

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(92) 1097 final

Brussels, 30 June 1992

Proposal for a
COUNCIL REGULATION (EEC)

on the harmonization and streamlining of decision-making procedures
for Community instruments of commercial defence and
modification of the relevant Council Regulations

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In its decision of 18.3.1992, giving its opinion on the extension of the competences of the Court of First Instance, the Commission has decided to subject its favourable opinion on this question to the parallel improvement of the decision-making mechanism of the various Community instruments of commercial defence.
2. Indeed, although the Commission agrees with such extension of competences, it is nevertheless apparent that it would result in the addition of a two-tiered mechanism of jurisdictional control to a decision-making process already characterised by lengthy and complex procedures, especially when compared with those employed by the Community's trading partners for the adoption of the same measures of commercial defence. This raises real concerns as to both the legal certainty for all economic operators involved and the effectiveness of the Community's commercial defence policy.
3. The Commission is therefore of the opinion that it is necessary to remedy these additional difficulties for the decision-making process, by replacing the existing mechanism with a more effective system which would be, at the same time, in conformity with the principle of the devolution of implementing powers to the Commission, laid down in Article 145 of the EEC Treaty.
4. The system being proposed would, in the first place, eliminate the risk of the Council not taking a decision, thereby increasing legal certainty; and, secondly, it would result in those decisions on which there is no disagreement between the

Commission and the Member States being taken at least one month earlier than at present.

5. Accordingly, the changes being proposed follow the so-called Comitology Decision, and the Community instruments whose modification is being proposed are:
 - the Anti-dumping/Anti-subsidy Regulation
 - the Regulations enabling the adoption of safeguard measures (common rules on imports)
 - the "New Instrument of Commercial Policy"
6. Among those provided for in the Comitology Decision, the procedure chosen is in general that of a management committee, that is, the procedure II (b) of Article 2 of that Decision, except that the special procedure for safeguard measures (Article 3 of the Comitology Decision) is maintained or adopted for measures to be taken promptly, either because of the urgency of the matter (eg safeguard measures under Reg. 288/82) or to comply with international obligations (eg termination of AD proceedings without measures).
7. In summary, the basic features of the new decision-making mechanism would be as follows:
 - the decision on whether or not to apply a measure of commercial defence would be taken by the Commission, after consultation of the Member States, in all cases;
 - insofar as Member States would be entitled to refer the Commission decision to the Council, a qualified majority would be needed in the Council to overturn the Commission decision ("filet").
8. The changes set out in the proposed Regulation concern exclusively internal Community procedures,

and do not affect in any manner the substantive conditions for the application of instruments of commercial defence (conditions which are dictated by our GATT obligations). Thus, these changes do not affect the international rights and obligations of the Community, nor do they affect the position of the Community's trading partners or that of their enterprises. In fact, the proposed changes merely reduce the gap in effectiveness and legal certainty between Community procedures and those of third countries as to the application of measures of commercial defence, and third country firms will benefit as much as Community ones from both a speedier process and a double jurisdictional control.

PROPOSAL FOR
Council Regulation (EEC) No ()

on the harmonisation and streamlining of decision making
procedures for Community instruments of commercial
defence and modification of the relevant Council
Regulations

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 proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the common commercial policy must be based on
uniform principles, notably with regard to commercial
defence,

Whereas instruments of commercial defence, in particular in respect of unfair trade practices, are an indispensable complement of an open market and fair trading system, thus contributing to the harmonious development of world trade,

Whereas, to this end, the following Community instruments were established, *inter alia*:

Council Regulation (EEC) No 2423/88 of 11 July 1988¹, on protection against dumped or subsidized imports from countries not members of the European Economic Community,

Council Regulation (EEC) No 2641/84 of 17 September 1984², on the strengthening of the common commercial policy with regard in particular to protection against illicit commercial practices,

Council Regulation (EEC) No 288/82 of 5 February 1982³, on common rules for imports (as last amended⁴),

Council Regulation (EEC) No 1765/82 of 30 June 1982⁵, on common rules for imports from State-trading countries (as last amended⁶),

Council Regulation (EEC) No 1766/82 of 30 June 1982⁷, on common rules for imports from the People's Republic of China (as last amended⁸),

1 OJ No L 209, 2.8.1988, p. 1.
 2 OJ No L 252, 20.9.1984, p. 1.
 3 OJ No L 35, 9.2.1982, p. 1.
 4 OJ No L 284, 12.10.1991, p. 1.
 5 OJ No L 195, 5.7.1982, p. 1.
 6 OJ No L 113, 30.4.1986, p. 1.
 7 OJ No L 195, 5.7.1982, p. 21.
 8 OJ No L 128, 14.5.1986, p. 25.

Whereas the completion of the single market in 1992 makes it appropriate to improve the functioning of the existing instruments of commercial defence, in particular in respect of the complexity and length of the decision making process,

Whereas the increased jurisdictional control which would result from the inclusion of measures of commercial defence within the jurisdiction of the Court of First Instance makes it imperative that current decision making procedures for the adoption of such measures be simplified,

Whereas it is therefore appropriate that any decisions to adopt measures of commercial defence be taken in accordance with Council Decision 87/373/EEC of 13 July 1987⁹ laying down the procedures for the exercise of implementing powers conferred on the Commission, as already provided for in certain existing instruments of commercial defence,

Whereas it is therefore appropriate and necessary to harmonize and streamline decision making procedures laid down in the various existing instruments of commercial defence,

HAS ADOPTED THIS REGULATION:

⁹ OJ No L 197, 18.7.1987, p. 33.

TITLE I

Antidumping and countervailing duties

Article 1

1. The last sentence of Article 11, paragraph 1, of Council Regulation (EEC) No 2423/88 of 11 July 1988 is amended as follows:

"In such cases, release of the products concerned for free circulation in the Community shall be conditional upon the provision of security for the amount of provisional duty, definitive collection of which shall be determined subsequently pursuant to Article 12 (2) of this Regulation."

2. Article 11, paragraph 6, of Council Regulation (EEC) No 2423/88 of 11 July 1988 is deleted.
3. Article 11, paragraph 7, of Council Regulation (EEC) No 2423/88 of 11 July 1988 is replaced by the following text:

"7. After expiration of the period of validity of provisional duties, the security shall be released as promptly as possible to the extent that it has not been decided to collect it definitively."

4. Article 12, paragraph 1, of Council Regulation (EEC) No 2423/88 of 11 July 1988 is replaced by the following text:

"1. Where the facts as finally established show that there is dumping or subsidization during the period under investigation and injury caused thereby, and the interests of the Community call for Community intervention, a definitive anti-dumping or countervailing duty shall be imposed according to the procedure provided for in Article 12 bis of this Regulation."

5. Article 12, paragraph 2 (a), of Council Regulation (EEC) No 2423/88 of 11 July 1988 is replaced by the following text:

"(a) Where a provisional duty has been applied, irrespective of whether a definitive anti-dumping or countervailing duty is to be collected, the proportion of the provisional duty to be definitively collected shall be decided according to the provisions of Article 12 bis of this Regulation."

6. After Article 12 of Council Regulation (EEC) No 2423/88 of 11 July 1988, the following Article 12 bis is inserted:

"Article 12 bis

Decision-making procedure

1. The decision to impose definitive anti-dumping or countervailing duties shall be taken according to the following procedure.
2. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.
3. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.
4. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

5. In that event, the Commission shall defer application of the measures which it has decided for a period of twenty days from the date of communication.

6. The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph."

7. Article 13, paragraph 4 (b), first line, of Council Regulation (EEC) No 2423/88 of 11 July 1988 is amended as follows:

"(b) However, where it is determined:"

8. The first sentence of the last sub-paragraph of Article 13, paragraph 10 (a), of Council Regulation (EEC) No 2423/88 of 11 July 1988 is amended as follows:

"In that event it shall, at the same time, be decided that parts or materials ..."

TITLE II

Strengthened commercial policy and illicit commercial practices**Article 2**

1. The reference to Article 12 at the end of Article 9, paragraph 1, of Council Regulation (EEC) No 2641/84 of 17 September 1984 is amended in a reference to Article 11 of the same Regulation.
2. Article 11 of Council Regulation (EEC) No 2641/84 of 17 September 1984 is replaced by the following text:
 - "1. The decisions referred to in articles 9 and 10 shall be adopted in accordance with the following provisions.
 2. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.
 3. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

4. *The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.*
 5. *In that event, the Commission shall defer application of the measures which it has decided for a period of twenty days from the date of communication.*
 6. *The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph."*
3. Article 12 of Council Regulation (EEC) No 2641/84 of 17 September 1984 is deleted.

TITLE III

Protective measures

Article 3

1. Article 15, paragraph 1, of Council Regulation (EEC) No 288/82 of 5 February 1982 is replaced by the following text:

"1. Where a product is imported into the Community in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, substantial injury to Community producers of like or directly competing products, the Commission may, acting at the request of a Member State or on its own initiative:

- (a) limit the period of validity of import documents within the meaning of Article 11 to be endorsed after the entry into force of this measure;
- (b) alter the import rules for the product in question by providing that it may be put into free circulation only on production of an import authorisation, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down.

The measures referred to in (a) and (b) shall take effect immediately."

- 2. Article 15, paragraph 6, of Council Regulation (EEC) No 288/82 of 5 February 1982 is replaced by the following text:

"6. If a Member State refers the decision taken by the Commission to the Council, the Council may, acting by a qualified majority, take a different decision within a month of the referral of the matter to the Council."

- 3. Article 16, paragraph 1, of Council Regulation (EEC) No 288/82 of 5 February 1982 is replaced by the following text:

"1. Where the interests of the Community so require, appropriate measures to allow the exercise of the rights or the fulfilment of the obligations of the Community or of all its Member States at international level, in particular those relating to trade in primary products, may be adopted according to the following procedure."

4. Article 16, paragraph 2, of Council Regulation (EEC) No 288/82 of 5 February 1982 is deleted, and the following paragraphs are inserted in Article 16:

"2. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

3. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

4. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

5. In that event, the Commission shall defer application of the measures which it has decided for a period of twenty days from the date of communication.

6. The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph."

5. Article 17 of Council Regulation (EEC) No 288/82 of 5 February 1982 is deleted.
6. Article 18, paragraph 2, of Council Regulation (EEC) No 288/82 of 5 February 1982 is replaced by the following text:

"2. Where, as a result of the consultations referred to in paragraph 1, the Commission considers that any measure referred to in Articles 10, 12, 15 or 16 should be revoked or amended, this shall be done according to the procedure followed to adopt measures of the type of those to be revoked or amended.

Where this decision concerns regional measures of surveillance, it shall apply as from the sixth day following its publication in the Official Journal of the European Communities."

Article 4

1. References to Article 13 in Articles 1 and 17 of Council Regulation (EEC) No 1765/82 of 30 June 1982 are suppressed, and the reference to Articles 10 to 13 in Articles 7 and 14 is replaced by reference to Articles 10 to 12.

2. Article 11, paragraph 1, of Council Regulation (EEC) No 1765/82 of 30 June 1982 is replaced by the following text:

"1. Where a product is imported into the Community in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, substantial injury to Community producers of like or directly competing products, the Commission may acting at the request of a Member State or on its own initiative, alter the import rules for the product in question by providing that it may be put into free circulation only on production of an import authorisation, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down."

3. Article 11, paragraph 6, of Council Regulation (EEC) No 1765/82 of 30 June 1982 is replaced by the following text:

"6. If a Member State refers the decision taken by the Commission to the Council, the Council may, acting by a qualified majority, take a different decision within a month of the referral of the matter to the Council."

4. Article 12 of Council Regulation (EEC) No 1765/82 of 30 June 1982 is replaced by the following text:

"1. Where the interests of the Community so require, appropriate measures to allow the exercise of the rights or the fulfilment of the obligations of the Community or of all its Member States at international level, in particular those relating to trade in primary products, may be adopted according to the following procedure.

2. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

3. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

4. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

5. In that event, the Commission shall defer application of the measures which it has decided for a period of twenty days from the date of communication.

6. The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph."

5. Article 13 of Council Regulation (EEC) No 1765/82 of 30 June 1982 is deleted.
6. Article 14, paragraph 2, of Council Regulation (EEC) No 1765/82 of 30 June 1982 is replaced by the following text:

"2. Where, as a result of the consultations referred to in paragraph 1, the Commission considers that any such measure should be revoked or amended, it shall modify or revoke the measure according to the procedure followed to adopt measures of the type of those to be modified or revoked."

Article 5

1. References to Article 13 in Articles 1 and 17 of Council Regulation (EEC) No 1766/82 of 30 June 1982 are suppressed, and the reference to Articles 10 to 13 in Articles 7 and 14 is replaced by reference to Articles 10 to 12.

2. Article 11, paragraph 1, of Council Regulation (EEC) No 1766/82 of 30 June 1982 is replaced by the following text:

"1. Where a product is imported into the Community in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, substantial injury to Community producers of like or directly competing products, the Commission may acting at the request of a Member State or on its own initiative, alter the import rules for the product in question by providing that it may be put into free circulation only on production of an import authorisation, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down."

3. Article 11, paragraph 6, of Council Regulation (EEC) No 1766/82 of 30 June 1982 is replaced by the following text:

"6. If a Member State refers the decision taken by the Commission to the Council, the Council may, acting by a qualified majority, take a different decision within a month of the referral of the matter to the Council."

4. Article 12 of Council Regulation (EEC) No 1766/82 of 30 June 1982 is replaced by the following text:

"1. Where the interests of the Community so require, appropriate measures to allow the exercise of the rights or the fulfilment of the obligations of the Community or of all its Member States at international level, in particular those relating to trade in primary products, may be adopted according to the following procedure.

2. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

3. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

4. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

5. In that event, the Commission shall defer application of the measures which it has decided for a period of twenty days from the date of communication.

6. The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph."

5. Article 13 of Council Regulation (EEC) No 1766/82 of 30 June 1982 is deleted.

6. Article 14, paragraph 2, of Council Regulation (EEC) No 1766/82 of 30 June 1982 is replaced by the following text:

"2. Where, as a result of the consultations referred to in paragraph 1, the Commission considers that any such measure should be revoked or amended, it shall modify or revoke the measure according to the procedure followed to adopt measures of the type of those to be modified or revoked."