

## ***Decision 284, Rules and regulations for preventing or correcting distortions in competition caused by restrictions on exports***

• I. SCOPE OF APPLICATION .....	1
• II. PROCEDURES AND MEASURES .....	2
• VI. FINAL PROVISION .....	5

THE COMMISSION OF THE CARTAGENA AGREEMENT,

HAVING SEEN: Chapter VIII of the Cartagena Agreement, Decisions 230, 258, and 281 and Board Proposal 225/Rev. 2;

WHEREAS:

The Commission approved Decision 230, which contains rules and regulations for preventing or correcting practices that could distort competition;

Decision 258 stipulates that the Commission, at the proposal of the Board, shall review the rules and regulations on trade competition;

Decision 281 stipulates that the Commission, at the proposal of the Board and by March 31, 1991 at the latest, shall review the rules and regulations on trade competition established in Decision 230;

In order to achieve the objectives of the integration process, it is advisable to perfect Subregional rules and regulations on competition so that they can act as effective mechanisms for preventing or correcting any distortions that may arise as a result of restrictions on exports;

Due to their origin and scope, it is necessary to distinguish between the practices that are the subject-matter of this Decision, dumping and subsidy practices and practices that restrict free competition;

The rules and regulations contained in this Decision shall be applicable until commitments are made to harmonize instruments for regulating foreign trade or if the restrictions on exports that were to be excluded from the elimination commitment in the context of that harmonization were to cause distortions in competition in specified isolated cases;

DECIDES:

### **I. SCOPE OF APPLICATION ➡**

**Article 1.-** The purpose of the rules and regulations stipulated in this Decision is to prevent or correct distortions in competition caused by restrictions on exports.

**Article 2.-** Member Countries or enterprises that have a legitimate interest may ask the

Board for authorization or a mandate to take measures to prevent or correct threats of damage or effective damage to national production or exports caused by restrictions on exports in effect in another Member Country.

For purposes of this Decision, a significant delay in building up national production is considered to be a threat of damage.

**Article 3.-** Restrictions on exports that are the subject-matter of this Decision are all measures of a quantitative or administrative nature through which Member Countries impede, restrict or hamper their sales within the Subregion. Also included are customs duties or other taxes that encumber only the exports to another Member Country.

Excluded from this Decision are, among others, restrictions on exports of traditional commodities protected by international agreements and of essential foodstuffs when a shortage exists in the Member Country applying those restrictions.

## **II. PROCEDURES AND MEASURES** ➔

**Article 4.-** The following are empowered to submit a petition:

- a. Member Countries through their respective liaison institutions; and
- b. The enterprise or enterprises that have a legitimate interest, in the degree allowed by national law.

The written petition must contain the following information:

- the nature of the practices and their duration;
- the characteristics of the products that are subjected to the restrictions;
- the characteristics of the products that are affected;
- the enterprises involved;
- the evidence for assuming the existence of the threat of damage or effective damage to national production or exports caused by restrictions placed on exports;
- the characteristics of the measures requested.

On receipt of the complaint, the Board shall proceed to inform the liaison institutions of the areas where the enterprises involved in the investigation carry out their economic activities.

**Article 5.-** The Board shall not start the investigation if the application is incomplete. In that case, it shall so inform the claimant, indicating in detail what information is missing, within ten working days after presentation of the application.

If the application is deemed adequate, within ten working days after its presentation, the Board shall go on record with its opinion through a justified Resolution. Furthermore, that

Resolution shall be communicated to the claimant enterprise or enterprises.

**Article 6.-** During the investigation, the Board may request and collect evidence and information from the liaison institutions and, either through them or directly, from the producers, exporters, importers or consumers with a legitimate interest in the investigation. They may furnish information or, as the case may be, present pleas to the Board.

In cases where the Board requests, collects or receives evidence and information directly, it shall report this to the respective liaison institutions.

**Article 7.-** In exercise of its power to request and collect evidence, the Board may decide to treat the information given to it confidentially if the furnisher of that information asks for and justifies that treatment, for it is the source of that information and its disclosure may have unfavorable consequences for it.

The parts of internal documents prepared by the Board or the Member Countries that contain that kind of information may be confidential in nature.

When confidential treatment of evidence is sought, the petitioner shall provide a summary of the information that can be disclosed or an explanation of why that information cannot be summarized. In the latter case, the Board does not have to accept that explanation, in which case it may not take that evidence into consideration.

Likewise, even if the petition is justified, the information may not be taken into account if the entity offering it fails to submit a non-confidential summary of its contents, provided that these are capable of being summarized.

Those interested in the investigation may submit a written request for the information furnished or prepared pursuant to this Decision and it shall be supplied to them if it is not confidential in nature.

This article does not impede the disclosure of general information and, in particular, of the grounds for the Resolutions to which this Decision refers, if they are demanded in the course of a judicial proceeding. In making that disclosure, it shall be kept in mind that the trade secrets of those that have a legitimate interest in the investigation must not be revealed.

**Article 8.-** In the course of the investigation, the Board may, on its own initiative or at the petition of any of the interested parties, call meetings for the purpose of reaching a direct solution; the commitments made and the results of these meetings shall be recorded in the minutes.

No interested party shall be compelled to attend a meeting and the absence of said party shall not be detrimental to its case.

The Board shall go on record with its opinion through a justified Resolution that will state what commitments have been assumed and whether the investigation shall be suspended or shall continue at the request of the claimant.

The exporters or the authorities of the country where the practice originated shall furnish the necessary information for verifying compliance with the commitments assumed. If these commitments fail to be fulfilled or the pertinent information is not furnished, the Board shall resume the investigation.

**Article 9.-** The Board shall have a period two months in which to make its investigation, starting on the date of communication to the claimant, referred to in Article 5 of this Decision.

In special cases, the deadline may be extended up to one additional month, in which case the claimant shall be informed thereof.

**Article 10.-** In order to make its decision, the Board shall consider the existence of positive evidence regarding:

- a. The restrictions placed on exports;
- b. The threat of damage or effective damage; and
- c. A cause-and-effect relationship between the restrictions on exports and the threat of damage or effective damage.

**Article 11.-** The determination of the existence of the threat of damage or effective damage and of the cause-and-effect relationship with the restrictions on exports may be based, among other things, on the examination of:

- a. The volume of the imports that are submitted to those practices, particularly to determine it has changed significantly, both in absolute terms and in relation to the production and consumption of the Member Country affected;
- b. The prices of the imports that are submitted to those practices, particularly to determine whether they are considerably different from the prices of similar products when no restrictions exist;
- c. The analysis of the global supply of the products that are submitted to those restrictions; and
- d. The effects on the national production or exports affected by the restrictions, as deduced from the real or virtual trends in the pertinent economic factors, such as: production, domestic sales, exports, market share, use of installed capacity, employment, stocks and profits.

Particular account shall be taken of the importance of the product to which the restrictions on exports are applied, in the final production costs or the exports affected; its main uses and replacements.

**Article 12.-** At the conclusion of the investigation, within ten working days after the event provided for in Article 9, the Board shall go on record with its opinion through a justified Resolution, in accordance with its conclusions and based on the information available.

The Resolution shall indicate the characteristics of the measures that are to be established, the deadlines for their adoption and their duration. Also, when applicable, the conditions that will determine the duration of those measures.

**Article 13.-** Once the Board has verified, at the request of the liaison institutions or of the interested parties, the change in or elimination of the causes that gave grounds for the

Resolution to which the previous article refers, it shall annul that Resolution partially or totally by amending or derogating it. The Board shall have one month in which to go on record with its opinion.

The Board may also verify on its own initiative the change in or elimination of the causes that gave grounds for the Resolution in question and amend or annul that Resolution accordingly.

**Article 14.-** The measures to correct the distortions in competition caused by restrictions placed on exports within the Subregion, shall consist preferably of their removal. If the Board determines, after coordinating with the authorities of the Member Country against which the claim has been brought, that the removal of those restrictions is not possible, it shall provide for the application of measures designed to eliminate or lessen the distortions that generated the claim.

## **VI. FINAL PROVISION** ➡

**Article 15.-** This Decision replaces Decision 230 as regards the rules and regulations for preventing or correcting distortions in competition caused by restrictions on exports.

Signed in the city of Lima on the twenty-first of March of nineteen ninety-one.