

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(86) 313 final

Brussels, 22 May 1986

441.2(103)

Proposal for a
COUNCIL REGULATION (EEC)

introducing surveillance on imports of certain products
originating in the United States of America

(submitted to the Council by the Commission)

COM(86) 313 final

Commission communication to the Council

Explanatory memorandum

1. The dispute started by the United States on the question of enlargement is by now a familiar one. The Americans have questioned the legality under GATT rules of the following measures which the Community has taken concerning imports into Portugal and Spain pursuant to the Accession Treaty:

a) arrangements for imports of oilseeds into Portugal

b) for the period during which an import monopoly remains in Portugal, arrangements whereby at least 15.5% of imports of grains into Portugal must originate in the EEC;

c) the application, from 1 March 1986, of an import levy on Spain's imports of maize and sorghum.

The United States argues that the measures referred to in (a) and (b) violate Article XI of the GATT, which prohibits quantitative restrictions, and that the measure referred to in (c) is inconsistent with the tariff concession previously granted by Spain in the GATT context.

2. The Community has pointed out that in so far as Portugal is concerned, the measures which have been criticized are in fact an improvement on the previous situation and that the mechanism for implementing the measures is such that the Americans would not suffer any adverse effects in the short term anyway. The alleged quantitative restrictions on oilseeds constitute a 25% increase in export opportunities compared with last year, and the reserving of 15.5% of cereal imports will not be applied until 1 January 1987. Lastly, enough maize and sorghum has already been imported into Spain to cover imports for the current year before the entry into force of the Community levy.

3. On 15 May 1986, the President of the United States signed a proclamation introducing retaliatory measures against the Community. The following measures are involved (see Annex A for the text of the proclamation).

a) Application of quantitative ceilings on certain products originating in the EEC as from 19 May

The products covered by this measure are:

- chocolate for processing (bars weighing more than 5 kg)
- sugar confectionery
- pear and apple juice
- beer
- wine valued at more than US \$4 per gallon.

Calculations for the ceilings are based on the level of 1985 US imports, increased by 40% for wine and by 20% for the other products.

b) Announcement of the suspension of certain GATT bindings

The Presidential announcement stated :

I have further decided.....to take steps to suspend temporarily certain GATT tariff concessions granted by the United States. The proclamation goes on to say that the customs duties corresponding to the bindings concerned would not be amended in practice until July or August when the results of the negotiations have been assessed within the framework of the exercise pursuant to Article XXIV.6 on the question of the Community levy applied to imports of maize and sorghum into Spain.

The products concerned are certain types of cheese, tinned ham, endives including witloof chicory, olives, soe alcoholic beverages, white wine valued at less than US \$4 per gallon, soe canned vegetables and hops.

The customs duties concerned will not be unbound in practice until thirty days have elapsed following formal notification by the US authorities to GATT of their intention.

4. According to the US authorities these measures do not constitute a threat to Community export interests, as the quantitative ceilings adopted by the United States are 20% higher than the level of our 1985 exports, except for white wine, where they are 40% higher.
5. As regards part (b), the United States confine themselves to indicating the products for which action could be taken in practice later. There is no further development here compared with the decision taken by the United States in April.
6. The Community must reply in a like manner, as the Council stated in its conclusions of 21 April. The Commission proposes that the Council should respond in the following manner:
 - a) as far as Portugal is concerned:
 - (i) by subjecting imports of the products listed in the annex to "ex post" quantitative surveillance.
 - (ii) by fixing "framework conditions" for retaliatory measures in the event of the United States introducing genuinely restrictive measures.
 - b) As far as Spain is concerned, by deciding to introduce at the appropriate time compensatory tariff measures which would correspond to the tariff increases which the United States might apply.

To this end, it presents to the Council the attached draft Regulation. (Annex B).

Proposal for a
Council Regulation (EEC)

introducing surveillance on
imports of certain products originating in the
United States of America

The Council of the European Communities,

Having regard to the Treaty establishing the European Economic Community
and in particular Article 113 thereof,

Having regard to Council Regulation (EEC) No. 2727/75 of 29 October 1975
on the common organization of the market in cereals (1), as last amended
by Regulation (EEC) No. 1355/86 (2), in particular Article 18 thereof,
and to the corresponding provisions of the other Regulations on the
common organization of markets in agricultural products,

Having regard to the proposal from the Commission,

Whereas the United States of America has imposed limitations on imports
of certain products from the Community;

Whereas these measures threaten to cause injury to the Community
producers concerned;

Whereas, in order to safeguard the interests of the Community, it is
necessary for the Community to introduce surveillance for imports of
certain products originating in the United States;

(1) OJ No. L 281, 1.11.1975, p. 1

(2) OJ No. L 118, 7.5.1986, p. 1

.../...

Whereas it is necessary to provide that Member States submit information rapidly to the Commission in respect of imports actually carried out;

Whereas further action may be necessary in view of the levels of imports of the products concerned and the injury caused to Community interests by the measures of the United States;

Whereas it is necessary to provide that such action can be taken expeditiously; whereas, therefore, the Commission should be authorised to take the necessary measures,

HAS ADOPTED THIS REGULATION:

Article 1

Imports into the Community of the products listed in the Annex and originating in the United States of America are hereby made subject to Community retrospective surveillance based on import declarations or any other equivalent import document required before the entry into force of this Regulation.

Article 2

1. Member States shall communicate to the Commission within the first 10 days of each month details, as to the quantity and statistical value, broken down according to the NIMEX nomenclature, of imports originating in the United States of each of the products listed in the Annex, actually carried out during the month preceding the immediately preceding month.
2. The first Communication will be made not later than July 10, 1986, covering imports carried out in May.

.../...

Article 3

1. In the event that imports from the Community into the United States of any of the products covered by the US limitations are prevented by those measures from taking place, the Commission may, by Regulation, take measures having an equivalent restrictive effect on imports from the United States, of products listed in the Annex. These measures may consist in altering the import rules for those products by providing that they may be put into free circulation only on production of an import authorization, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down pending action, if any, by the Council under paragraph 3.

These measures shall take effect immediately.

2. Any Member State may, within one month following the date of publication, refer such Regulation to the Council.
3. If a Member State refers the Commission's Regulation to the Council, the Council shall, acting by a qualified majority, confirm, amend or revoke such Regulation.

If within three months of the referral of the matter to the Council, the latter has not given a decision, the measure taken by the Commission shall be deemed revoked.

Article 4

This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.

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

Done at Brussels,

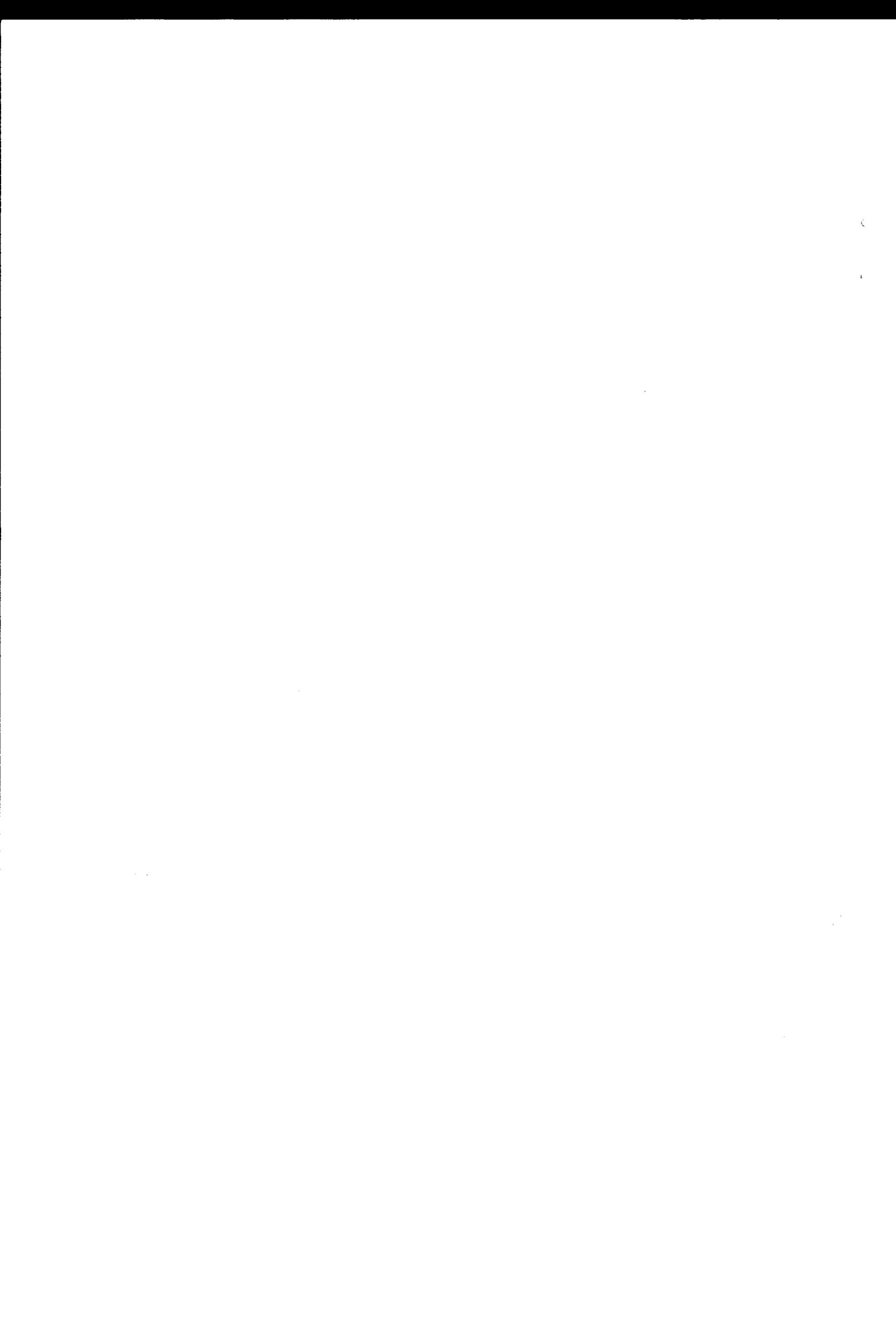
For the Council
The President

Common Customs Tariff Nos.	Description
02.01	<p>Meat and edible offals of the animals falling within heading No. 01.01 to 01.04 inclusive, fresh, chilled or frozen:</p> <p>A. Meat:</p> <p style="padding-left: 40px;">I. of horses, asses, mules and hinnies</p> <p>B. Offals:</p> <p style="padding-left: 40px;">II. Other:</p> <p style="padding-left: 80px;">b) of bovine animals:</p> <p style="padding-left: 120px;">2. other</p>
04.06	Natural honey
06.04	<p>Foliage, branches and other parts (other than flowers or buds) of trees, shrubs, bushes and other plants, and mosses, lichens and grasses, being goods of a kinds suitable for bouquets or ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared:</p> <p>B. Other:</p> <p style="padding-left: 40px;">I. fresh</p>
08.12	Fruit, dried, other than that falling within heading 08.01 to 08.05 inclusive
12.01	<p>Oil seeds and oleaginous fruit, whole or broken:</p> <p>Ex. B. other:</p> <p style="padding-left: 40px;">- sunflower seeds</p>
15.02	<p>Fats of bovine cattle, sheep or goats, unrendered; rendered or solvent-extracted fats (including "premier jus") obtained from those unrendered fats:</p> <p>B. other:</p> <p style="padding-left: 40px;">I. unrendered fats of bovine cattle; rendered or solvent-extracted fats (including "premier jus") obtained from those fats</p>

Common Customs Tariff Nos.	Description
20.07	<p>Fruit juices (including grape must) and vegetable juices, whether or not containing added sugar, but unfermented and not containing spirit:</p> <p>B. of a density of 1.33 g/CM³ or less at 20°C</p> <p>II. other:</p> <p>a) of a value exceeding 30 ECU per 100 kg net weight:</p> <ol style="list-style-type: none"> 1. orange juice 2. grapefruit juice 4. pineapple juice: <p>bb) other:</p> <p>b) of a value of 30 ECU or less per 100 kg net weight:</p> <ol style="list-style-type: none"> 1. orange juice: <p>bb) other</p> <ol style="list-style-type: none"> 2. grapefruit juice: <p>bb) other</p>
21.07	<p>Food preparations not elsewhere specified or included:</p> <p>A. Cereals in grain or ear form, pre-cooked or otherwise prepared:</p> <p>I. Maize</p> <p>G. other:</p> <p>I. containing no milkfats or containing less than 1,5% by weight of such fats:</p>

.../...

Common Customs Tariff Nos.	Description
21.07 (cont'd)	a) containing no sucrose or containing less than 5% by weight of sucrose (including invert sugar expressed as sucrose): 1. containing no starch or containing less than 5% by weight of starch
22.03	Beer made from malt
22.05	Wine of fresh grapes; grape must with fermentation arrested by the addition of alcohol:



A PROCLAMATION

126

1. ON MARCH 31, 1986, I ANNOUNCED MY DECISION TO TAKE ACTION IN RESPONSE TO RESTRICTIONS IMPOSED BY THE EUROPEAN ECONOMIC COMMUNITY (EEC) AFFECTING IMPORTS OF UNITED STATES GRAIN AND OILSEEDS INTO SPAIN AND PORTUGAL, FOLLOWING THE EXPANSION OF THE EEC TO INCLUDE THOSE TWO COUNTRIES. I HAVE DETERMINED, PURSUANT TO SECTION 301(A) OF THE TRADE ACT OF 1974, AS AMENDED (THE ACT) (19 U.S.C. 2411(A)), THAT THESE RESTRICTIONS DENY BENEFITS TO THE UNITED STATES ARISING UNDER THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) (61 STAT. (PTS. 5 AND 6)), ARE UNREASONABLE, AND CONSTITUTE A BURDEN OR RESTRICTION ON UNITED STATES COMMERCE.

2. SECTION 301(A) OF THE ACT (19 U.S.C. 2411 (A)) AUTHORIZES THE PRESIDENT TO TAKE ALL APPROPRIATE AND FEASIBLE ACTION TO OBTAIN THE ELIMINATION OF AN ACT, POLICY, OR PRACTICE OF A FOREIGN GOVERNMENT OR INSTRUMENTALITY THAT 1) IS INCONSISTENT WITH THE PROVISIONS OF, OR OTHERWISE DENIES BENEFITS TO THE UNITED STATES UNDER, ANY TRADE AGREEMENT; 2) IS UNJUSTIFIABLE, UNREASONABLE, OR DISCRIMINATORY AND BURDENS OR RESTRICTS UNITED STATES COMMERCE. SECTION 301(P) OF THE ACT (19 U.S.C. 2411(B)) ALSO AUTHORIZES THE PRESIDENT TO SUSPEND, WITHDRAW, OR PREVENT THE APPLICATION OF BENEFITS OF TRADE AGREEMENT CONCESSIONS WITH RESPECT TO, AND TO IMPOSE DUTIES OR OTHER IMPORT RESTRICTIONS ON THE PRODUCTS OF, SUCH FOREIGN GOVERNMENT OR INSTRUMENTALITY. PURSUANT TO SECTION 301(A) OF THE ACT, ANY SUCH ACTIONS CAN BE TAKEN ON A DISCRIMINATORY BASIS SOLELY AGAINST THE FOREIGN GOVERNMENT OR INSTRUMENTALITY INVOLVED. SECTION 301(D)(1) OF THE ACT (19 U.S.C. 2411 (D)(1)) AUTHORIZES THE PRESIDENT TO TAKE ACTION ON HIS OWN MOTION.

3. IN RESPONSE TO THE EEC IMPOSITION OF ILLEGAL RESTRICTIONS ON PORTUGUESE IMPORTS OF GRAIN, OILSEEDS, AND OILSEED PRODUCTS, I HAVE DECIDED THAT EXPEDITIOUS ACTION IS REQUIRED, AND, PURSUANT TO SECTION 301(A), (B), AND (D)(1) OF THE ACT, TO IMPOSE QUANTITATIVE RESTRICTIONS ON THE ARTICLES PROVIDED FOR IN ANNEX I TO THIS PROCLAMATION THAT ARE THE PRODUCT OF THE EEC.

4. IN RESPONSE TO THE WITHDRAWAL OF TARIFF CONCESSIONS AND THE APPLICATION OF THE EEC VARIABLE LEVY ON SPANISH IMPORTS OF CORN AND SORGHUM, I HAVE FURTHER DECIDED, PURSUANT TO SECTION 301(A), (B), AND (D)(1) OF ACT, TO

TAKE STEPS TO SUSPEND TEMPORARILY THE TARIFF CONCESSIONS MADE BY THE UNITED STATES UNDER THE GATT ON ARTICLES DESCRIBED IN ANNEX II TO THIS PROCLAMATION, BUT TO MAKE NO

2

IMMEDIATE CHANGE IN THE RATES OF DUTY FOR THESE ARTICLES SET FORTH IN RATE OF DUTY COLUMN 1 OF THE TARIFF SCHEDULES OF THE UNITED STATES (TSUS). IF BY JULY 1, 1986, THE IIC PROVIDES ADEQUATE COMPENSATION FOR THE IMPOSITION OF VARIABLE LEVIES ON IMPORTS OF CORN AND SORGHUM INTO SPAIN, OR IF IT IS DETERMINED THAT OTHER CIRCUMSTANCES SO WARRANT, I AM AUTHORIZING THE UNITED STATES TRADE REPRESENTATIVE (USTR) TO TERMINATE ANY OF THESE SUSPENSIONS AS APPROPRIATE. IF SUCH COMPENSATION IS NOT PROVIDED, I WILL PROCLAIM INCREASED DUTIES ON THESE ARTICLES AS APPROPRIATE, HAVING DUE REGARD FOR THE INTERNATIONAL OBLIGATION OF THE UNITED STATES, PARTICULARLY PARAGRAPH 3 OF ARTICLE XVIII OF THE GATT REQUIRING ANY SUSPENSION OF TRADE AGREEMENT CONCESSIONS TO BE MADE ON A MOST-FAVORED-NATION BASIS, ANY DUTY INCREASED ON THESE ARTICLES WILL BE MADE ON A MOST-FAVORED-NATION BASIS.

NOW, THEREFORE, I, RONALD REAGAN, PRESIDENT OF THE UNITED STATES OF AMERICA, ACTING UNDER THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE STATUTES OF THE UNITED STATES, INCLUDING BUT NOT LIMITED TO SECTION 301(A), (E), AND (D)(1) AND SECTION 624 OF THE ACT (19 U.S.C. 2483), DO PROCLAIM THAT:

1. SUBPART 2 OF PART 2 OF THE APPENDIX TO THE TARIFF SCHEDULES OF THE UNITED STATES IS MODIFIED AS PROVIDED IN ANNEX I TO THIS PROCLAMATION. THESE CHANGES SHALL BE EFFECTIVE WITH RESPECT TO ARTICLES ENTERED, OR WITHDRAWN FROM WAREHOUSE FOR CONSUMPTION, ON OR AFTER MAY 19, 1986.

2. THE TARIFF CONCESSIONS UNDER GATT ON ARTICLES LISTED IN ANNEX II TO THIS PROCLAMATION ARE SUSPENDED, EFFECTIVE ON THE THIRTY-FIRST DAY FOLLOWING NOTIFICATION TO THE CONTRACTING PARTIES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE, AND PART 1 OF SCHEDULE IX OF THE GATT IS MODIFIED TO CONFORM TO THIS ACTION. THE RATES OF DUTY FOR THESE ARTICLES SET FORTH IN THE RATE OF DUTY COLUMN 1 OF THE TSUS ARE NOT AFFECTED BY THIS ACTION AND SHALL REMAIN AS PREVIOUSLY PROCLAIMED UNTIL SUCH TIME AS THEY ARE EXPRESSLY MODIFIED.

3. THE USTR IS HEREBY AUTHORIZED TO SUSPEND, MODIFY, OR TERMINATE THE QUANTITATIVE RESTRICTIONS ON ANY OF THE ARTICLES COVERED BY ANNEX I TO THIS PROCLAMATION, AND TO TERMINATE THE SUSPENSION OF THE TARIFF CONCESSIONS UNDER THE GATT ON ANY OF THE ARTICLES COVERED BY ANNEX II, UPON THE PUBLICATION IN THE FEDERAL REGISTER OF HIS DETERMINATION THAT SUCH SUSPENSION, MODIFICATION, OR TERMINATION IS JUSTIFIED BY ACTIONS TAKEN BY THE IIC WITH RESPECT TO THIS MATTER OR IS OTHERWISE APPROPRIATE, TAKING INTO ACCOUNT THE INTERESTS OF THE UNITED STATES.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS DAY OF _____, IN THE YEAR OF OUR LORD NINETEEN EIGHTY AND EIGHTY-TWO, AND OF THE INDEPENDENCE OF THE UNITED STATES

Subpart B of part 2 of the Appendix to the Tariff Schedules of the United States is modified --

(1) by inserting the following new headnote 3:

"3. For purposes of this subpart, the term "product of the European Economic Community" refers to products of any member state of this instrumentality which includes Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom."; and

(2) by inserting in numerical sequence the following new provisions:

"Item	Articles	Quota Quantity
	Whenever, in the period from May 19, 1986, through December 31, 1986, the respective aggregate quantity specified below for the numbered classes of articles the product of the European Economic Community has been entered, no article the product of the European Economic Community in such class may be entered during the remainder of such period:	
946.01	Chocolate, sweetened, in bars or blocks weighing 10 pounds or more each (provided for in item 156.25, part 10A, schedule 1).....	7,358 thousand pounds
946.02	Candy, and other confectionery, not specially provided for (provided for in item 157.10, part 10C, schedule 1).....	122,546 thousand pounds
946.03	Apple or pear juices, not mixed and not containing over 1.0 percent of ethyl alcohol by volume (provided for in item 165.15, part 12A, schedule 1).....	73,093 thousand gallons
946.05	Ale, porter, stout, and beer; In containers other than glass each holding not over 1 gallon (provided for in item 167.05, part 12C, schedule 1).....	2,462 thousand gallons
946.06	In containers each holding over 1 gallon (provided for in item 167.05, part 12C, schedule 1).....	7,405 thousand gallons
946.07	White still wines produced from grapes, containing not over 14 percent of alcohol by volume, in containers each holding not over 1 gallon, valued over \$4 per gallon (provided for in item 167.30, part 12C, schedule 1).....	27,991 thousand gallons

Item	Articles	Quota Quantity
<p>Whenever, in the 12-month period beginning January 1, 1987, and in any subsequent 12-month period beginning January 1 in any year, the respective aggregate quantity specified below for the numbered classes of articles the product of the European Economic Community has been entered, no article the product of the European Economic Community in such class may be entered during the remainder of such period:</p>		
946.08	<p>Chocolate, sweetened, in bars or blocks weighing 10 pounds or more each (provided for in item 156.25, part 10A, schedule 1).....</p>	11,773 thousand pounds
946.09	<p>Candy, and other confectionery, not specially provided for (provided for in item 157.10, part 10C, schedule 1).....</p>	196,072 thousand pounds
946.10	<p>Apple or pear juices, not mixed and not containing over 1.0 percent of ethyl alcohol by volume (provided for in item 165.15, part 12A, schedule 1).....</p>	116,919 thousand gallons
946.11	<p>Ale, porter, stout, and beer: In containers other than glass each holding not over 1 gallon (provided for in item 167.05, part 12C, schedule 1).....</p>	3,971 thousand gallons
946.12	<p>In containers each holding over 1 gallon (provided for in item 167.05, part 12C, schedule 1).....</p>	11,848 thousand gallons
946.13	<p>White still wines produced from grapes, containing not over 14 percent of alcohol by volume, in containers each holding not over 1 gallon, valued over \$4 per gallon (provided for in item 167.30, part 12C, schedule 1).....</p>	44,766 thousand gallons"

Articles on Which Tariff Concessions under the
General Agreement on Tariffs and Trade Are Suspended

Item No.

Articles

[The bracketed language in this list has been included only to clarify the scope of the numbered items on which concessions are being suspended, and such language is not itself intended to describe articles on which concessions are suspended.]

107.35 pt.	Pork, prepared or preserved (except sausages): Boned and cooked and packed in airtight containers: Ham and shoulders: In containers holding less than 3 pounds
117.00	Blue-mold cheese:
117.09	In original loaves
	Other
	[Bryndza and Cheddar cheeses]
117.25	Edam and Gouda cheeses
	[Gjetost, Goya, Sbrinz, Roquefort, Romano made from cow's milk, Reggiano, Parmesano, Provoloni, Provolette, Swiss or Emmenthaler with eye formation, Gruyere-process, Gammelost, and Nokkelost cheeses]
	Other cheeses, and substitutes for cheese:
	[Cheeses made from sheep's milk]
	Other:
	Valued over 25 cents per pound:
	[Colby]
	Other:
	[Cheese and substitutes for cheese, whether or not original loaves, containing or processed from Romano, Reggiano, Parmesano, Provoloni, Provolette, Sbrinz, and Goya, all the foregoing made from cow's milk]
117.88 pt.	Other:
	Other than cheeses provided for in items 950.07, 950.08A, 950.08B, 950.09B, 950.10C, 950.10D, and 950.10E in part 3 of the Appendix to the Tariff Schedules of the United States
136.10	Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared for preserved): Endive, including Witloof chicory
141.82	Vegetables (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved (except vegetables in subpart B of part 8 of schedule 1 of the Tariff Schedules of the United States): Carrots in airtight containers

Item No.	Articles
148.42	Olives, prepared or preserved: In brine, whether or not pitted or stuffed: Not ripe and not pitted or stuffed: Not green in color and not packed in airtight containers of glass, metal, or glass and metal
148.56	[Dried] Otherwise prepared or preserved
167.30 pt.	Still wines produced from grapes: Containing not over 14 percent of alcohol by volume: In containers each holding not over 1 gallon: Valued not over \$4 per gallon: White
168.78	Brandy: [Pisoo, singani, and slivovitz] Other: In containers each holding not over 1 gallon: Valued over \$13 per gallon
168.96	Cordials, liqueurs, kirschwasser, and ratafia: In containers each holding not over 1 gallon
169.07	Gin: In containers each holding not over 1 gallon
192.25	Hops