

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 December 1995

suspending the proceeding under Council Regulation (EC) No 3286/94 on trade barriers, concerning piracy of Community sound recordings in Thailand and its effects on Community trade in sound recordings

(96/40/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization⁽¹⁾, as last amended by Regulation (EC) No 365/95⁽²⁾, in particular Articles 11 and 14 thereof,

Following consultations in the Advisory Committee,

Whereas :

On 5 June 1991 the Commission received a complaint, under Regulation (EEC) No 2641/84 of 17 September 1984 on the strengthening of the common commercial policy with regard in particular to protection against illicit commercial practices⁽³⁾, as last amended by Regulation (EC) No 522/94⁽⁴⁾, from the European Office of the International Federation of the Phonographic Industry (IFPI), representing virtually all producers of sound recordings in the Community. The complaint alleged that piracy of Community sound recordings was taking place on a massive scale in Thailand and that such piracy was

causing injury to the Community industry, notably by affecting exports of Community sound recordings to Thailand as well as to other third markets.

As the complaint provided sufficient evidence, within the meaning of Article 6 (1) of Regulation (EEC) No 2641/84, of the existence of an illicit commercial practice attributable to Thailand and of consequent injury, the Commission announced in a notice published in the *Official Journal of the European Communities*⁽⁵⁾ the initiation of an examination procedure concerning piracy of Community sound recordings in Thailand.

Following the initiation of the proceeding, the Commission conducted a factual and legal examination and presented on 20 February 1992 its examination report to the Advisory Committee established under Regulation (EC) No 2641/84. From this it appeared that, during the reference period, and essentially as a result of the Thai authorities' failure to properly enforce the then Thai legislation on copyright, the level of piracy of sound recordings (international repertoire) was likely to have reached 90 %, and that this situation resulted in material injury to the Community industry, notably in the form of lost sales on the Thai market (as well as certain other third markets). Consequently, it appeared that Thailand had therefore violated its international obligation to provide Community producers of sound recordings with effective protection against piracy of their products. This obligation followed from the national treatment provision which

⁽¹⁾ OJ No L 349, 31. 12. 1994, p. 71.

⁽²⁾ OJ No L 41, 23. 2. 1995, p. 3.

⁽³⁾ OJ No L 252, 20. 9. 1984, p. 1.

⁽⁴⁾ OJ No L 66, 10. 3. 1994, p. 10.

⁽⁵⁾ OJ No C 189, 20. 7. 1991, p. 26.

Article 4 of the Berlin Act of the Berne Convention for the Protection of Literary and Artistic Works stipulates to which Thailand is a signatory.

The Commission then held consultations with the Thai authorities which brought about the commitment of the Thai government, in September 1992, to bring down piracy of EC sound recordings to negligible levels within the shortest possible time span and, in a first stage, to achieve a substantial reduction within one year.

On the basis of this commitment, with the favourable opinion of the Advisory Committee, and subject to a regular evaluation of the situation, no further steps in the proceeding appeared appropriate in the immediate future.

In December 1993 a mission took place to Thailand to evaluate the progress achieved. Following this mission the Commission reported again to the Committee established under Regulation (EEC) No 2641/84. The first finding of the mission was that the actual level of audio cassettes' piracy had fallen to approximately 50 % in the first year following the undertaking by the Thai Government, thus confirming the Thai Government's willingness to abide by its commitment. However further progress was considered to have been slow and, moreover, concern was expressed about the possible resurgence in piracy of sound recordings, notably as a result of sales of pirated compact discs (CDs). In this context, and with the favourable opinion of the Advisory Committee, it appeared that further time should be allowed to give Thailand the opportunity to adopt new legislation on copyright, which was already in the form of a Bill being discussed in Parliamentary committee and which contained more appropriate provisions to combat piracy and to effectively enforce it.

The information gathered by the Commission since the beginning of 1994 shows that no further significant improvement occurred regarding the actual level of piracy of EC sound recordings. However important positive developments took place on the legislative side. The new Thai Copyright Act entered into force on 21 March 1995. It introduced numerous provisions aimed at simplifying action against the pirates and including the necessary deterrent effects against potential as well as actual infringers, notably through much increased penalties.

Under these circumstances and account being taken of both the maintenance of a significant level of piracy, in particular as regards CDs, and of the prospects of its reduction to negligible levels on a permanent basis through the effective enforcement of the new Thai legislation, the Commission considers that at this stage neither the termination of the procedure nor the adoption of commercial policy measures against Thailand is appropriate. However, a close monitoring of the situation remains necessary.

As from 1 January 1995 Regulation (EC) No 3286/94, which repealed Regulation (EEC) No 2641/84, applies to the present proceeding.

Regulation (EC) No 3286/94 introduced in Article 11 (2) (a) the possibility to formally suspend a proceeding. In such a case, the Commission has the task of supervising the proper application of the measures taken by the third country concerned, as provided for in Article 11 (2) (b) of that Regulation.

Under Article 13 (1) of Regulation (EC) No 3286/94, this suspension Decision is adopted in accordance with Article 14 of the same Regulation. The latter provides, in particular, that the Commission shall adopt a decision which it shall communicate to the Member States and which shall apply after a period of 10 days if during this period no Member State has referred the matter to the Council.

It should also be recalled that Article 11 (2) (c) of Regulation (EC) No 3286/94 provides that where the measures taken by the third country have been rescinded, suspended or improperly implemented or where the Commission has grounds for believing this to be the case or, finally, where a request for information made by the Commission has not been granted, any commercial policy measures may be adopted in accordance with the appropriate provisions of the Regulation.

The proceeding concerning piracy of Community sound recordings in Thailand should therefore be suspended. The Commission should continue to monitor the situation on a permanent basis and regularly inform the Advisory Committee established under Regulation (EC) No 3286/94,

HAS ADOPTED THIS DECISION :

Article 1

The proceeding concerning piracy of Community sound recordings in Thailand is hereby suspended.

Article 2

This Decision shall apply as from the day of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 20 December 1995.

For the Commission

Leon BRITTAN

Vice-President