

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 904 final.

Brussels, 23 December 1980

Proposal for a  
COUNCIL REGULATION (EEC)  
amending Council Regulation (EEC) No 926/81 of 8 May 1979 on common  
rules for imports

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(submitted to the Council by the Commission)

COM(80) 904 final.



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EXPLANATORY MEMORANDUM

The common rules for imports were laid down by the Council in Regulation (EEC) N° 926/79.

In accordance with Articles 14 and 16 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 check 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.

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Proposal for Council Regulation (EEC)  
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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 the 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 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, most recently in Regulation (EEC) N° 926/79, has laid  
down common rules applicable to imports, including provisions on the  
liberalization of imports, on surveillance and on safeguards;

Whereas Article 14(5) and Article 16(1) of that Regulation provide that  
the the Council shall decide on the amendments to be made to it;

Whereas a review 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 sharply defined investigation  
procedures for surveillance and protective measures, while still allowing  
the Commission and the Member States to introduce appropriate 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 quantitative restrictions still applied at the national level in order to achieve greater transparency of the import arrangements applied by the Member States.

HAS ADOPTED THIS REGULATION:

Article 1

Title II of Regulation (EEC) N° 926/79 shall be replaced by the following:

"Community information, consultation and investigation procedure".

Article 2

Article 3 of the Regulation referred to above shall be replaced by the following:

"Article 3

The Commission shall be informed should trends in imports appear to call for surveillance or protective measures. This information shall contain sufficient evidence of the increase in such imports and/or the conditions in which they take place and of the substantial injury, or threat of substantial injury, resulting therefrom. These details must relate to the criteria laid down in Article 14 a. The Commission shall pass this information to all the Member States."

Article 3

Article 6 of the Regulation referred to above shall be replaced by the following:

"Article 6

1. Where, after consultation it is apparent that there is sufficient evidence to justify initiating a proceeding the Commission shall immediately:

- a) announce the initiation of a proceeding in the Official Journal of the European Communities; such announcements shall give a summary of the information received, and provide 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 and may apply to be heard by the Commission in accordance with paragraph 4;
- 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, 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 shall be used only for the purpose for which it was requested.

6. 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.

7. Information will ordinarily 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.

8. Paragraphs (5) to (7) 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. The Community 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, necessary information within a reasonable period, or significantly impedes the investigation, findings may be made 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 12 and 14.

#### Article 4

Paragraphs 4 and 5 of Article 14 shall be replaced by the following:

"4. The notification shall be equivalent to a request within the meaning of Article 12(4). The measures shall operate only until the coming into operation of the decisions taken by the Commission. However, where the Commission decides not to introduce any measure or adopts measures pursuant to Article 12 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 day of their entry into force. The Council shall meet forthwith. It can <sup>confirm</sup> 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 amendments to be made to it. The Council shall act on this proposal by a qualified majority before 31 December 1984."

#### Article 5

The following Article shall be inserted after Article 14:

#### "Article 14a

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 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 a 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 the relevant economic 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 <sup>a threat of</sup> 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 the exports to the Community;
- b) export capacity in the country of origin or export, already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to the Community;

Article 6

Paragraph 2b of Article 15 shall be replaced by the following:

"2(b) In other cases, it shall amend or revoke Community protective and surveillance measures. Where this decision concerns national surveillance measures it 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 day of their entry into force. The Council shall meet forthwith. It can amend or annul the measures in question by a qualified majority."

Article 7

The date of 31 December 1981 foreseen in paragraph 1 of Article 16 is replaced by 31 December 1984.

Article 8

Article 17(1) shall be replaced by the following:

- "a) The Member States other than those indicated in column 2 of Annex I opposite the products listed therein may retain the restrictions given in Annex III.\*
- b) Member States shall forward to the Commission details of any measures taken in conformity with the Agreement on import licensing procedures concluded by the Community or with the Councils' Decision of 10 December 1979 concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations (1). In particular they shall make available to the Commission the rules and all information concerning the procedures for the submission of requests for licences, including the conditions relating to admissibility of persons, enterprises or institutions who submit such requests. All changes of these rules shall also be sent to the Commission.

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\* This annex will be established on a later date on the basis of the information supplied by the Member States. It will include, in the case of those Member States who administer quotas by means of licences, the total volume and/or total value of the quotas to be applied, the country or countries or the geographical areas to which each restriction applies.

Article 9

Article 20 is amended by the insertion of the words "and Annex III" after the reference to Annex I.

Article 10

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

