COUNCIL REGULATION (EC) No 3/2003

of 19 December 2002

amending Regulation (EC) No 153/2002 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part, and for applying the Interim Agreement between the European Community and the Former Yugoslav Republic of Macedonia

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) The Council is in the process of concluding a Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part, which was signed at Luxembourg on 9 April 2001 (hereinafter referred to as the 'Stabilisation and Association Agreement').

(2) Meanwhile on 9 April 2001 the Council concluded an Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part [1], which provides for the early entry into force of the trade and trade-related provisions of the Stabilisation and Association Agreement (hereinafter referred to as 'Interim Agreement'). The Interim Agreement entered into force on 1 June 2001.

(3) Regulation (EC) No 153/2002 [2] lays down certain procedures for applying some provisions of these Agreements. It is, however, necessary to lay down procedures for applying certain additional provisions of these Agreements.

(4) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [3].

(5) With regard to trade defence measures, it is appropriate to lay down specific provisions concerning the general rules provided for in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [4].

(6) This Regulation should continue to apply after entry into force of the Stabilisation and Association Agreement,

[1] OJ L 124, 4.5.2001, p. 2.
[2] OJ L 25, 29.1.2002, p. 16.
[3] OJ L 184, 17.7.1999, p. 23.
[4] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EC) No 153/2002 the following Articles shall be inserted:

'*Article 7a*

General safeguard clause and shortage clause

1. Where a Member State requests the Commission to take measures as provided for in Articles 24 and 25 of the Interim Agreement, and thereafter Articles 37 and 38 of the Stabilisation and Association Agreement, it shall provide the Commission, in support of its request, with the information needed to justify it.

2. The Commission shall be assisted by the Advisory Committee established by Article 4 of Council Regulation (EC) No 3285/94 (*) (hereinafter referred to as "the Committee").

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

4. The Committee shall adopt its rules of procedure.

5. Where the Commission, at the request of a Member State or on its own initiative, finds that the conditions laid down in Articles 24 and 25 of the Interim Agreement, and thereafter Articles 37 and 38 of the Stabilisation and Association Agreement are fulfilled, it shall:

— inform the Member States forthwith if acting on its own initiative or, if it is responding to a Member State's request, within five working days of the date of receipt of that request,

— consult the Committee on the proposed measures,

— at the same time inform the Former Yugoslav Republic of Macedonia and shall notify it of the opening of the consultations within the Cooperation Council, and thereafter the Stabilisation and Association Committee as provided for in Article 24(4) and Article 25(3) of the Interim Agreement, and thereafter Article 37(4) and Article 38(3) of the Stabilisation and Association Agreement,

— at the same time provide the Cooperation Council, and thereafter the Stabilisation and Association Committee with all the information necessary for these consultations as provided for in Article 24(3) and Article 25(3) of the Interim Agreement, and thereafter Article 37(3) and Article 38(3) of the Stabilisation and Association Agreement.

6. On the completion of the consultations and if no other arrangement proves possible, the Commission, after consulting the Committee, may decide on appropriate measures as provided for in Articles 24 and 25 of the Interim Agreement, and thereafter Articles 37 and 38 of the Stabilisation and Association Agreement.

That Decision shall be notified forthwith to the Council; it shall also be notified to the Cooperation Council, and thereafter the Stabilisation and Association Committee.

That Decision shall be applicable immediately.

7. Any Member State may refer the Commission's Decision referred to in paragraph 6 to the Council within 10 working days of its notification.

The Council, acting by a qualified majority, may take a different Decision within two months.

8. If the Commission decides not to take measures as provided for in Articles 24 and 25 of the Interim Agreement, and thereafter Articles 37 and 38 of the Stabilisation and Association Agreement, it shall inform the Council accordingly within five working days of receipt of the request from the Member State.

Any Member State may refer that Decision of the Commission to the Council within 10 working days of its notification.

If the Council, acting by qualified majority, indicates its intention to adopt a different Decision, the Commission shall inform the Former Yugoslav Republic of Macedonia thereof forthwith and shall notify it of the opening of the consultations within the Cooperation Council, and thereafter the Stabilisation and Association Committee as provided for in Article 24(3) and (4) and Article 25(3) of the Interim Agreement, and thereafter Article 37(3) and (4) and Article 38(3) of the Stabilisation and Association Agreement.

9. The Council, acting by qualified majority, may take a different Decision within two months of the conclusion of the consultations with the Former Yugoslav Republic of Macedonia within the Cooperation Council, and thereafter the Stabilisation and Association Committee.

10. The consultations within the Cooperation Council, and thereafter the Stabilisation and Association Committee shall be deemed to be completed 30 days after the notification referred to in paragraphs 5 and 8.

Article 7b

Exceptional and critical circumstances

1. Where exceptional and critical circumstances arise within the meaning of Article 24(4)(b) and Article 25(4) of the Interim Agreement, and thereafter Article 37(4)(b) and Article 38(4) of the Stabilisation and Association Agreement, the Commission may take immediate measures as provided for in Articles 24 and 25 of the Interim Agreement, and thereafter Articles 37 and 38 of the Stabilisation and Association Agreement.

If the Commission receives a request from a Member State, it shall take a Decision thereon within five working days of receipt of the request.

2. The Commission shall notify the Council of its Decision.

3. Any Member State may refer the Commission's Decision to the Council within 10 working days of receiving notification of the Decision.

The Council, acting by a qualified majority, may take a different Decision within two months.

Article 7c

Safeguard clause for agricultural and fisheries products

Notwithstanding the procedures set out in Articles 7a and 7b, necessary measures concerning agricultural and fisheries products on the basis of Articles 17 or 24 of the Interim Agreement, and thereafter Articles 30 or 37 of the Stabilisation and Association Agreement or on the basis of provisions in the Annexes covering these products as well as of Protocol 3, can be taken according to procedures provided for by the relevant rules establishing the common organisation of the agricultural markets or markets in fishery and aquaculture products, or in specific provisions adopted pursuant to Article 308 of the Treaty and applicable to products resulting from the processing of agricultural and fisheries products, provided that the conditions established pursuant to Article 17 of the Interim Agreement, and thereafter Article 30 of the Stabilisation and Association Agreement or Article 24(3), (4) and (5) of the Interim Agreement, and thereafter Article 37(3), (4) and (5) of the Stabilisation and Association Agreement are met.

Article 7d

Dumping

In the case of a practice which is liable to warrant application by the Community of the measures provided for in Article 23(1) of the Interim Agreement, and thereafter Article 36(1) of the Stabilisation and Association Agreement, the introduction of anti-dumping measures shall be decided upon in accordance with the provisions laid down in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped import from countries not members of the European Community (**) and the procedure provided for in Article 23(2) of the Interim Agreement, and thereafter Article 36(2) of the Stabilisation and Association Agreement.

Article 7e

Competition

1. In the case of a practice that may justify application by the Community of the measures provided for in Article 33 of the Interim Agreement, and thereafter Article 69 of the Stabilisation and Association Agreement, the Commission after examining the case, on its own initiative or at the request of a Member State, shall decide whether such practice is compatible with the Agreement. Where necessary it shall propose the adoption of safeguard measures to the Council, which shall act in accordance with the procedures laid down in Article 133 of the Treaty, except in the cases of aid to which Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (***) applies, when measures shall be taken according to the procedures laid down in that Regulation.

Measures shall be taken only under the conditions set out in Article 33(5) of the Interim Agreement, and thereafter Article 69(5) of the Stabilisation and Association Agreement.

2. In the case of a practice that may cause measures to be applied to the Community by the Former Yugoslav Republic of Macedonia on the basis of Article 33 of the Interim Agreement, and thereafter Article 69 of the Stabilisation and Association Agreement, the Commission, after examining the case, shall decide whether the practice is compatible with the principle set out in the Interim Agreement, and thereafter the Stabilisation and Association Agreement. Where necessary, it shall take appropriate decisions on the basis of criteria which result from the application of Articles 81, 82 and 87 of the Treaty.

Article 7f

Fraud or failure to provide administrative cooperation

1. For the purpose of interpreting Article 29 of the Interim Agreement, and thereafter Article 42 of the Stabilisation and Association Agreement, failure to provide administrative cooperation as required for the verification of evidence of origin shall mean, *inter alia*:

— the absence of administrative cooperation, such as the failure to provide names and addresses of customs or government authorities responsible for issuing and checking certificates of origin, or specimens of stamps used to authenticate the certificates, or the failure to update that information where appropriate,

— a repeated lack or inadequacy of action in verifying the originating status of products and the fulfilment of the other requirements of Protocol 4 of the Agreements and identifying or preventing contravention of the rules of origin,

— a repeated refusal or undue delay to carry out, at the request of the Commission, subsequent verification of the proof of origin and to communicate its results in time,

— a repeated refusal or undue delay to obtain the authorisation to conduct administrative and investigative cooperation missions in the Former Yugoslav Republic of Macedonia, in order to verify the authenticity of documents or the accuracy of information relevant for granting the preferential treatment granted under the Agreements, or to carry out or arrange for appropriate inquiries to identify or prevent contravention of the rules of origin,

— a repeated failure to comply with the provisions of Protocol 5 on mutual administrative assistance in customs matters insofar as it is relevant to the application of the trade provisions of the Interim Agreement, and thereafter the Stabilisation and Association Agreement.

2. Where the Commission, on the basis of information provided by a Member State or on its own initiative, finds that the conditions laid down in Article 29 of the Interim Agreement, and thereafter Article 42 of the Stabilisation and Association Agreement, are fulfilled it shall:

— inform the Council,

— enter immediately into consultations with the Former Yugoslav Republic of Macedonia to find an appropriate solution as provided for in those provisions.

In addition, it may:

— call on the Member States to take such precautionary measures as are necessary in order to safeguard the Community's financial interests,

— publish a notice in the *Official Journal of the European Communities* stating that there are grounds for reasonable doubts about the application of the provisions relevant to the application of Article 29 of the Interim Agreement, and thereafter of Article 42 of the Stabilisation and Association Agreement.

3. Pending a mutually satisfactory solution having been reached in the consultations referred to in paragraph 2, the Commission may decide on other appropriate measures it deems necessary in accordance with Article 29 of the Interim Agreement, and thereafter Article 42 of the Stabilisation and Association Agreement, as well as with the procedure referred to in paragraph 5.

4. The Commission shall be assisted by the Customs Code Committee set up by Article 248a of Regulation (EEC) No 2913/92 (****).

5. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

6. The Committee shall draw up its rules of procedure.

Article 7g

Notification

Notification to the Cooperation Council, and thereafter the Stabilisation and Association Council and the Stabilisation and Association Committee, respectively, as required by the Interim Agreement, and thereafter the Stabilisation and Association Agreement shall be the responsibility of the Commission, acting on behalf of the Community.

(*) 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).

(**) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

(***) OJ L 288, 21.10.1997, p. 1. Regulation as amended by Regulation (EC) No 1973/2002 (OJ L 305, 7.11.2002, p. 4).

(****) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000 (OJ L 311, 12.12.2000, p. 17).'

Article 2

This Regulation shall enter into force on the day 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, 19 December 2002.

For the Council

The President

L. ESPERSEN