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COUNCIL DECISION

of 16 December 1969

on the progressive standardisation of agreements concerning commercial relations
between Member States and third countries and on the negotiation of Community
agreements

(69/494/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the
European Economic Community, and in particular
Articles 111 and 113 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European
Parliament¹;

Whereas the Council Decision of 9 October 1961² on
standardisation of the duration of trade agreements
with third countries provides that the duration of
such agreements may not extend beyond the end of
the transitional period;

Whereas Article 113 (3) of the Treaty provides that
where, after the transitional period has ended, trade
agreements with third countries need to be
negotiated, the Commission shall make recommen-
dations to the Council, which shall authorise the
Commission to open the necessary negotiations;

Whereas a procedure must be established to ensure
that the replacement of national agreements by
Community agreements is carried out progressively;

Whereas, while all negotiations with a view to
conclusion of new treaties, agreements, or
arrangements, or to amendment of those already
existing, must, after the end of the transitional
period, be conducted in accordance with a
Community procedure, it is nevertheless permissible

for existing treaties, agreements and arrangements to
be provisionally extended, expressly or tacitly,
even beyond the end of the transitional period,
provided that their extension does not hinder
implementation of the common commercial policy;

Whereas, in order to ascertain whether this condition
is met, prior consultation should take place at
Community level between the Member States and the
Commission;

Whereas, where it is not possible for Community
negotiations to take place, provision should be made
for co-ordination at Community level of commercial
relations between Member States and third countries;

Whereas, however, in certain exceptional cases,
where negotiation by the Community is not yet
possible and an interruption in relations based on
agreement might compromise the development of
commercial relations with the third country in
question to the detriment of the Community and
Member States, provision should be made, as a
temporary measure and for a limited period, for
possible negotiation by Member States;

Whereas, in order to prevent such negotiations
hindering implementation of the common
commercial policy, they must be conducted by
Member States on the basis of conclusions reached
beforehand in accordance with a Community
procedure and covering the basic terms of the
agreement to be negotiated;

Whereas, before an agreement is signed, the results of
the negotiations must be checked to ensure that they
conform with the joint conclusions;

Whereas, in order that the bringing into operation of
the proposed provisions may be facilitated, provision

¹ OJ No C 160, 18.12.1969, p. 17.

² OJ No 71, 4.11.1961, p. 1274/61.

should be made for consultations between the Member States and the Commission;

Whereas the special committee provided for in Article 113 of the Treaty should be set up;

HAS ADOPTED THIS REGULATION:

TITLE I

Express or tacit extension of agreements already existing

Article 1

Member States shall notify the Commission of all bilateral treaties, agreements or arrangements concerning commercial relations with third countries within the meaning of Article 113 the extension of which, whether express or tacit, is proposed; the Commission shall notify the other Member States.

Notification shall reach the Commission not later than three months before the date of express extension or of the expiry of the period during which notice of termination of the agreement in question may be given.

Article 2

After the notification has been received, prior consultation shall take place, either at the request of a Member State or on the initiative of the Commission.

Consultation shall begin within three weeks following receipt by the Commission of the notification referred to in the second paragraph of Article 1 or of the request from a Member State.

The main purpose of the consultation shall be to establish whether the bilateral agreements to be extended expressly or tacitly contain provisions relating to the common commercial policy within the meaning of Article 113 and, if such be the case, whether such provisions could constitute an obstacle to that policy. The consultation shall also cover all instruments currently in force between the other Member States and the third country concerned.

Article 3

If, after consultation, it is established that even though certain provisions in the instruments to be

extended expressly or tacitly come within the scope of the common commercial policy within the meaning of Article 113 those provisions would not, during the period of extension envisaged, constitute an obstacle to implementation of the common commercial policy, the Commission may propose to the Council that the Member State or States concerned be authorised, by way of derogation from Article 1 of the Council Decision of 9 October 1961¹ on standardisation of the duration of trade agreements with third countries, to extend, expressly or tacitly, for a period to be specified, the provisions in question of the instruments which were the subject of the consultation. This period shall not exceed one year.

If, however, the instruments in question contain either a Community reservation clause or a clause providing for annual notice of termination, express or tacit extension may be authorised for a longer period.

Article 4

If, after consultation, it is established that provisions in the instrument to be extended expressly or tacitly could, during the period of extension envisaged, constitute an obstacle to implementation of the common commercial policy, in particular by reason of divergencies between the policies of Member States, the Commission shall submit a detailed report to the Council. This report shall be accompanied by the necessary proposals and, where appropriate, by recommendations requesting that the Commission be authorised to open Community negotiations with the third countries in question. Negotiation of agreements shall be governed by the provisions of Title II of this Decision.

TITLE II

Negotiation of agreements with third countries

Article 5

Where a Member State considers that a bilateral treaty, agreement or arrangement concerning commercial relations with a third country within the meaning of Article 113 should be negotiated, it shall refer the matter to the Commission, which shall notify the other Member States. The Commission may also propose such negotiations. The Member

¹ OJ No 71, 4.11.1961, p. 1274/61.

States and the Commission shall take account of requests and approaches made by third countries.

Article 6

Following receipt of these notifications, the Commission shall prepare its proposals or recommendations under Article 113 of the Treaty. To this end:

1. it shall check whether the provisions to be presented for negotiation relate to the commercial policy as defined in Article 113 of the Treaty;
2. it shall examine whether the conditions required for the opening of Community negotiations are satisfied and whether such negotiations are desirable;
3. it shall examine, where necessary and where either conditions for the opening of Community negotiations are not yet satisfied or such negotiations are not desirable, the desirability of co-ordinating commercial relations between Member States and third countries by means of autonomous Community action.

Article 7

Where it is apparent that the provisions to be presented for negotiation relate to the commercial policy of the Community, the Commission shall submit a detailed report to the Council forthwith, accompanied either by recommendations requesting that the Commission should be authorised to open the necessary negotiations, or by proposals for autonomous Community action.

Article 8

Negotiations shall be conducted by the Commission in consultation with the special committee appointed by the Council under Article 113 of the Treaty to assist the Commission in this task, and within the framework of such directives as the Council may issue to it.

The committee shall consist of representatives of the Member States and shall be presided over by the representative of the Member State which holds the office of President of the Council.

The committee may be consulted by the Commission on the drafting of a programme of negotiations. The Commission shall take part in all the work of the committee and may at any time request that it be convened.

TITLE III

Transitional provisions concerning exceptional cases; final provisions

Article 9

By way of derogation from the provisions of Title II and until 31 December 1972, the Council, acting on a proposal from the Commission and after the required prior consultation, may by way of exception authorise bilateral negotiations between Member States and certain third countries in cases where Community negotiations under Article 113 of the Treaty prove to be not yet possible.

The provisions of this Article shall apply where, for any special reason, a Member State considers that, in order to avoid any interruption in commercial relations based on agreements, it must, even before the Community procedure laid down in Title II is fully established, undertake negotiations with some third country.

Article 10

Consultations held in accordance with Article 11:

- (i) shall involve such co-ordination as will ensure the proper functioning and the strengthening of the common market, will take account of the legitimate interests of the Member States, as regards both imports and the growth of exports, and will contribute towards the establishment of uniform principles of common commercial policy in relation to the country in question;
- (ii) shall, in particular, cover all the basic commercial provisions of the proposed agreement;
- (iii) shall be resumed during negotiations if developments in the latter so require and particularly if the Member State concerned intends to digress from the guidelines adopted at the time of consultation;
- (iv) shall—as regards points (i), (ii) and (iii)—lead to conclusions which will serve as guidelines for the Member State during the negotiations.

Article 11

The consultations provided for in Articles 2 and 10 shall be carried out within the Committee referred to

in the Council Decision of 9 October 1961¹ concerning a consultation procedure in respect of the negotiation of agreements concerning commercial relations between Member States and third countries and in respect of changes in the state of liberalisation in relation to third countries.

Article 12

The Council may, acting by a qualified majority on a proposal from the Commission, authorise Member States to open negotiations with the third countries in question, such negotiations to be conducted on the basis of the conclusions reached under the procedure laid down in Article 10.

Article 13

At the end of negotiations, the Member State concerned shall communicate to the Commission the results of such negotiations and shall inform the other Member States thereof.

If within five working days after communication to the Commission no Member State has raised any objection with the Commission to the proposed agreement or communicated any such objection to the Member State concerned, the Commission shall forthwith inform the Council and the other Member

States of that fact, unless, for its part, the Commission has any objection to raise.

Upon receipt of this information the agreement in question may be concluded.

In all other cases, the agreement may be concluded only after authorisation by the Council, acting by a qualified majority on a proposal from the Commission.

Article 14

This Decision shall apply from 1 January 1970.

Article 15

The Council Decision of 9 October 1961 concerning a consultation procedure in respect of the negotiation of agreements concerning commercial relations between Member States and third countries is hereby amended to the extent to which it is inconsistent with this Decision.

This Decision is addressed to the Member States.

Done at Brussels, 16 December 1969.

For the Council

The President

H. J. DE KOSTER

¹ OJ No 71, 4.11.1961, p. 1273/61.