

## COMMISSION DECISION

of 12 May 1971

empowering Member States to take interim protective measures with regard to the importation of certain products originating in third countries and put into free circulation in other Member States

(71/202/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 115 thereof;

Whereas since the end of the transitional period all quantitative restrictions on imports and all measures having equivalent effect have been prohibited between Member States, as regards both products originating in the Community and those which originate in third countries and are put into free circulation in the Community; whereas, in intra-Community trade, Member States may therefore only impose a system of licences or other import authorisations provided they issue such documents promptly and for all the quantities in respect of which application is made;

Whereas experience has shown that it is necessary that a Member State be able to subject to prior control the importation of certain products originating in third countries and put into free circulation in another Member State where such importation would constitute such deflection of trade as could obstruct the operation of measures of commercial policy taken in conformity with the Treaty; whereas the risk of such deflection of trade exists where, in the Member State concerned, the importation of a product originating in a third country is prohibited, or is subject to a quota or voluntary restraint arrangement the quantity or value of which, taking account of direct and indirect imports already effected or authorised, is liable to be exceeded;

Whereas this objective cannot be attained solely by co-operation between Member States, but requires an effective system, involving the least possible disturbance to the functioning of the common market, whereby the imports in question are made subject to the prior granting of an import

authorisation and Member States are empowered, as an interim protective measure, to withhold such authorisation for the period necessary to request from the Commission powers to apply definitive protective measures;

Whereas it is therefore appropriate to empower Member States to apply such a system by way of interim protection and to specify what information must accompany any request submitted under the system;

HAS ADOPTED THIS DECISION:

*Article 1*

1. Member States are hereby empowered to make the importation of products originating in third countries and put into free circulation in other Member States subject to the granting of an import authorisation where:

- the importation into the Member State in question of such products directly from the third country concerned is subject, in conformity with the Treaty, to quantitative restrictions or to voluntary restraint on the part of the third country concerned under a trade agreement with the Member State in question; and
- deflection of trade is to be feared because of divergence between these measures and the measures of commercial policy applied in other Member States.

However, where any quota is not reserved for imports coming direct from the third country of origin under a trade agreement with that country, the Member State may not avail itself of the powers provided for in the first subparagraph until, taking account of direct and indirect imports already effected or authorised, 80% of the quota has been utilised.

2. A Member State may require an applicant for an import authorisation to supply all relevant information concerning the description of the product, its origin and price, and the quantity or value of goods which it is proposed to import, and also information concerning the free circulation of the product in another Member State.

3. Import authorisations shall be issued as promptly as possible and in any event not later than eight working days following submission of the application by the party concerned.

#### *Article 2*

1. If a Member State finds that a proposed importation is likely to cause such deflection of trade as could obstruct the operation of measures of commercial policy taken in conformity with the Treaty, it may withhold the import authorisation applied for, provided that, within the time limit specified in Article 1 (3), a request for application of the first paragraph of Article 115 of the Treaty is placed before the Commission.

The Member State shall forthwith inform the applicant for the import authorisation of its action.

2. The Member State concerned shall take a decision on the issuing of the import authorisation as soon as the decision of the Commission concerning application of the first paragraph of Article 115 of the Treaty is received, and in any event not later than twelve working days following submission of the application for the import authorisation.

#### *Article 3*

The request referred to in Article 2 (1) must be accompanied by all the necessary particulars and must, in particular, give:

- an exact description and the tariff heading of the product;
- the country of origin of the product;

- the regime, whether autonomous or conventional, applied in the requesting Member State to the products in question originating in the third country concerned, and the quantity or value and nature of any quota, with details of the extent to which, taking account of direct imports already effected and licences issued, this has been utilised;
- the exporting Member State;
- the quantity or value of products originating in the third country concerned and put into free circulation in other Member States which have already been imported or in respect of which import authorisations have already been granted during the appropriate reference period;
- where relevant, any available indication as to the price of the product which it is proposed to import and the price of like domestic products, together with any other information necessary to an assessment of possible economic difficulties arising in the requesting Member State;
- the date on which the application for the import authorisation was submitted.

#### *Article 4*

Member States shall forthwith inform the Commission and the other Member States of measures taken under Article 1 (1) and (2).

#### *Article 5*

This Decision is addressed to the Member States.

Done at Brussels, 12 May 1971.

*For the Commission*

*The President*

Franco M. MALFATTI