II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 1083/2013

of 28 August 2013

establishing rules related to the procedure for temporary withdrawal of tariff preferences and adoption of general safeguard measures under Regulation (EU) No 978/2012 of the European Parliament and the Council applying a scheme of generalised tariff preferences

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 [1], and in particular Articles 15(12), 19(14), and 22(4) thereof,

Whereas:

To ensure the transparency and predictability of the temporary withdrawal of preferences and of the adoption of general safeguards, the Commission has been empowered by the European Parliament and the Council to adopt a delegated act to establish rules, in particular, with respect to deadlines, rights of parties, confidentiality and review,

HAS ADOPTED THIS REGULATION:

CHAPTER I

RULES RELATED TO THE PROCEDURE FOR TEMPORARY WITHDRAWAL OF TARIFF PREFERENCES

Article 1

Examination of information

1. The Commission shall seek all information it considers necessary, including, inter alia, the conclusions and recommendations of the relevant monitoring bodies. In drawing its conclusions, the Commission shall assess all relevant information

2. The Commission shall provide a reasonable period of time within which third parties may make their views known in writing by sending the relevant information to the Commission. This period shall be specified in the notice announcing the initiation of the procedure for temporary withdrawal. The Commission shall take into account the views submitted by those third parties where they are backed by sufficient evidence.

3. Where the Commission finds that the beneficiary country concerned or any third party which has come forward in accordance with paragraph 2 has supplied it with false or misleading information, it shall disregard that information.

Article 2

Constituted file

1. Where the Commission has initiated the procedure for the temporary withdrawal of the tariff preferences it shall establish a constituted file. A constituted file shall contain the documents which are relevant for drawing conclusions, including, information provided by the concerned GSP beneficiary country, GSP + beneficiary country or EBA beneficiary country (the 'beneficiary country'), information submitted by third parties which have come forward in accordance with Article 1(2) and any relevant information obtained by the Commission.

2. The beneficiary country and the third parties which have submitted information supported by sufficient evidence in accordance with Article 1(2) have the right of access to the constituted file upon written request. They may inspect all information contained in the constituted file except internal documents prepared by the Union institutions or Member States authorities and with due regard to the confidentiality obligations contained in Article 38 of Regulation (EU) No 978/2012 (GSP Regulation).

3. The content of a constituted file shall comply with provisions of confidentiality in accordance with Article 38 of the GSP Regulation

[1] OJ L 303, 31.10.2012, p. 1.

Article 3

Obligation to cooperate for GSP + beneficiary countries

1. Where the Commission has initiated the procedure for the temporary withdrawal of the tariff preferences provided under the special incentive arrangement for sustainable development and good governance (GSP+), the GSP + beneficiary country concerned shall submit all necessary information providing proof of compliance with obligations resulting from its binding undertakings within a period provided in the Commission's notice.

2. Lack of cooperation of the GSP + beneficiary country concerned shall not impede the right of the access to the constituted file.

3. If the GSP + beneficiary country concerned refuses to cooperate, or does not provide the necessary information within the relevant time limit or significantly impedes the procedure, the Commission findings, affirmative or negative, may be made on the basis of the facts available.

Article 4

General hearing

1. The beneficiary country concerned and third parties which have submitted information supported by sufficient evidence in accordance with Article 1(2) have the right to be heard by the Commission.

2. They shall submit a written request specifying the reasons for them to be heard orally. Such a request shall be received by the Commission at the latest one month after the date of initiation of a temporary withdrawal procedure.

Article 5

Involvement of the Hearing Officer

1. The beneficiary country concerned and third parties which have submitted information supported by sufficient evidence in accordance with Article 1(2) may also request the intervention of the Hearing Officer. The Hearing Officer shall review requests for access to the constituted file, disputes on the confidentiality of documents, requests for extension of time limits and requests to be heard.

2. Third parties which have submitted information supported by sufficient evidence in accordance with Article 1(2) may request the intervention of the Hearing Officer to verify whether their observations have been considered by the Commission. The written request shall be submitted no later than 10 days after expiry of the period provided to make their views known.

3. If the beneficiary country concerned or third parties which have submitted information supported by sufficient evidence in accordance with Article 1(2)) have an oral hearing with the Hearing Officer the relevant Commission service shall participate in it.

Article 6

Disclosure for investigations under Article 15 of the GSP Regulation

1. The Commission shall disclose to the GSP + beneficiary country concerned the details underlying the essential facts and considerations on the basis of which the Commission intends to take decisions pursuant to article 15(8) and 15(9) of the GSP Regulation.

2. Disclosure shall be given in writing. It shall contain the Commission's findings and shall reflect its provisional intention whether to terminate the temporary withdrawal procedure or to temporarily withdraw the tariff preferences.

3. Disclosure shall be made, with due regard to the protection of confidential information in accordance with Article 38 of the GSP Regulation, as soon as possible and, normally, not later than 45 days prior to a definitive decision by the Commission of any proposal for final action. Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter.

4. Disclosure shall not prejudice any subsequent decision which may be taken but where such a decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

5. Submissions made after disclosure shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 14 days after disclosure, due consideration being given to the urgency of the matter.

Article 7

Review

1. Where the tariff preferences have been temporarily withdrawn from a beneficiary country, the beneficiary country concerned may submit a written request for reinstatement of the tariff preferences if it considers that the reasons justifying temporary withdrawal no longer apply.

2. The Commission may review the need for the temporary withdrawal of preferences wherever it considers that the conditions for such withdrawal are no longer met.

3. The provisions of this chapter shall apply *mutatis mutandis* to the review of temporary withdrawal of tariff preferences.

CHAPTER II

RULES RELATED TO THE PROCEDURE FOR ADOPTING THE GENERAL SAFEGUARD MEASURES

Article 8

Initiation of investigation on request

1. A request for the initiation of a safeguard investigation shall be submitted in writing, in confidential and non-confidential form. It shall contain such information as is reasonably available to the requesting party on the following:

(a) the identity of the complaining Union producers and a description of the volume and value of their Union production of the like product or directly competing product. Where a written complaint is made on their behalf, the complaint shall identify the Union producers on behalf of which the complaint is made. The complaint shall also list other known producers (or associations of Union producers of the like product) in the Union which are not complaining, and describe the volume and value of their Union production;

(b) a complete description of the like product, the name of the beneficiary country concerned, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(c) information on levels and trends of volumes and prices of the imports of the like product originating in the beneficiary country concerned. This information shall distinguish amongst preferential imports under the GSP Regulation, other preferential imports, and imports not enjoying preferences;

(d) information on the situation of the complaining Union producers, on the basis of the factors listed in Article 23 of the GSP Regulation;

(e) information on the effect the imports as described under (c) have had on the complaining Union producers, due account being taken of other additional factors affecting the situation of Union producers.

2. The request together with the accompanying documents shall be submitted to the Commission's mail reception service:

Central mail service (Courrier central)
Bâtiment DAV1
Avenue du Bourget 1/Bourgetlaan 1
1140 Bruxelles/Brussel
BELGIQUE/BELGIË

The request shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission.

The Commission shall send to the Member States a copy of the request once it has been received.

3. In addition to the formal written submission, the request and the accompanying documents shall also be submitted in electronic format. Any request submitted exclusively in electronic format will not be considered valid for the purposes of this Regulation.

4. The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicising of the request seeking the initiation of an investigation. However, after receipt of a properly documented request and before proceeding to initiate an investigation, the government of the exporting country concerned shall be notified.

5. The request may be withdrawn prior to initiation, in which case it shall be considered not to have been lodged.

Article 9

Ex officio initiation of investigation

Commission can initiate an investigation without request on the basis of sufficient *prima facie* evidence that the conditions for imposing the safeguard measure set out in Article 22(1) of GSP Regulation are met.

Article 10

Information on initiation of investigation

1. The notice of initiation published in the *Official Journal of the European Union* shall:

(a) give a summary of the information received, and require that all relevant information is to be communicated to the Commission;

(b) state the period within which interested parties may make known their views in writing and submit information, in order for such views and information to be taken into account during the investigation;

(c) state the period of investigation, which shall normally, cover a period of no less than 3 years immediately prior to the initiation of the investigation proceeding. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account;

(d) state the period within which interested parties may apply to be heard orally by the Commission;

(e) state the period within which interested parties may request the intervention of the Hearing Officer.

2. The Commission shall advise the exporters, importers and representative associations of importers or exporters known to it to be concerned, as well as representatives of the beneficiary country concerned and the complaining Union producers, of the initiation of the investigation and, with due regard to the protection of confidential information, provide the full text of the written complaint to the known exporters and to the authorities of the exporting country, and make it available upon request to other interested parties involved. Where the number of exporters involved is particularly high, the full text

of the written complaint may instead be provided only to the authorities of the exporting country or to the relevant trade association.

Article 11

Investigation

1. The Commission shall seek all information which it deems necessary to carry out an investigation.

2. Interested parties may make their views known in writing by sending the relevant information to the Commission. Those views shall be taken into consideration where they are backed by sufficient evidence. The Commission may verify the information received with the beneficiary country concerned and any interested party.

3. Parties receiving questionnaires used in the investigation shall be given at least 30 days to reply. An extension to the 30 day period may be granted, due account being taken of the time-limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances.

4. The Commission may request Member States to supply information, and Member States shall take whatever steps are necessary in order to give effect to such requests.

5. The Commission may request Member States to carry out all necessary checks and inspections, particularly amongst importers, traders and Union producers, and to carry out investigations in third countries, provided that the economic operators concerned give their consent and that the government of the country in question has been officially notified and raises no objection. Member States shall take whatever steps are necessary in order to give effect to such requests from the Commission. Officials of the Commission shall be authorised, if the Commission or a MemberStateso requests, to assist the officials of Member States in carrying out their duties.

6. In cases where the number of interested parties, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available. The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided such parties make themselves known and make sufficient information available to enable a representative sample to be chosen. Where it is decided to sample and there is a degree of non-cooperation by some or all of the parties selected which is likely to materially affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the relevant provisions of Article 13 shall apply.

Article 12

Verification visits

1. The Commission may carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations and other interested parties to verify information provided on products that may require safeguard measures.

2. The Commission may carry out investigations in third countries as required, provided that it obtains the agreement of the economic operators concerned, that it notifies the representatives of the government of the country in question and that the latter does not object to the investigation. As soon as the agreement of the economic operators concerned has been obtained the Commission should notify the authorities of the exporting country of the names and addresses of the economic operators to be visited and the dates agreed.

3. The economic operators concerned shall be advised of the nature of the information to be verified during verification visits and of any information which needs to be provided during such visits. Further information may be requested.

4. In investigations carried out pursuant to paragraphs 1, 2 and 3, the Commission shall be assisted by officials of those Member States who so request.

Article 13

Non-cooperation

1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time-limits provided in this Regulation, or significantly impedes the investigation, findings, affirmative or negative, may be made on the basis of the facts available. Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available. Interested parties shall be informed of the consequences of non-cooperation.

2. Where the information submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

3. If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons therefor and shall be granted an opportunity to provide further explanations within the time-limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information shall be disclosed and given in published findings.

4. If determinations are based on the provisions of paragraph 1, including the information supplied in the request, it shall, where practicable and with due regard to the time-limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation.

Such information may include relevant data pertaining to the world market or other representative markets, where appropriate.

5. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated.

Article 14

Constituted file

1. Where the Commission, in accordance with Article 24(2) of the GSP Regulation, has initiated an investigation, it shall establish a constituted file. A constituted file shall contain information submitted by the Member States, a beneficiary country, interested parties and the relevant information which has been obtained by the Commission and with due regard the confidentiality obligations contained in Article 38 of the GSP Regulation.

2. A beneficiary country concerned and interested parties which have come forward in accordance with Article 11(2) have a right of access to the constituted file upon written request. They may inspect all information contained in the constituted file except internal documents prepared by the authorities of the EU or its MemberStatesand with due regard to the confidentiality obligations contained in Article 38 of the GSP Regulation. They may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated.

3. The content of a constituted file shall comply with provisions of confidentiality in accordance with Article 38 of the GSP Regulation.

Article 15

General hearing

1. A beneficiary country concerned and interested parties which have come forward in accordance with Article 11(2) have the right to be heard by the Commission.

2. They shall submit a written request within the period laid down in the notice published in the *Official Journal of the European Union*, showing that they are actually likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

Article 16

Involvement of the Hearing Officer

1. A beneficiary country and interested parties which have come forward in accordance with Article 11(2) may also request the intervention of the Hearing Officer. The Hearing Officer shall review requests for access to the constituted file, disputes on the confidentiality of documents, requests for extension of time limits and requests to be heard.

2. If there is an oral hearing with the Hearing Officer the relevant Commission service shall participate in it.

Article 17

Disclosure

1. The Commission shall disclose the details underlying the essential facts and considerations on the basis of which the Commission's decisions are taken.

2. Disclosure shall be given in writing. It shall contain the Commission's findings and shall reflect its intention to reintroduce normal Common Customs Tariff duties or not.

3. Disclosure shall be made, with due regard to the protection of confidential information, as soon as possible and, normally, not later than 45 days prior to a definitive decision by the Commission of any proposal for final action and in any case at an appropriate time for the parties to make comments and for those comments to be considered by the Commission. Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter.

4. Disclosure shall not prejudice any subsequent decision which may be taken but where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

5. Submissions made after disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 14 days, due consideration being given to the urgency of the matter.

Article 18

Review

1. Wherever normal Common Custom Tariff duties have been reintroduced, any interested party may submit a written request for reinstatement of the tariff preferences providing *prima facie* evidence that the reasons justifying the reintroduction of normal duties no longer apply. Union producers may submit a written request for the extension of the period of reintroduction of the normal duties providing *prima facie* evidence that the reasons justifying the reintroduction of normal duties continue to apply.

2. The Commission may review the need for reinstatement of normal Common Custom Tariff duties wherever it considers such a review to be justified.

3. The provisions of this chapter shall apply *mutatis mutandis* to the review of the safeguard measures.

Article 19

This Regulation shall enter into force on the day following that of 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.

Done at Brussels, 28 August 2013.

For the Commission
The President
José Manuel BARROSO