COMMISSION DECISION No 264/94/ECSC

of 1 February 1994

on certain procedures for applying the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 74 and the first subparagraph of Article 95 thereof,

Whereas a Europe Agreement establishing an association between the European Communities and their Member States, of the other part, and the Republic of Hungary, of the one part, hereinafter referred to as 'the Agreement', was signed in Brussels on 16 December 1991;

Whereas pending the entry into force of the Europe Agreement, its provisions on trade and trade-related matters have been given effect since 1 March 1992 by an Interim Agreement on trade and trade-related matters between the European Economic Community and the European Coal and Steel Community, of the one part, and the Republic of Hungary, of the other part, signed in Brussels on 16 December 1991 [1];

Whereas pursuant to the conclusions of the Copenhagen European Council on 21 and 22 June 1993 regarding new trade concessions for the Central and Eastern European countries, an Additional Protocol to the Interim Agreement was signed on 22 December 1993 by the European Economic Community and the European Coal and Steel Commuity, of the one part, and Hungary, of the other part [2];

Whereas Commission Decision No 523/92/ECSC [3] lays down certain procedures for applying the Interim Agreement on trade and trade-related measures between the European Economic Community and the European Coal and Steel Community, of the one part, and the Republic of Hungary, of the other part;

Whereas it is necessary to lay down the procedures for applying various provisions of the agreement and in particular those contained in Protocol 2 on ECSC products by adopting provisions similar to those provided for in Decision No 523/92/ECSC;

Whereas such procedures have been laid down for the European Economic Community by Council Regulation (EC) No 3491/93 of 13 December 1993 on certain procedures for applying the Interim Agreement on trade and trade-related matters between the European Economic Community and the European Coal and Steel Community, of the one part, and the Republic of Hungary, of the other part [4];

Whereas, as regards measures of commercial protection it is necessary to lay down specific provisions concerning the general rules set out in Commission Decision No 2424/88/ECSC of 29 July 1988 on protection against dumped or subsidized imports from countries not members of the European Coal and Steel Community [5] where the Agreement makes this necessary;

Whereas account should be taken of the undertakings set out in the Agreement when examining whether a safeguard measure should be introduced;

Whereas it is desirable to ensure that the rules for the application of the Agreement should be similar for both the European Economic Community and the European Coal and Steel Community;

Whereas certain measures provided for in the Agreement go beyond the powers of action provided for in the Treaty and it is therefore necessary in this case to refer to the provisions of Article 95, after consultation with the consultative committee and with the unanimous assent of the Council,

HAS ADOPTED THIS DECISION:

Article 1

The Commission may, with the assent of the Council, decide to refer to the Association Council established by the Agreement with regard to the measures provided for in Articles 28 and 115 (2) of the Agreement. Where necessary, the Commission shall adopt these measures in accordance with the same procedure.

The Commission may take the decisions to this end on its own initiative or at the request of a Member State.

Article 2

1. In the case of a practice that may justify application by the Community of the measures provided for in Article 8 of Protocol 2 to the Agreement, the Commission, after examining the case on its own initiative or at the request of a Member State, shall decide whether such

[1] OJ No L 116, 30. 4. 1992, p. 2.
[2] OJ No L 25, 29. 1. 1994, p. 7.
[3] OJ No L 56, 29. 2. 1992, p. 38.
[4] OJ No L 319, 21. 12. 1993, p. 1.
[5] OJ No L 209, 2. 8. 1988, p. 18.

practice is compatible with the Agreement. Where necessary, except in the case of public aids to which Decision No 2424/88/ECSC applies, when measures shall be taken according to the procedures laid down in that Decision.

Such measures shall be taken under the conditions provided for in Article 8 of Protocol 2 to the Agreement.

2. In the case of a practice that may cause safeguard measures to be applied to the Community by Hungary on the basis of Article 8 of Protocol 2 to the Agreement, the Commission, after examining the case, shall decide whether the practice is compatible with the principles set out in the Agreement. Where necessary, it shall take appropriate decisions on the basis of the criteria laid down in Articles 65 and 66 of the ECSC Treaty and Article 85 of the Treaty establishing the European Community, and of the rules applicable to State aids, including secondary legislation.

Article 3

In the case of a practice which is liable to warrant the application, by the Community, of the measures provided for in Article 29 of the Agreement, the introduction of anti-dumping measures shall be decided upon in accordance with the provisions laid down in Decision No 2424/88/ECSC and the procedure provided for in Article 33 (2) and (3) (b) or (d) of the Agreement.

Article 4

1. Where a Member State requests the Commission to apply safeguard measures as provided for in Article 30 or 31 of the Agreement, and if the Commission decides not to apply them, the Commission shall inform the Council and the Member States accordingly within five 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.

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

If the Council, acting by the qualified majority referred to in Article 28 (4) of the Treaty, indicates its intention to request a different decision, the Commission shall inform Hungary thereof forthwith and shall notify it of the opening of the consultations within the Association Council as provided for in Article 33 (2) and (3) of the Agreement.

The Council, acting by a qualified majority, may ask the Commission within one month of the conclusion of the consultations with Hungary within the Association Council, to adopt safeguard measures.

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 30 or 31 of the Agreement should be applied:

— 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,

— it shall consult the committee mentioned in Article 5 (2) of Regulation (EC) No 3941/93 (hereinafter referred to as 'the committee'),

— at the same time it shall inform Hungary and notify the Association Council of the opening of consultations as referred to in Article 33 (2) and (3) of the Agreement,

— at the same time it shall provide the Association Council with all the information necessary for these consultations.

3. In any event, the consultations within the Association Council shall be deemed to be completed 30 days after the notification referred to in the fourth subparagraph of paragraph 1 and in paragraph 2.

At the need of the consultations or on expiry of the period of 30 days, and if no other arrangement proves possible, the Commission, after consulting the committee, may take appropriate measures to implement Articles 30 and 31 of the Agreement.

4. The decision referred to in paragraph 3 shall be notified forthwith to the Council, the Member States and Hungary; it shall also be notified to the Association Council.

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 the meaning of the second subparagraph of paragraph 3 within 10 working days of the end of the consultations with the Association Council or, as the case may be, the end of the period of 30 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 paragraph 5 the Council, acting by a qualified majority, may, within one month, ask the Commission to adopt different safeguard measures, and in the cases mentioned in paragraph 6, ask the Commission to take measures.

Article 5

1. Where exceptional circumstances arise within the meaning of Article 33 (3) (d) of the Agreement, the Commission may take immediate safeguard measures in the cases referred to in Articles 30 and 31 of the Agreement.

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

The Commission 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 4 (5).

The procedure set out in Article 4 (5) to (7) shall be applicable.

If the Commission has not taken a decision within the time limit mentioned in paragraph 2, any Member State which has referred the matter to the Commission may refer it to the Council in accordance with the procedure laid down in the preceding subparagraphs.

Article 6

Notification to the Association Council by the Community as required by the Agreement shall be the responsibility of the Commission.

Article 7

This Decision shall enter into force on the same day as the Europe Agreement.

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

Done at Brussels, 1 February 1994.

For the Commission

Martin BANGEMANN

Member of the Commission