

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## PROPOSAL FOR A COUNCIL REGULATION

amending regulations (EEC) Nos 109/70 and  
1439/74, on common rules for imports from  
State-trading countries and other third  
countries.

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(Submitted by the Commission to the Council)

## Explanatory Memorandum

(1)  
Regulation (EEC) No. 1439/74 on common rules for imports and Regulation (EEC) No. 109/70<sup>(2)</sup> establishing common rules for imports from state-trading countries must be revised by 31 December 1975, at the latest, with a view to a greater standardisation of the import rules which they lay down.

Having regard to both the positive and the negative experiences gained in the application of these Regulations, the Commission considers that their revision should take the following lines :

Firstly, certain basic modifications should be introduced into Regulation (EEC) No. 1439/74 including an extension of the common rules established under this Regulation to all the products covered by the EEC Treaty, which makes necessary a new conception of Annex I of the Regulation. Secondly, certain technical improvements of both Regulations should be effected including a simplification of the consultation procedure, a rationalisation of the surveillance procedure and an improvement of the safeguard measures.

### A. BASIC MODIFICATION (Regulation (EEC) No. 1439/74)

#### Extension of the common rules to all products

The Community liberalisation rules established by this Regulation only cover, at present, 926 entire positions and 63 partial positions out of the 1,097 positions in the C.C.T.

For the other products the import rules vary from one Member State to another; whilst they are under quota in some Member States they are liberalised in others. This residual portion is, in the main, governed by the Council Decision of 19.12.1972 laying down certain transitional measures for the progressive standardisation of the import terms of Member States as regards third countries<sup>(3)</sup>. Taken literally, that decision fixes a minimum of common rules for the modification of different import rules which remain, finally, largely national.

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(1) O.J. No. L 159 of 15. 6.1974, p.1

(2) O.J. No. L 19 of 26. 1.1970, p.1

(3) O.J. No. L 299 of 31.12.1972, p. 46

Its practical application has shown, however, that this minimum procedure does not permit of any real progress towards standardisation of commercial policy and has, in fact, caused certain difficulties, particularly in the textiles field<sup>(1)</sup>.

The continued existence, five years after the end of the transition period, of two separate sets of rules, communitarian for liberalised products and essentially national for sensitive products seems, furthermore, to be out of step if the progress made in other similar fields is considered : the strict communitarianisation of the conventional commercial policy confirmed by the Council Decision of 16.12.1969<sup>(2)</sup> on the standardisation of trade agreements and the increased standardisation of the autonomous commercial policy with regard to state-trading countries brought about by Council Decisions of 2.12.1974<sup>(3)</sup> and of 27.3.1975<sup>(4)</sup>.

Guidance can be taken from the two above mentioned Council Decisions, whilst bearing in mind the difference in political context between the countries to which Regulation (EEC) No. 1439/74 relates and the state-trading countries. For the former group of countries, therefore, the Community stress should be on liberalisation rather than on the restrictive aspect which is at the heart of the Decisions of 2.12.1974 and 27.3.1975.

In that context, the following solution could be envisaged for those products which, up to now, have not been included in the common liberalisation list under Regulation (EEC) No. 1439/74 :

- liberalisation measures existing in Member States would be consolidated at Community level.

The establishment of surveillance or protective measures with regard to those products would, therefore, follow the procedure in Titles II and III of the Regulation. These procedures have, in the recent past, shown their efficiency at Community level and, furthermore, they allow for initiative to be taken at national level (the system of national launching).

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- (1) With a view to resolving these difficulties the Commission has proposed to the Council the adoption of a Regulation on protective measures provided for in the Arrangement Regarding International Trade in Textiles and amending Regulation (EEC) No. 1439/74
  - (2) O.J. No. L 326 of 29.12.1969, p. 39
  - (3) O.J. No. L 358 of 31.12.1974, p. 1
  - (4) O.J. No. L 99 of 21. 4.1975, p. 7.

- With regard to quantitative restrictions existing in other Member States for the same products, they could be maintained in effect and consolidated by means of a negative list setting out the Member States and the products concerned (see annex). The procedure for any modification of these restrictions would follow the model of the Decision of 19.12.1972.

In order to achieve this objective the present liberalisation list could be revised and simplified.

In its present version Annex I of Regulation (EEC) No. 1439/74 contains four columns. While it seems necessary to retain the first one, as a common liberalisation list, the second could be abolished. This column, in effect, sets out those products for which liberalisation depends solely on origin. However, it was always understood between the Commission and the Member States that these products would correspond to those liberalised erga omnes that is, vis-a-vis both GATT countries and state-trading countries. It would suffice to restate this principle in the Regulation itself rather than to enumerate all the products in a separate list.

Column 2 could therefore be used for the negative list of residual quantitative restrictions maintained in effect in one or other Member State.

The present columns 3 and 4 could be combined into one single column "Import Surveillance" which would indicate both measures established nationally and those established by the Community.

Finally column 4 would set out the protective measures established by the Community<sup>(1)</sup>.

The import rules would therefore be as follows :

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(1) See annexed model

1. The importation of products included in the common liberalisation list in column 1 of Annex I and originating in any of the third countries included in the list of countries set out in Annex II would be free, that is to say not subject to any quantitative restriction in the Community. (Text of Article I practically unchanged).

2. The importation of the products set out in column 2 of the said list originating in any of the above mentioned third countries would be free in the Member States other than those set out in the column with regard to those products. These Member States would be authorised to maintain quantitative restrictions, the modification of which would be effected in accordance with the Decision of 19.12.1972.

This method of proceeding would not require any modification of the import terms existing in Member States and would permit a global view of the situation in the Community.

#### B. TECHNICAL IMPROVEMENTS

The revision could include a certain number of technical improvements applicable in general to the two Regulations concerned.

1) Simplification of the consultation procedure (Regulation (EEC) Nos. 1439/74 and 109/70

In its present form Title II of each of the Regulations provides that all consultations between the Member States and the Commission necessarily take the form of a meeting of experts, normally in Brussels.

However, in certain cases, particularly where national surveillance measures are concerned, the holding of such meetings seems to be not only burdensome but also superfluous.

It would, therefore, seem desirable to follow the recent modification of the Anti-Dumping Regulation and provide that, in certain cases, consultations could take place in writing (Article 6 of Regulation (EEC) Nos. 2011/73)<sup>(1)</sup>.

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(1) O.J. No. L 206 of 27.7.1973, p. 3

2) Rationalisation of the surveillance procedure (especially Regulation (EEC) No. 1439/74)

At present, Regulation (EEC) No. 1439/74 provides that the surveillance procedure must be both anterior (by means of import documents) and posterior (by means of a check on imports effected). Conversely, Regulation (EEC) NO. 109/70 allows a distinction and a choice between the two methods of surveillance, which, in some cases, is more practical. It would be useful, therefore, to have this possibility of choice inserted into Regulation (EEC) No. 1439/74.

It would also be useful, in order to make for more precise control and easier use of the data extracted, to provide that separate import documents would be required for each product under surveillance.

Finally, it should be made clear that, where a surveillance measure concerns a product which is subject to quota in one or more Member States, the document used for the purposes of the quota could also be used for the surveillance. (Regulation (EEC) No. 1439/74 and Regulation (EEC) No. 109/70.)

3) Improvement of safeguard clauses (Regulations (EEC) Nos. 1439/74 and 109/70)

In spite of the fears expressed during the discussions which preceded the adoption of these two Regulations, experience has shown that the general conception of the safeguard measures was reasonable, including the compromise solution for the national launching of these measures. The existence of this solution, although it has been used only once, has played a moderating and balancing role between the Commission, on the one hand, and the Member States, on the other.

The maintenance of the general lines of this system seems, therefore, to be necessary and this would entail a new extension of the "national launching mechanism" which would normally expire on 31.12.1975.

However, it might be desirable to modify it on these points :

- a) consultation of the Commission and the other Member States would be necessary before any surveillance or "national launching" of a measure by any Member State, even in cases of urgency (repeal of Article 9(2) of Regulation (EEC) No. 1439/74 and of the end of Article 14(2) of Regulation No. 1439/74 and of Article 9(2) of Regulation (EEC) No. 109/70.
- b) The special procedure for the national launching of measures flowing from safeguard clauses contained in bilateral agreements could be ended.

In the context of Regulation (EEC) NO. 1439/74 this procedure could be replaced by the normal procedure applicable in other cases i.e. in the case of an autonomous intervention not based on a bilateral safeguard clause.

- c) Another provision, which has recently been the cause of serious difficulties and according to which products already on their way to the Community are not affected by protective measures, could also be revised. This rule, the use of which by importers in the textiles sector has led to quota measures being deprived of much of their efficacy, could be made more flexible, by providing that, while protective measures would not prevent the putting into free circulation of goods on their way to the Community, it would be possible to decide, in accordance with Article XIII GATT, that those products should be counted against the quota fixed for the period of application of the measure and, where necessary, against the quotas for the following period or periods.
- d) Experience has shown that the necessity in all cases for the Council to confirm interim protective measures taken by the Commission constitutes a considerable procedural and administrative complication for all concerned, the Commission, the Member States and the Council. This complication, which is based on an essentially formalistic conception is superfluous in those cases where the Commission's measures are not contested by any

Member State. The Commission, therefore, proposes that it be provided that the intervention of the Council would only be obligatory where a Member State contests the Commission's measures.

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In the circumstances, the Commission proposes to the Council that it should adopt the following amendments to the texts of Regulations (EEC) Nos. 1439/74 and 109/70, the amendments being underlined in the text transmitted to the Council. The passages which are not underlined correspond to the present text of the Regulations which the Commission does not wish to place in discussion. They are reproduced only to facilitate understanding of the proposed innovations. With regard to the list in Annex I of Regulation (EEC) No. 1439/74 the Commission proposes that it should be amended in accordance with the model which is annexed and that, after the adoption of this proposal that it should be completed by the addition of the various products affected.



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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 the instruments establishing common organisation of agricultural markets and to the instruments concerning processed agricultural products adopted in pursuance of Article 235 of the Treaty, in particular the provisions of those instruments which allow for derogation from the general principle that all quantitative restrictions or measures having equivalent effect may be replaced solely by the measures provided for in those same instruments;

Having regard to the proposal from the Commission;

Whereas Article 14(6) and Article 15(1) of Council Regulation (EEC) No 1439/74 of 4 June 1974 on common rules for imports<sup>(1)</sup> and amended Article 3(6) and amended Article 11(1) of Council Regulation (EEC) No 109/70 of 19 December 1969 establishing common rules for imports from State-trading countries<sup>(2)</sup> provide that the Council shall by 31 December 1975 at the latest decide on the adjustments to be made to those Regulations;

Whereas any amendment of Regulation (EEC) No 1439/74 must be concerned, above all, with increased standardisation of import terms, in particular with regard to those imports which up to now have not been included in the common liberalisation list; and whereas, to this end, it is necessary to provide that these imports shall be free except in those Member States where they are still subject to quantitative restrictions and which are authorised to maintain these restrictions provisionally, every modification of these measures being carried out in accordance with the Decision of 19 December 1972<sup>(3)</sup> laying down certain transitional measures for the

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(1) O.J. No. L 159 of 15.6.1974, p.1

(2) O.J. No. L 19 of 26.1.1970, p.1

(3) O.J. No. L 299 of 31.12.1972, p.46

progressive standardisation of the import terms of Member States as regards third countries;

Whereas, also, the experience gained in the application of Regulation (EEC) No. 1439/74 and Regulation (EEC) No. 109/70 shows that it is necessary to simplify the consultation procedures, to rationalise the surveillance measures and to improve, in certain respects, the safeguard clauses,

HAS ADOPTED THIS REGULATION :

#### Article 1

The text of Article 1 of Regulation (EEC) No. 1439/74 is hereby replaced by the following text :

1. Importation into the Community of the products included in the common liberalisation list contained in column 1 of Annex 1 and originating in any third country included in the list of countries contained in Annex II, shall be free, that is to say not subject to any quantitative restriction.
2. Importation of other products originating in any of the aforesaid third countries shall be free in the Community, that is to say not subject to any quantitative restriction other than those maintained in effect, in accordance with Article 16 bis of this Regulation, for the products set out in column 2 of the said Annex in respect of the Member States indicated therein.

#### Article 2

The text of Article 2 of Regulation (EEC) No. 1439/74 is hereby replaced by the following text :

The Council may, acting by a qualified majority on a proposal from the Commission, resolve that column I of Annex 1 be extended to include further products or that Annex II be extended to include other third countries, if it considers that such action is not liable to create a situation where the application of protective measures would be justified.

Article 3

Paragraph 4 hereunder is hereby added to the text of Article 5 of Regulation (EEC) No. 1439/74 and of Regulation (EEC) No. 109/70:

4. Where necessary, consultations may take place in writing; in such cases the Commission shall inform the Member States and the latter may, within a fixed time-limit, indicate their views or request an oral consultation.

Article 4

The text of Article 7 of Regulation (EEC) No. 1439/74 is hereby replaced by the following text :

1. Where developments on the market in respect of a product originating in a third country listed in Annex II threaten to cause injury to Community producers of like or directly competing products and the interests of the Community so require, importation of that product may be made subject to :

a) Posterior Community surveillance carried out in the form and manner determined in the Decision mentioned in paragraph 2;

b) Anterior Community surveillance carried out in the form and manner provided for in Article 8;

In that event the product shall be indicated by the designation EUR in column 3 of Annex I.

2. Where the decision to impose surveillance is taken simultaneously with the inclusion of the product in column 1 of Annex I, that decision shall be taken by the Council, acting by a qualified majority on a proposal from the Commission. In all other cases, it shall be taken by the Commission and Article 12 (5) shall apply.

Article 5

Article 5 (2) of Regulation (EEC) No. 1439/74 is hereby replaced by the following text :

Products under anterior Community surveillance may be put into free circulation only on production of a separate import document for each product. Such document shall be issued or endorsed by Member States, free of charge, for any quantity requested and within a maximum of five working days following submission of a declaration or an application by any Community importer, regardless of his place of business in the Community, without prejudice to the observance of the other conditions required by the regulations in force.

Article 6

The following text is hereby added to Article 8 of Regulation (EEC) No. 1439/74 as paragraph 6 and to Article 6 of Regulation (EEC) No. 109/70 as paragraph 3 :

"Where importation of a product under Community surveillance is subject to a quantitative restriction in a Member State the import authorisation granted by such Member State shall replace the aforesaid import document".

Article 7

Article 9 (2) of Regulation (EEC) No. 1439/74 is hereby repealed.

Article 8

The text of Article 11 (1) of Regulation (EEC) No. 1439/74 is hereby replaced by the following text :

1. In the absence of different provisions adopted at the same time and in accordance with the same procedure as the imposition of surveillance, Member States shall communicate to the Commission within the first ten days of

each month in the case of Community surveillance and within the first twenty days of each quarter in the case of national surveillance;

- (a) in the case of anterior surveillance, details of the sums of money (calculated on the basis of cif prices) and quantities of goods in respect of which import documents were issued or endorsed during the preceding period;
- (b) in every case details of imports during the period preceding the period referred to in subparagraph (a).

The information supplied by Member States shall be broken down by product and by countries.

#### Article 9

The texts of Articles 12(3) and 13(3) of Regulation (EEC) No. 1439/74 and of Articles 7(3) and 8(2) of Regulation (EEC) No. 109/70 are hereby replaced by the following text :

3. "Such measures shall apply to every product which is put into free circulation after their entry into force. They may be limited to imports intended for certain regions of the Community."

Where such measures institute a quantitative restriction on imports they shall not prevent the putting into free circulation of products already on their way to the Community, provided that the destination of such products cannot be changed and that those products which under Articles 7 and 8 may be put into free circulation only on production of an import document are accompanied by such a document. In accordance with the procedure laid down in paragraph 1, it may be decided to count these products, so far as practicable, against the quantity permitted to be imported in the period of application of the protective measure and also, where necessary, against the quantities permitted to be imported in the next following period or periods".

Article 10

The texts of Article 12 (5) and (6) of Regulation (EEC) No. 1439/74 and of Article 7 (5) and (6) of Regulation (EEC) No. 109/70 are hereby replaced by the following text :

5. Any decision taken by the Commission under this Article shall be communicated to the Council and to the Member States. Any Member State may, within ten working days following the day of communication, refer such decision to the Council.

6. In the event that a Member State refers to the Council a decision taken by the Commission, the latter shall, within ten working days following the date on which the Council is seized of the matter, make a proposal to the Council on appropriate measures as provided for in Article 13.

Article 11

The following text is hereby added, as paragraph 4, to Article 13 of Regulation (EEC) No. 1439/74 :

4. Where measures taken under this Article establish quantitative restrictions, the product affected shall be indicated in column 4 of Annex I with, where necessary, a designation of the Member States concerned.

Article 12

The texts of Article 14(2) of Regulation (EEC) No. 1439/74 and of Article 9 (2) of Regulation (EEC) No. 109/70 are hereby replaced by the following text :

2. The Member State shall take the measure after hearing the opinion expressed in the Committee.

Article 13

- a) Article 9 (b) of Regulation (EEC) No. 109/70 is hereby repealed.
- b) The texts of Article 14(4) of Regulation (EEC) No. 1439/74 and of Article 9(4) of Regulation (EEC) No. 109/70 are hereby replaced by the following text :

4. Such notification shall be equivalent to a request within the meaning of Article 12 (4). The measure shall operate only until the coming into operation of the decision taken by the Commission. However, where the Commission decides not to introduce any measure under Article 12, its decision shall apply as from the sixth day following its entry into force, unless the Member State which has taken the measure refers the decision to the Council; in that case, the national measure shall continue to operate until the entry into force of the decision taken by the Council, but in no case beyond the expiry of a period of one month following referral of the matter to the latter. The Council shall take a decision before the expiry of that period.

#### Article 14

Article 14(5) of Regulation (EEC) No. 1439/74 and Article 9 (5) of Regulation (EEC) No. 109/70 are hereby repealed.

#### Article 15

The date of 31 December 1975 mentioned in Articles 14 (6) and 16 (1) of Regulation (EEC) No. 1439/74 and in Articles 9 (6) as amended and 11 (1) as amended of Regulation (EEC) No. 109/70 is hereby replaced by 31 December 1977.

#### Article 16

The text of Article 16 (2) (a) of Regulation (EEC) No. 1439/74 is hereby replaced by the following text :

a) in so far as standardization between the areas of liberalisation has not been wholly realized Member States may subject imports of products not included in the annex to Regulation (EEC) No. 109/70 establishing common rules for imports from state-trading countries to the requirement that, not only the country of origin, but also the country of purchase or the country of consignment shall be listed in Annex II; for the Federal Republic of Germany, this shall apply also to those products shown in column 2 of Annex I whose importation is not yet exempted in respect of all third countries, under German import arrangements, from the requirement of an import authorization;

Article 17

The following text is hereby added, as Article 16 bis, to Regulation (EEC) N° 1439/74 :

"The Member States indicated in column 2 of Annex I with regard to the products included therein are hereby authorised to maintain the quantitative restrictions which apply at the date of entering into force of this Regulation. Any amendments to such measures shall be effected in accordance with the provisions of the Council Decision of 19 December 1972 laying down certain transitional measures for the progressive standardisation of the import terms of Member States as regards third countries".

Article 18

The following text is hereby added, as paragraph 2, to Article 19 of Regulation (EEC) No. 1439/74 :

2. In the event that a Member State shall repeal a quantitative restriction included in column 2 the Commission shall, if it ascertains that the product is thereby liberalised in the entire Community, transfer such product to the common liberalisation list.

Article 19

Annex I to Regulation (EEC) No. 1439/74 is hereby replaced by the Annex to this Regulation.

Article 20

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

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

Done at

For the Council  
The President



ANNEX I

(To be established later in accordance with the following design)

List of products

Common liberalisation list Description of products C.C.T. No.	National quantitative restrictions on imports	Community or national surveillance on imports	Community Protective Measures
1	2	3	4

