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COUNCIL REGULATION (EC) No 140/2008

of 19 November 2007

on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and the Republic of Montenegro, of the other part

(OJ L 43, 19.2.2008, p. 1)

Amended by:

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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) A Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, (hereinafter referred to as SAA) was signed on 15 October 2007. The SAA is in the process of being ratified.

(2) On 15 October 2007 the Council concluded an Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Montenegro, of the other part, (hereinafter referred to as the Interim Agreement) which provides for the early entry into force of the trade and trade-related provisions of the SAA. The Interim Agreement is to enter into force on the first day of the second month following the date on which the Parties notify each other that their respective approval procedures have been completed.

(3) It is necessary to lay down the procedures for applying certain provisions of the Interim Agreement. Since the trade and trade-related provisions of these instruments are to a very large extent identical, this Regulation should also apply to the implementation of the SAA after its entry into force.

(4) The SAA and the Interim Agreement stipulate that fishery products originating in Montenegro may be imported into the Community at a reduced customs duty, within the limits of tariff quotas. It is therefore necessary to lay down provisions regulating the management of these tariff quotas.

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(5) Where trade defence measures become necessary, they should be adopted in accordance with the general provisions laid down in Council Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports ([1]), Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports ([2]), Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([3]) or, as the case may be, Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ([4]).

(6) Where a Member State provides the Commission with information on a possible fraud or failure to provide administrative cooperation, the relevant Community legislation shall apply, in particular Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters ([5]).

(7) For the purposes of implementing the relevant provisions of this Regulation the Commission should be assisted by the Customs Code Committee established by Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([6]).

(8) 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 ([7]),

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down certain procedures for the adoption of detailed rules for the implementation of certain provisions of the Stabilisation and Association Agreement between the European Communities

([1]) OJ L 349, 31.12.1994, p. 53. Regulation as last amended by Regulation (EC) No 2200/2004 (OJ L 374, 22.12.2004, p. 1).
([2]) OJ L 324, 27.12.1969, p. 25. Regulation as last amended by Regulation (EEC) No 3918/91 (OJ L 372, 31.12.1991, p. 31).
([3]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
([4]) OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
([5]) OJ L 82, 22.3.1997, p. 1. Regulation as amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).
([6]) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).
([7]) OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

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and their Member States, of the one part, and the Republic of Montenegro, of the other part, (hereinafter referred to as the SAA), and of the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Montenegro, of the other part (hereinafter referred to as the Interim Agreement).

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Article 2

Concessions for fish and fishery products

Detailed rules on the implementation of Article 14 of the Interim Agreement, and thereafter Article 29 of the SAA, concerning the tariff quotas for fish and fishery products, shall be adopted by the Commission in accordance with the examination procedure referred to in Article 8a(3) of this Regulation.

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Article 3

Tariff reductions

1. Subject to paragraph 2, rates of preferential duty shall be rounded down to the first decimal place.

2. Where the result of calculating the rate of the preferential duty pursuant to paragraph 1 is one of the following, the preferential rate shall be considered a full exemption:

(a) 1 % or less in the case of ad valorem duties; or

(b) EUR 1 or less per individual amount in the specific duties.

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Article 4

Technical adaptations

Amendments and technical adaptations to the provisions adopted pursuant to this Regulation which are necessary following changes to the Combined Nomenclature codes and to the TARIC subdivisions, or arising from the conclusion of new or modified agreements, protocols, exchanges of letters or other acts between the Union and the Republic of Montenegro, shall be adopted in accordance with the examination procedure referred to in Article 8a(3) of this Regulation.

Article 5

General safeguard clause

Where the Union needs to take a measure as provided for in Article 26 of the Interim Agreement, and thereafter Article 41 of the SAA, it shall be adopted in accordance with the examination procedure referred to in Article 8a(3) of this Regulation, unless otherwise specified in Article 26 of the Interim Agreement, and thereafter Article 41 of the SAA.

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Article 6

Shortage clause

Where the Union needs to take a measure as provided for in Article 27 of the Interim Agreement, and thereafter Article 42 of the SAA, it shall be adopted in accordance with the examination procedure referred to in Article 8a(3) of this Regulation.

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Article 7

Exceptional and critical circumstances

Where exceptional and critical circumstances arise within the meaning of Articles 26(5)(b) and 27(4) of the Interim Agreement, and thereafter Article 41(5)(b) and 42(4) of the SAA, the Commission may take immediate measures as provided for in Articles 26 and 27 of the Interim Agreement, and thereafter Article 41 and 42 of the SAA.

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.

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The Commission shall take such measures in accordance with the examination procedure referred to in Article 8a(3). In cases of urgency, Article 8a(4) shall apply.

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Article 8

Safeguard clause for agricultural and fishery products

1. Notwithstanding the procedures provided for in Articles 5 and 6 of this Regulation, where the Community needs to take a safeguard measure, as provided for in Article 26 of the Interim Agreement and thereafter Article 41 of the SAA, concerning agricultural and fishery products, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures after, where applicable, having had recourse to the referral procedure provided for in Article 26 of the Interim Agreement and thereafter Article 41 of the SAA.

If the Commission receives a request from a Member State, it shall take a decision thereon:

(a) within three working days following the receipt of a request, where the referral procedure provided for in Article 26 of the Interim Agreement and thereafter Article 41 of the SAA does not apply; or

(b) within three days of the end of the 30-day period referred to in Article 26(5)(a) of the Interim Agreement and thereafter in Article 41(5)(a) of the SAA, where the referral procedure provided for in Article 26 of the Interim Agreement and thereafter Article 41 of the SAA applies.

The Commission shall notify the Council of the measures it decided.

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2. The Commission shall take such measures in accordance with the examination procedure referred to in Article 8a(3). In cases of urgency, Article 8a(4) shall apply.

Article 8a

Committee procedure

1. For the purpose of Article 4 of this Regulation, the Commission shall be assisted by the Customs Code Committee established by Article 184 of Regulation (EC) No 450/2008 of the European Parliament and of the Council [1]. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council [2].

2. For the purpose of Articles 5, 6, 7 and 8 of this Regulation, the Commission shall be assisted by the Committee established by Council Regulation (EC) No 260/2009 [3]. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

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Article 9

Dumping and subsidy

In the event of a practice which is liable to warrant application by the Community of the measures provided for in Article 25(2) of the Interim Agreement, and thereafter Article 40(2) of the SAA, the introduction of anti-dumping and/or countervailing measures shall be decided upon in accordance with the provisions laid down in, respectively, Regulation (EC) No 384/96 and/or Regulation (EC) No 2026/97.

Article 10

Competition

1. In the event of a practice which may justify application by the Community of the measures provided for in Article 38 of the Interim Agreement, and thereafter Article 73 of the SAA, the Commission shall, after examining the case, on its own initiative or on the request of a Member State, decide whether such practice is compatible with the Agreement.

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[1] Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ L 145, 4.6.2008, p. 1).

[2] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

[3] Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports (OJ L 84, 31.3.2009, p. 1).

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The measures provided for in Article 38(10) of the interim Agreement, and thereafter Article 73(10) of the SAA, shall be adopted in the cases of aid in accordance with the procedures laid down in Regulation (EC) No 2026/97 and, in the other cases, in accordance with the procedure laid down in Article 133 of the Treaty.

2. In the event of a practice which may cause measures to be applied to the Community by the Republic of Montenegro on the basis of Article 38 of the Interim Agreement, and thereafter Article 73 of the SAA, the Commission shall, after examining the case, decide whether the practice is compatible with the principles set out in the Interim Agreement, and thereafter the SAA. 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 11

Fraud or failure to provide administrative cooperation

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 31 of the Interim Agreement and thereafter in Article 46 of the SAA are fulfilled, it shall, without undue delay:

(a) inform the Council; and

(b) notify the Interim Committee, and thereafter the Stabilisation and Association Committee, of its finding together with the objective information, and enter into consultations within the Interim Committee, and thereafter the Stabilisation and Association Committee.

Any publication under Article 31(5) of the Interim Agreement, and thereafter Article 46(5) of the SAA, shall be effected by the Commission in the *Official Journal of the European Union*.

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The Commission may decide, in accordance with the examination procedure set out in Article 8a(3) of this Regulation, to suspend temporarily the relevant preferential treatment of the products as provided for in Article 31(4) of the Interim Agreement, and thereafter Article 46(4) of the SAA.

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Article 13

Notification

The Commission, acting on behalf of the Community, shall be responsible for notification to the Interim Committee, and thereafter the Stabilisation and Association Council and the Stabilisation and Association Committee, respectively, as required by the Interim Agreement or the SAA.

Article 14

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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