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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2285/2002

of 10 December 2002

on the safeguard measures provided for in the ACP-EC Partnership Agreement and repealing Regulation (EEC) No 3705/90

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) It is necessary to lay down detailed rules for implementing the safeguard clauses provided for in Chapter 1 of Annex V to the ACP-EC Partnership Agreement, signed in Cotonou on 23 June 2000, hereinafter referred to as 'the Cotonou Agreement' ([1]), in order to enable the Community and the Member States to comply with their obligations under that Agreement.

(2) It is therefore appropriate to adapt the provisions of Council Regulation (EEC) No 3705/90 of 18 December 1990 on the safeguard measures provided for in the Fourth ACP-EEC Convention ([2]) to refer to the Cotonou Agreement.

(3) Regulation (EEC) No 3705/90 is rendered obsolete by this Regulation and should therefore be repealed.

(4) Account should be taken of the undertakings set out in Article 8(3) and (4) and Articles 9 and 11 of Annex V to the Cotonou Agreement when examining whether a safeguard measure should be introduced.

(5) The procedures concerning safeguard clauses provided for in the Treaty and in the Regulations on the common organisation of the agricultural markets are also applicable.

(6) By virtue of the Cotonou Agreement, it is also necessary to lay down certain specific provisions concerning the general rules set out in Council Regulation (EC) No 3285/94 of 22 December 1994 on common rules for imports ([3]),

([1]) OJ L 317, 15.12.2000, p. 3.
([2]) OJ L 358, 21.12.1990, p. 4.
([3]) OJ L 349, 31.12.1994, p. 53. Regulation as last amended by Regulation (EC) No 2474/2000 (OJ L 286, 11.11.2000, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

1. Where a Member State requests the Commission to apply safeguard measures as provided for in Article 8 of Annex V to the Cotonou Agreement and if the Commission decides not to apply them, the Commission shall inform the Council and the Member States accordingly within three working days of receipt of the request from the Member State.

Member States shall provide the Commission with the information needed to justify their requests to apply safeguard measures.

Where the Commission decides not to apply safeguard measures, any Member State may refer that decision to the Council within 10 working days of its notification.

In such a case, the Commission shall notify the ACP States and inform them of the opening of consultations as referred to in Article 9(1) of Annex V to the Cotonou Agreement.

The Council, acting by a qualified majority, may adopt a different decision within 20 working days after the conclusion of the consultations with the ACP States.

2. Where the Commission, at the request of a Member State or on its own initiative, decides that the safeguard measures provided for in Article 8 of Annex V to the Cotonou Agreement should be applied:

— it shall inform the Member States forthwith or, if it is responding to a Member State's request, within three working days of the date of receipt of that request,

— it shall consult a committee made up of representatives of the Member States and chaired by a Commission representative,

— at the same time it shall inform the ACP States and notify them of the opening of consultations as referred to in Article 9(1) of Annex V to the Cotonou Agreement,

— at the same time it shall provide the ACP States with all the information necessary for those consultations.

3. In any event, the consultations shall be deemed to be completed 21 days after the notification referred to in the fourth subparagraph of paragraph 1 or the third indent of paragraph 2.

At the end of the consultations or on expiry of the period of 21 days, and if no other arrangement proves possible, the Commission, after consulting the committee referred to in the second indent of paragraph 2, may decide to take appropriate measures to implement Article 8 of Annex V to the Cotonou Agreement.

4. The decision referred to in paragraph 3 shall be notified forthwith to the Council, the Member States and the ACP States.

It shall be immediately applicable.

5. Any Member State may refer the Commission decision referred to in paragraph 3 to the Council within 10 working days of receiving notification of the decision.

6. If the Commission has not taken a decision within 10 working days following the end of the consultations with the ACP States or, as the case may be, the end of the period of 21 days, any Member State which has referred the matter to the Commission in accordance with paragraph 2 may refer it to the Council.

7. In the cases referred to in paragraphs 5 and 6, the Council, acting by a qualified majority, may adopt a different decision within 20 working days.

Article 2

1. Where special factors arise within the meaning of Article 9(3) of Annex V to the Cotonou Agreement, the Commission may take safeguard measures, or authorise a Member State to apply safeguard measures immediately.

2. If the Commission receives a request from a Member State it shall take a decision thereon within three working days of receipt of the request.

It shall notify the Council and the Member States of its decision.

3. Any Member State may refer the Commission's decision to the Council in accordance with the procedure provided for in Article 1(5).

The procedure set out in Article 1(7) shall be applicable.

If the Commission has not taken a decision within the time limits specified in paragraph 2, any Member State which has referred the matter to the Commission may refer it to the Council in accordance with the procedures referred to in the first and second subparagraphs.

The provisions of this Article shall not preclude the consultations referred to in Article 9(1) of Annex V to the Cotonou Agreement.

Article 3

Implementation of this Regulation shall not preclude the application of the Regulations establishing a common organisation of the agricultural markets or related Community or national administrative provisions or the specific rules adopted under Article 308 of the Treaty for processed agricultural products.

Article 4

Regulation (EEC) No 3705/90 is hereby repealed.

Article 5

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 December 2002.

For the Council

The President

P. S. MØLLER