

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 923 final
Brussels, 20 January 1981

Proposal for a
COUNCIL REGULATION (EEC)
amending Regulation (EEC) No 925/74 common rules for imports from
State-Trading Countries

(submitted to the Council by the Commission)

COM(80) 923 final

EXPLANATORY MEMORANDUM

The common rules for imports from State-trading countries were laid down by the Council in Regulation (EEC) N° 925/79.

In accordance with Articles 9(5) and 11(1) of the Regulation, the Commission has re-examined the rules with particular reference to the provisions on surveillance and safeguard measures and the possibility of activating such measures at national level.

It has concluded that, given the present state of industry in the Community, the rules may be retained on condition that a minimum of provisions are included enabling the Commission to conduct investigations and checks prior to adopting measures that are its responsibility.

A proposal for a regulation to achieve this is attached for approval. The Commission would like to stress that the draft constitutes an indivisible whole.

Proposal for Council Regulation (EEC)
amending Regulation (EEC) No 925/79 on common
rules for imports from State-trading countries

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 the common organization of agricultural markets and to the instruments concerning processed agricultural products adopted in pursuance of Article 235 of the Treaty, and in particular the provisions of those instruments which allow derogations 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 has, most recently in Regulation (EEC) No 925/79, laid down common rules for imports from State-trading countries, including provisions on the liberalization of imports, on surveillance and on safeguards;

Whereas Article 2(5) and Article 11(1) of that Regulation provide that the Council shall decide on the amendments to be made to it;

Whereas a review of the whole of the Regulation in the light of experience gained in applying it has shown that it is necessary to adopt more precise assessment criteria and more clearly defined investigation procedures for surveillance and protective measures, while still allowing the Commission and the Member States to introduce the required measures in urgent cases;

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;

Whereas it is also necessary to translate into Community law the provisions of the Agreement on Import Licensing Procedures signed within the GATT, in particular in order to achieve greater transparency of the restriction arrangements applied by the Member States,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 925/EEC is hereby amended as follows:

1. The heading of title II is replaced by the following:

"Community information, consultation and investigation procedure".

2. (a) The following paragraph is inserted after Article 3(1).

"2. This information shall contain sufficient evidence of the increase in such imports and/or the conditions in which they take place and of the serious injury, or threat of serious injury, resulting therefrom. These details must relate to the criteria laid down in Article 9 a."

(b) Paragraph 2 of Article 3 becomes paragraph 3.

3. The following Article 5a is inserted:

"Article 5a

1. Where, after consultation, it appears that there is sufficient evidence to justify initiating an investigation, the Commission shall :
 - a) announce the initiation of an investigation in the Official Journal of the European Communities; such announcement shall give a summary of the information received and specify 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 at Community level, acting in co-operation with the Member States.
2. The Commission shall seek all information it deems to be necessary and, where it considers it appropriate, examine and verify the records of importers, traders, agents, producers, and trade associations and organizations.
3. The Member States shall supply the Commission, at its request and following procedures laid down by it, with information on developments in the market of the product being investigated.
4. The Commission may hear the interested parties.
5. Information received in pursuance of this Regulation may be used only for the purpose for which it was requested.
6. Neither the Council, nor the Commission, nor Member States, nor employees 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 express permission from the supplier of such information.
7. Information will ordinarily be considered to be confidential if its disclosure is likely to have a significant adverse effect upon the supplier or the source of such information.

8. Paragraphs (5) to (7) shall not preclude reference by the institutions of the Community and authorities of the Member States to general information and in particular to reasons on which decisions taken in pursuance of this Regulation are based. Such institutions and authorities must, however, take into account the legitimate interest of the parties concerned that their business secrets should not be divulged.

9. In cases in which any interested party does not provide, within a reasonable period, the information requested by the Commission, or significantly impedes the investigation, conclusions may be drawn on the basis of the facts available.

10. The Commission shall publish the results of its investigations in the Official Journal of the European Communities, setting out its basic conclusions and a summary of the reasons therefor.

11. This Article shall not preclude the taking of interim protective or urgent measures in accordance with Articles 7 and 8."

4. Article 9(4) and (5) are replaced by the following:

"4. Notification shall be equivalent to a request within the meaning of Article 7(4). The measures shall operate only until the Commission decision takes effect. However, where the Commission decides not to introduce any measure or adopts measures pursuant to Article 7 different from those taken by the Member State, its decision shall apply as from the sixth day following its entry into force.

Any Member State may refer the measures taken by the Commission to the Council during the three working days following the date of their entry into force. The Council shall meet forthwith. It may confirm, amend or annul the measures in question by a qualified majority.

5. This Article shall apply until 31 December 1984. Before 31 December 1983 the Commission shall propose to the Council adjustments to be made to it. The Council shall act on this proposal by a qualified majority before 31 December 1984."

5. The following Article is inserted:

" Article 9 a

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

- a) the volume of imports, in particular whether 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 whether 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 like competitive products as indicated by trends in factors such as:
 - production,
 - utilization of capacity,
 - stocks,
 - sales,
 - market share,
 - prices (i.e., depression of prices or prevention of price increases which otherwise would have occurred),
 - profits,
 - return on investment,
 - cash flow,
 - employment.

2. In the event that 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 the following factors :

- a) the rate of increase of the exports to the Community;
- b) such export capacity in the country of origin or export as already exists or will be operational in the foreseeable future, and the likelihood that the resulting exports will be to the Community ."

6. In Article 11(1), "31 December 1981" is replaced by "31 December 1984".

Article 2

This Regulation shall enter into force on 1 January 1982.

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

Done at Brussels,

For the Council

The President

