

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 173 final

Brussels, 13 May 1982

Proposal for a  
COUNCIL REGULATION (EEC)  
amending Council Regulation (EEC) No 2532/78 on common rules  
for imports from the People's Republic of China

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(submitted to the Council by the Commission)

COM(82) 173 final



EXPLANATORY MEMORANDUM

The Council, by Regulation (EEC) No 2532/73, laid down common rules for imports from China.

The Commission, in accordance with Articles 9 and 11 of that Regulation, has reviewed the rules in question, particularly in respect of the provisions relating to surveillance and protective measures and the possibility of initiation of such measures at national level. It has concluded that in view of the situation of Community industry the rules could be maintained, provided that minimum conditions are set concerning the possible undertaking by the Commission of investigations or checks in respect of the adoption of measures falling within its sphere of competence.

The Commission is accordingly forwarding to the Council the attached proposal for a regulation. This proposal embodies the text of the provisions adopted in the revised version of Regulation No 926/79 (common rules for imports), except for those relating to the replacement of the joint liberalization list by a list of residual restrictions. It is similar to the proposal currently under discussion in the Council concerning the amendment of Regulation No 925/79 (common rules for imports from state-trading countries).

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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 organization 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 the Council, by Regulation (EEC) No 2532/78<sup>1</sup>, as last amended by Regulation  
(EEC) No <sup>2</sup>, laid down common rules for imports from the People's Republic  
of China which in particular included provisions relating to the liberalization of  
imports, surveillance and protective measures;

Whereas Article 9(5) and Article 11(1) of the aforementioned Regulation stipulate  
that the Council is to decide on any amendments to be made to it;

Whereas a review of that Regulation, in the light of experience gained in applying  
it, has shown that it is necessary to adopt more precise criteria for assessing  
possible injury and to introduce an investigation procedure, while still allowing  
the Commission and the Member States to introduce appropriate measures in urgent  
cases;

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<sup>1</sup> OJ No L 306, 31.10.1978, p.1

<sup>2</sup> OJ No L

Whereas, to this end, more detailed provisions should be introduced on the opening of investigations, on the checks and inspections required, on the hearing of those concerned, the treatment of information obtained and the criteria for assessing injury,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2532/78 is hereby amended as follows:

1. The following paragraph 2 shall be inserted in Article 3:

"2. This information must include the available evidence on the basis of the criteria laid down in Article 5 d."

The former paragraph 2 becomes paragraph 3.

2. The following Title II a shall be inserted after Title II of the Regulation in question:

TITLE II a

Community investigation procedure

Article 5 a

1. Where, after consultation, it is apparent to the Commission that there is sufficient evidence to justify an investigation, the Commission shall:

- (a) announce the opening of an investigation in the *Official Journal of the European Communities*; such announcements shall give a summary of the information received and stipulate that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may make known their views in writing;
- (b) commence the investigation, acting in cooperation with the Member States.

2. The Commission shall seek all information it deems to be necessary and, where it considers it appropriate, after consulting the Committee, endeavour to check this information with importers, traders, agents, producers, trade associations and organizations.

The Commission shall be assisted in this task by staff of the Member State on whose territory these checks are being carried out, provided this Member State so wishes.

3. The Member States shall supply the Commission, at its request and following procedures laid down by it, with all information at their disposal on developments in the market of the product being investigated.

4. The Commission may hear the interested natural and legal persons. Such parties must be heard where they have applied in writing within the period laid down in the notice published in the *Official Journal of the European Communities*, showing that they are actually likely to be affected by the outcome of the investigations and that there are special reasons for them to be heard orally.

5. Where the information requested by the Commission is not supplied within a reasonable period, or the investigation is significantly impeded, findings may be made on the basis of the facts available.

Article 5 b

1. At the end of the investigation, the Commission shall submit a report on the results to the Committee.
2. If the Commission considers that no Community surveillance or protective measures are necessary, it shall publish in the *Official Journal of the European Communities*, after consulting the Committee, a notice that the investigations are closed, stating the main conclusions of the investigations.
3. If the Commission considers that Community surveillance or protective measures are necessary, it shall take the necessary decisions in accordance with Titles III and IV.
4. The provisions of this Title shall not preclude the taking, at any time, of surveillance measures in accordance with Article 7 or, in an emergency, protective measures in accordance with Articles 7 to 10.

In the latter case, the Commission shall immediately take the investigation measures it considers to be still necessary. The results of the investigation shall be used to re-examine the measures taken.

Article 5 c.

1. Information received in pursuance of this Regulation shall be used only for the purpose for which it was requested.
2. (a) Neither the Council, nor the Commission, nor Member States, nor the officials of any of these, shall reveal any information of a confidential nature received in pursuance of this Regulation, or any information provided on a confidential basis, without specific permission from the supplier of such information.  
  
(b) Each request for confidentiality shall state the reasons why the information is confidential.  
  
However, if it appears that a request for confidentiality is unjustified and if the supplier of the information wishes neither to make it public nor to authorize its disclosure in general terms or in the form of a summary, the information concerned may be disregarded.
3. Information will in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.
4. The above paragraphs shall not preclude reference by the Community authorities to general information and in particular to reasons on which decisions taken in pursuance of this Regulation are based. These authorities must, however, take into account the legitimate interest of the legal and natural persons concerned that their business secrets should not be disclosed.

Article 5 d

1. The examination of the trend of imports, of the conditions in which they take place and of the substantial injury or threat of substantial injury to Community producers resulting from such imports, shall cover in particular the following factors:

- (a) the volume of imports, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in the Community;
- (b) the prices of the imports, in particular where there has been significant price undercutting as compared with the price of a like product in the Community;
- (c) the consequent impact on the Community producers of similar or directly competitive products as indicated by trends in certain economic factors such as:
  - production,
  - utilization of capacity,
  - stocks,
  - sales,
  - market share,
  - prices (i.e. depression of prices or prevention of price increases which would normally have occurred),
  - profits,
  - return on capital employed,
  - cash flow,
  - employment.

2. Where a threat of serious injury is alleged the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury. In this regard account may be taken of factors such as:



- (a) rate of increase of exports to the Community;
- (b) export capacity of China, already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to the Community."

3. Paragraphs 4 and 5 of Article 9 shall be replaced by the following:

"4. The notification shall be equivalent to a request within the meaning of Article 7 (4). The measures 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 or adopts, pursuant to Article 7, measures different from those taken by the Member State, its decision shall apply from the sixth day following that of its entry into force, unless the Member State which has taken the measures refers the decision to the Council; in that case, the national measures shall continue to operate until the entry into force of the decision taken by the Council, but for a maximum period of one month following the referral of the matter to the latter. The Council, acting by a qualified majority, shall take a decision before the expiry of that period. The Council may, under the same conditions, decide in certain cases to extend this period, which may not, under any circumstances, exceed three months overall.

The preceding subparagraph shall not affect the Member States' right of recourse under Article 7 (5) and (6).

5. This Article shall apply under 31 December 1984. Not later than 31 December 1983, the Commission shall propose to the Council any amendments to be made to it. The Council, acting by a qualified majority, shall take a decision on such proposals before 31 December 1984."

4. In Article 11, "31 December 1981" shall be replaced by "31 December 1984".

Article 2

This Regulation shall enter into force on the third day following that of 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 Brussels,

For the Council

The President