

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 541 final

Brussels, 4 November 1993

Proposal for a

COUNCIL REGULATION (EEC)

**on the introduction of time limits for investigations carried out
under the Community Instruments of commercial defence
and
modification of the relevant Council Regulations**

(presented by the Commission)

COMMISSION OF THE EUROPEAN COMMUNITIES

ADDENDUM

FICHE FINANCIERE

Concerne les 9 versions.

COM(93) 541 final/2

Brussels, 23 November 1993

Proposal for a

COUNCIL REGULATION (EEC)

**on the introduction of time limits for investigations carried out
under the Community Instruments of commercial defence
and
modification of the relevant Council Regulations**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The effectiveness of the Community's instruments of commercial defence has been a major preoccupation in the Community for some time, particularly in view of the liberalization of trade due to the creation of the single market and the further push in this direction from the Uruguay Round. In June 1992, the Commission addressed part of this problem in its proposal on decision-making procedures⁽¹⁾ which is still before the Council. There is, however, another aspect of the overall problem which remains to be addressed, i.e. the excessive duration of anti-dumping and anti-subsidy investigations which has provoked criticisms from the European Parliament, Member States, Community industries, importers and exporters, which have all condemned the length of these Community investigations. Excessive time delays cause uncertainty in the market place, reduce the chances that measures, once taken, have the desired effect, and contribute to the creation of a lack of confidence in the effectiveness of Community commercial policy. Thus, to maintain the credibility of this aspect of commercial defence it is necessary to propose corrective action to improve efficiency. For the same reasons, it is also appropriate to propose the same corrective action to improve efficiency of safeguard action⁽²⁾.

In addition to the above-mentioned proposal on decision-making there is another proposal to modify Council Regulation (EEC) No 288/82 which is also before the Council⁽³⁾. It should be noted that nothing in the existing proposal conflicts with those already

(1) Commission proposal of 30.6.92, SEC(92) 1097 FINAL

(2) Council Reg.(EEC) No 288/82 of 5.2.82, OJ No L35 of 9.2.82

(3) Commission proposal of 18.9.93, COM(92), 374 FINAL

before the Council. It should be underlined that the latter are maintained and that the Commission considers their adoption as essential for an effective commercial defence. The present proposal has been drafted in such a manner that it is compatible with the existing legislation and complements the proposals already before the Council on decision-making. The common purpose of all these proposals is to improve the credibility of the Community's trade policy.

2. THE PRESENT SITUATION - ANTI-DUMPING AND ANTI-SUBSIDY

At present, investigations frequently take up to 18 months in the Community between the initiation and the provisional determination, which is nearly twice the time taken by, for example, the United States. Annex A sets out the actual time limits in force in the United States and, by way of comparison, it also outlines the proposed time limits for the EC and the time taken at present to complete these cases.

The short duration in the United States is due to several reasons. First, the scope of their investigations is more limited in that they neither apply a public interest test nor a "lesser duty rule", i.e. they automatically apply the full margin of dumping as a duty rather than investigating whether a lower amount would suffice. Furthermore, they have a simple decision-making process and they operate in one language, a situation which is also true for Canada and Australia.

However, the main reason for the short duration is that these countries operate mandatory legal time limits⁽⁴⁾ which they are able to apply because they have allocated sufficient resources to the problem. In this respect, the United States, employs approximately 5 times the number of staff for roughly the same number of investigations as the EC and Canada 3 times the number of staff for one third the number of investigations in the EC. Moreover, they employ staff specifically qualified for this work which requires auditing or accounting experience if it is to be carried out effectively.

(4) approximately 25 days to accept or reject a complaint and 6 months on average from initiation to provisional determination.

3. THE PROPOSED SOLUTION AND PRECONDITIONS

a) Solution for Anti-dumping and Anti-subsidy

Certain of the differences between the EC and US systems outlined above will, of course, always remain. Therefore, the most feasible solution is the introduction of mandatory time limits based on the practice of our major trading partners but adapted to the peculiarities of the EC. Thus, the appropriate time limits for the EC would be :

- a maximum 1 month from receipt of complaint to initiation or rejection of complaint;
- a maximum 9 months between initiation of investigation and provisional measures⁽⁵⁾.
- a maximum 15 months between initiation of investigation and definitive conclusion.

b) Solution for Safeguard Action

As far as safeguard measures under Regulation No 288/82 and other similar instruments are concerned, the limited number of investigations carried out by the Commission has not given rise, so far, to a problem of the same magnitude as that concerning anti-dumping or anti-subsidy actions. Nevertheless, delays have occurred in certain cases. It would appear appropriate, therefore, to introduce the same changes for safeguard action as is proposed for anti-dumping and anti-subsidy investigations.

(5) The Commission understands the wish of European industry to have shorter time limits than those indicated in the present proposal. The Commission is prepared to propose to reduce these time limits further provided it is assured of having the means to carry out reduced delays. The Commission will undertake a review of the duration of these time limits within 2 years after their entry into force with a view to reducing them further.

In addition, in order to introduce a more democratic and transparent system, it appears necessary to confer on Community industries the right to lodge complaints for safeguard measures in the same manner as for anti-dumping and anti-subsidy cases.

c) Preconditions

For the imposition of time limits it is imperative that strict, sufficiently short and legally binding deadlines be set for the Community institutions concerned and the other participants in such procedures i.e. for the Community industry, exporters, importers, users and consumer organizations. The same must apply for written or oral consultations of Member States. The imposition of such deadlines will only be realistic if:

- Investigations of dumping and injury/Community interest would have to be carried out separately and in parallel. This would also increase the transparency and objectivity of these investigations, as well as improve the quality of the work carried out in these investigations which, as is well known, is under strict scrutiny by GATT panels and the European Court.
- Clarifications are made to existing provisions. A more systematic use of sampling would have to be made where there are a large number of parties involved in the investigation. Moreover, the consequences of non-cooperation by interested parties have to be clarified.
- Staffing is increased. In this respect, it has to be borne in mind that the changes envisaged will lead to a considerably increased workload for a staff which is already stretched to breaking point. Moreover, adequate staff levels are essential to implement the reform given the implications of failing to meet the time limits where the legal right to continue the investigations would fall and the institutions would be exposed to serious legal consequences under Article 215 of The Treaty.

Indeed, since the quantity of work will not diminish but increase following Uruguay and liberalization vis-à-vis PECOs and the CIS⁽⁶⁾, then it is clear that more personnel is needed if the same work has to be done in a shorter period of time. The additional staff required to implement time limits and the other changes outlined has been calculated in relation to the number of investigating staff needed. The methodology used to calculate this figure is set out in ANNEX B which shows a requirement for 146 investigators, an increase which naturally generates an increased hierarchy, policy and supporting staff requirement. The total existing staff and the additional staff required to implement changes are set out in ANNEX C. The calculations are based on the average of 56 new investigations per year⁽⁷⁾. The staff required to carry out a deadlines based system, involving a 50% reduction in the duration of investigations for these new cases, means that more work has to be done in a shorter time, and thus extra staff is required. This requirement to carry out work in a shorter time is continuous, as is the influx of new cases. The consequence of the new system will be a gradual reduction in the number of cases in progress at any given time but, given the deadlines, an increased workload at any point in time. Therefore, the result will not lead to unused resources but will stop the tendency towards ever-increasing periods of time necessary for completion of cases. Finally, in this respect, it should be understood that no margin of security has been incorporated into the staffing figures for increases in case numbers, which will certainly happen due to the liberalization of the internal market and the further push in this direction resulting from the Uruguay Round and the PECOS/CIS negotiations.

(6) For example the elimination of quantitative restrictions, granting of market economy status, etc.

(7) This figure should not be confused with the number of investigations in progress at any given time - SEE ANNEX D WHICH SETS OUT THE NUMBER OF NEW CASES INITIATED AND INVESTIGATIONS IN PROGRESS FOR THE PERIOD 1981 - 1992.

- Member States play their role in, firstly, explaining to interested parties how Community legislation operates and, secondly, in ensuring a more effective enforcement of measures once they are imposed.
- The extra staff required for this purpose is treated as being additional to other requirements of the Commission.
- The figures set out in Annex C include provision for the transformation of 23 national expert posts into permanent posts. This is necessary because of the time required for training and the short duration of contracts which has made national expert staffing particularly unsuited to working under a deadlines-based approach.
- Annex C also specifies that there will be a requirement for an additional translator in each language given that translations will have to be made under tight deadlines.
- The recruitment of the necessary staff takes place in tandem with the implementation of time limits. In this respect, the calendar for recruitment, the method of recruitment, the budgetary implications and the timing of the introduction of time limits and other changes are addressed in paragraph 4 below.
- The budgets for training and computerization, as well as missions, are increased. The need for increased spending on training and computerization is self-evident. With regard to missions, the split of dumping and injury investigations would result in more missions which would have to be compressed within legally binding time limits.

Finally, this occasion should be used to give users and consumers a greater input into the whole process. They have been pressing for years to obtain interested party status in these investigations, a demand which was even pursued, unsuccessfully, before the European Court of Justice. The Commission should now accommodate them in order to increase the transparency in this important area of trade policy.

4. Timetable for Action

a) Calendar for recruitment of additional staff

Assuming the Council approves the Commission's proposal on the implementation of deadlines by the end of 1993, it should be borne in mind that it will take some time to put the necessary administrative structure into place, and that it is imperative that the implementation of time limits and the recruitment of staff be accomplished in tandem. In this respect, it has to be borne in mind that the Edinburgh Summit imposed strict budgetary ceilings until 1995 and, consequently, a realistic timetable for supplying the necessary statutory staff would be 10 posts in 1994, 59 in 1995 and the remaining 59 in 1996⁽⁸⁾.

b) External Recruitment of qualified personnel

Apart from legal and economic specialists who are available in house or as a result of general open competitions, this type of work requires staff with auditing or accounting experience. Accountants or auditors, in the numbers required, are just not available from within the Commission and, therefore, redeployment cannot work. Thus, special external competitions may have to be organised, early in 1994, to recruit the suitably qualified personnel.

(8) For non-statutory staff, the figures are 14 in 1995 and 6 in 1996.

c) Implementation of time limits

Given the above timetable on staff recruitment, the most realistic date for entry into effect of time limits with respect to new cases (as opposed to pending cases or reviews) would be 1.4.1995.

It can be expected that all cases, including reviews, would be subject to the "new system" from 1.7.1996, when the full administrative structure will be in place.

- d) The budgetary implications of the above are set out in the attached "fiche financière".

5. CONCLUSION

To achieve the above and in order to meet the preoccupations frequently expressed by the European Parliament, Member States and the Community industry, the Commission herewith submits to the Council:

- a proposal to amend the Community's basic anti-dumping and anti-subsidy and safeguard legislation.

This proposal is principally aimed at:

- a) incorporating time limits,
- b) providing a basis for sampling where there are a large number of parties involved and clarifying the provisions with regard to interested parties and the treatment of non or partial cooperators; and
- c) permitting the imposition of provisional measures for a full 6 months rather than the current situation where they are first imposed for 4 months and then, if necessary, extended for a further two months by the Council; and
- d) conferring on Community industries the right to lodge safeguard complaints.

The above proposal is made, of course, on the assumption that the necessary financial resources are provided by the Council for the budgetary years 1995 and 1996. In effect, the credibility of the Community vis-à-vis its own industries and third countries is involved in this policy. Therefore, every effort must be made to achieve the above objectives, including the question of additional resources. If these are not forthcoming, the Commission would have to reconsider its position.

ANNEX A
(Explan. Memo)

ANTI-DUMPING - US TIME LIMITS

Adequacy of complaint	20 days after it is lodged
Prel. injury finding	45 days after it is lodged
Prel. dumping finding	160 days after it is lodged (210 in complex cases)
Final dumping finding	75 days after prel. dump. finding (135 in complex cases)
Final injury finding	45 days after final dump. finding

Investigations may be finished in a period ranging from a minimum of 280 days for simple cases or a maximum of 390 days in complex cases.

PROPOSED TIME LIMITS FOR EC

Adequacy of complaint	1 month
Prel. dumping and injury finding	9 months
Final dumping and injury finding	15 months

THE TIME TAKEN AT PRESENT IN EC

Adequacy of complaint	2- 3 months
Prel. dumping and injury finding	15-18 months
Final dumping and injury finding	21-24 months

Anti-dumping and anti-subsidy -
Calculation of number of investigators

DUMPING

- investigators would work in teams of two and would not be involved in more than two cases at the same time;
- 56 cases are on-going at any one time, 13 of which are complicated, 25 of which are normal and 18 of which are simple;
- two teams of two officials would work on each complicated case, though the second team would also have to do a simple case at the same time, i.e accounting for 26 cases and 26 teams or 52 investigators;
- for the remaining 30 cases (5 simple and 25 normal), 1 team of two would work on 2 cases at the same time, i.e 15 teams of 2 investigators or 30 investigators;
- the above would give a total requirement of 82 investigators.

INJURY

- investigators would work in teams of two and would not be involved in more than two cases at the same time;
- 48 cases are on-going at any one time, 8 of which are complicated, 27 which are normal and 13 of which are simple;
- two teams of two officials would work on each complicated case, though the second team would also have to do a simple case at the same time, i.e accounting for 16 cases and 16 teams or 32 investigators.
- for the remaining 32 cases, 1 team of two would work on 2 cases at the same time, i.e 16 teams of 2 investigators or 32 investigators;
- the above would give a total requirement of 64 investigators.

ANNEX C

(Explan. Memo.)

The Existing and Additional Staff Required to Implement Changes

<u>DGI</u>	<u>Existing</u>	<u>Additional</u>
1. A Grade (stat)	32	57
2. B Grade (stat)	22	42
3. C Grade (stat)	18	20
	---	---
Sub-Total	72	109 (new posts of which 55 in 1995, and 54 in 1996)
4. A Grade (stat. temp)	13	10 ⁽¹⁾
5. National Experts and replacements	23 ⁽²⁾	23 ⁽³⁾
6. C Grade (non-stat)	11	17 ⁽⁴⁾
<u>Translation Service</u>		
7. LA Grade (stat)	-	9 (new posts)
8. C Grade (non-stat)		3 ⁽⁴⁾

(1) To be supplied from existing resources.

(2) These are national experts to be replaced by permanent staff.

(3) These are statutory replacements for national experts achieved through a transfer of employment credits.

(4) These are non-statutory staff which will require supplementary credits.

ANTI-DUMPING AND ANTI-SUBSIDY INVESTIGATIONS DURING THE PERIOD 1981 - 1992

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
Investigations in progress at the beginning of the period	29	46	53	33	40	44	21	39	53	60	59	46
Investigations initiated during the period	48	58	38	49	36	24	39	40	27	43	20	39
Investigations in progress during the period	77	104	91	82	76	68	60	79	80	103	79	85
Investigations concluded by :												
- Imposition of definitive duty	10	7	20	5	8	4	9	18	10	18	19	16
- acceptance of price undertaking	7	35	27	27	4	25	8	-	5	9	3	-
- determination of no dumping	7	3	-	6	2	4	-	-	-	-	1	1
- determination of no subsidisation	-	-	-	-	1	-	-	-	-	-	-	-
- determination of no injury	6	6	8	-	15	7	4	5	5	13	6	4
- other reasons	1	1	3	4	2	7	-	3	-	5	4	7
Total investigations concluded during the period	31	51	58	42	32	47	21	26	20	45	33	28
Investigations in progress at the end of the period	46	53	33	40	44	21	39	53	60	58	46	57
Provisional duties imposed during the period	10	18	22	11	9	8	13	28	10	23	19	18

REVIEWS OF ANTI-DUMPING AND ANTI-SUBSIDY INVESTIGATIONS DURING 1981 - 1992

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
Reviews in progress at the beginning of the period	1	16	24	2	2	20	27	11	20	15	21	21
Reviews opened during the period	17	24	10	7	30	24	8	24	17	26	16	27
Reviews in progress during the period	18	40	34	9	32	44	35	35	37	41	37	48
Reviews concluded by :												
- imposition of definitive duty in lieu of price undertaking	-	1	8	1	1	1	7	4	4	6	1	1
- amendment of definitive duty	-	-	11	2	5	7	8	-	4	2	3	11
- suspension of definitive duty	-	-	-	-	3	-	1	-	-	-	-	-
- acceptance of price undertaking in lieu of definitive duty	-	-	2	2	1	1	1	3	-	1	-	-
- amendment of price undertaking	-	13	8	1	-	2	4	2	1	-	5	1
- repeal or expiry of definitive duty	-	-	-	-	2	2	2	1	9	6	4	5
- repeal or expiry of price undertaking	-	-	3	-	-	3	-	5	4	5	2	-
- repeal of regional duty	1	-	-	1	-	-	-	-	-	-	-	-
- no change of the measures in force	1	2	-	-	-	1	1	-	-	-	-	-
Total reviews terminated during the period	2	16	32	7	12	17	24	15	22	20	15	18
Reviews in progress at the end of the period	16	24	2	2	20	27	11	20	15	21	22	30
Provisional duties imposed during the reviews	1	13	3	3	2	8	-	7	1	-	-	-

PROPOSAL FOR
Council Regulation (EEC) No

On the introduction of time limits for investigations carried out under the 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 to an open market and fair trading system, thus contributing to the harmonious development of world trade,

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

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

Council Regulation (EEC) No 288/82 of 5 February 1982²⁾, on common rules for imports (as last amended³⁾)

1) OJ No L 209, 2.8.1988, p.1

2) OJ No L 35, 9.2.1982, p.1

3) OJ No L 284, 12.10.1991, p.1

Whereas the completion of the single market in 1992 makes it appropriate to improve the functioning of these instruments of commercial defence, in particular in respect of the length of the investigations carried out under these instruments,

Whereas it is, therefore, appropriate and necessary to introduce time limits for procedures carried out under the above-mentioned Regulations,

Whereas for complaints lodged against dumped or subsidized imports it is necessary to set time limits for the initiation of investigations and for the provisional and final determinations; whereas it is also appropriate to ensure that final decisions, either positive or negative, are taken quickly to ensure compliance with international obligations,

Whereas in order that the time limits can be respected, it is essential to provide for sampling where there are a large number of parties involved in an investigation, to clarify the periods within which views and information have to be submitted to the Commission in order for them to be taken into account in the investigation, to define more precisely the parties which may inspect information available to the Commission and may request to be informed of the essential facts on the basis of which definitive measures are to be proposed and to clarify the consequences of partial or non-cooperation by these parties,

Whereas it is also essential to ensure that consultations with Member States within the Advisory Committee are held in sufficient time to allow the time limits to be respected,

Whereas it is also appropriate to simplify procedures by providing that provisional duties can be imposed for a full six month period rather than for an initial four month period which may then be extended for a further two months,

Whereas, review investigations should also be completed expeditiously,

Whereas, for Community surveillance and protective measures it is also necessary to set time limits for the initiation of investigations and for determinations as to whether, or not, measures are appropriate, with a view to ensuring that such determinations are made quickly, in order to increase legal certainty for the economic operators concerned,

Whereas, in addition, in order to introduce a more accessible and transparent system, it appears necessary to confer on Community industries the right to lodge complaints for safeguard measures in the same manner as for anti-dumping and anti-subsidy cases,

Whereas, in addition, it is imperative to link the implementation of this Regulation to the establishment of the necessary administrative structure within the Commission's services; whereas, the Council, therefore, should specify in a decision to be adopted in accordance with Article 113 of the EEC Treaty, the complaints, proceedings and investigations to which this Regulation will apply.

HAS ADOPTED THIS REGULATION:

TITLE I

Anti-dumping and countervailing duties

Article 1

1. Article 2, paragraph 13, of Council Regulation (EEC) No 2423/88 is retitled "G Averaging Techniques" and the third indent is deleted.

2. The following sentence is added to Article 5, paragraph 3:

"A complaint shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission."

3. The following text is added to Article 5, paragraph 5 in fine:

"within 1 month of the date on which the complaint is lodged with the Commission."

4. "The following text is added to Article 6, paragraph 1 in fine:

"within a time frame which allows the time limits set by the present Regulation to be respected."

5. The words "or to request an oral consultation" are deleted from the end of Article 6, paragraph 3 in fine:

6. The word "immediately" in the first sentence of Article 7, paragraph 1 is deleted and Article 7, paragraph 1, sub-paragraph (a) is amended to read as follows:

"Initiate a proceeding within one month of the lodging of the complaint and publish a notice in the Official Journal of the European Communities; such notice shall indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the periods within which interested parties may make their views known in writing and submit information if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 5 of this Article."

7. The following sub-paragraph (c) is added to Article 7, paragraph 2 :

"Where there are a large number of parties involved, the investigation may be limited to a sample of the parties, products or transactions which can be investigated in the time available."

8. The text "The complainant and the importers and exporters" at the beginning of Article 7, paragraph 4, sub-paragraph (a) is deleted and replaced by the following:

"The complainants, importers, exporters, users and consumer organisations"

9. Article 7, paragraph 7, sub-paragraph (b) is amended to read as follows:

"In cases in which any interested party or third country refuses access to, or otherwise does not provide, necessary information within the time limits set by this Regulation or by the Commission under this Regulation, or significantly impedes the investigation, preliminary or final findings, affirmative or negative, may be made on the basis of the facts available. Where the Commission finds that any interested party or third country has supplied it with false or misleading information, it may make use of facts available in place of such information.

10. Article 7, paragraph 9, sub-paragraph (a) is amended to read as follows:

"Investigations should normally be concluded within one year. In any event, an investigation shall be concluded within 15 months from its initiation either by its termination pursuant to Article 9 or by definitive action pursuant to Article 12."

11. The following text is added to the first sentence of Article 11, paragraph 1:

"no later than 9 months from the initiation of the investigation"

12. Article 11, paragraph 5, is amended to read as follows:

"Provisional duties shall have a maximum period of validity of four months. However, where exporters representing a significant percentage of the trade involved so request or do not object upon notification by the Commission, provisional anti-dumping duties may have a period of validity of six months."

13. The following sentence is added to Article 14, paragraph 2:

"Review investigations shall normally be completed no later than 15 months from the date of the initiation of the review."

TITLE II

Community surveillance and protective measures

Article 2

1. The following paragraphs are added to Article 3 of Council Regulation (EEC) No 288/82 :

"2. Under the same circumstances a written complaint may be lodged with the Commission by any natural or legal person, or any association not having legal personality, acting on behalf of a Community industry which considers itself injured or threatened by such imports. This complaint shall contain the evidence referred to in paragraph 1 above. The Commission shall inform the Member States of such complaint forthwith.

3. A complaint shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission.

4. For the purposes of this Regulation a Community industry means the producers as a whole of the like or directly competitive products to the imported products operating within the territory of the Community, or those whose collective output of the like or directly competitive products constitute a major proportion of the total Community production of those products.

In case of a complaint concerning only one or more regions of the Community, the industry concerned shall be identified in the same manner as described above, but in relation to the region or regions concerned.

2. Article 6, paragraph 1, sub-paragraph (a) of Council Regulation (EEC) No 288/82 is amended to read as follows :

"Initiate an investigation within one month of the receipt of an information by a Member State or the lodging of a complaint by a Community industry and publish a notice in the Official Journal of the European Communities; such notice 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 submit information, if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 4 of this Article;"

3. The following text is added to Article 6, paragraph 2 of Council Regulation (EEC) No 288/82 :

"The complainant, importers, exporters and users and consumer organizations known to be concerned, as well as the representatives of the exporting country, may inspect all information made available to the Commission by any party to an investigation, as distinct from internal documents prepared by the authorities of the Community or its Member States, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 8 and that it is used by the Commission in the investigation. To this end, they shall address a written request to the Commission indicating the information required."

4. Article 6, paragraph 5 of Council Regulation (EEC) No 288/82 is amended to read as follows :

"Where information is not supplied within the time limits set by this Regulation or by the Commission under this Regulation, or the investigation is significantly impeded, findings may be made on the basis of the facts available. Where the Commission finds that any interested party or third country has supplied it with false or misleading information, it may make use of facts available in place of such information."

5. The following paragraph is inserted after Article 6, paragraph 5 of Council Regulation (EEC) No 288/82 :

"5bis Where it becomes apparent, after consultations, that the complaint lodged by a Community industry does not provide sufficient evidence to justify initiating an investigation, then the Commission shall, within one month of the date on which the complaint is lodged, decide to reject the complaint. The complainant shall be informed accordingly."

6. Article 7, paragraph 2 of Council Regulation (EEC) No 288/82 is amended to read as follows :

"Where no Community surveillance or protective measures have been taken within nine months of the initiation of the investigation, the investigation shall be terminated, after consulting the Committee, within one month and the decision published in the Official Journal of the European Communities, stating the main conclusions of the investigation and a summary of the reasons therefor."

7. The following text is added to Article 7, paragraph 3, in fine, of Council Regulation (EEC) No 288/82 :

"No later than nine months from the initiation of the investigation. In exceptional circumstances, this time limit may be extended by a further maximum period of two months; the Commission shall then publish a notice in the Official Journal of the European Communities setting forth the duration of the extension and a summary of the reasons therefor."

TITLE III

Article 3

The present Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities. It shall, however, only apply to complaints lodged, proceedings initiated and review investigations initiated after dates which the Council shall specify in a decision adopted in accordance with Article 113 of the Treaty.

ADDENDUM

- 1 -

FINANCIAL FORM

1. Title

Proposal for a Council Regulation on the introduction of time limits for investigations carried out under the Community instruments of commercial defence and modification of the relevant Council Regulations.

2. Relevant budget lines

Titles: A1, A2, A5 (expenditure on personnel)
A 1110: auxiliary staff
Art. A 130 : mission, travel and other related expenses

3. Legal basis

Article 113 of the EEC Treaty

4. Description of the action

4.1. General aim of the action

Introduction of legal deadlines for the imposition of measures in the framework of the Community's instruments of commercial defence.

4.2. Period covered by the action

The entry into force of the act is foreseen for 01.04.1995 for an unlimited period of time.

5. Classification of the expenditure/receipts

5.1. NOE

5.2. NAC

5.3. Receipts: Anti-dumping and anti-subsidy duties.

These figures are not available due to the fact that the Member States do not differentiate between normal duties and anti-dumping/anti-subsidy duties in their budgetary systems.

6. Type of expense

Personnel and operating

7. Financial repercussions on operational credits

none

8. Anti-fraud arrangements foreseen

In conjunction with DG XXI, reinforcement of the arrangements aimed at eliminating circumvention and fraud.

9. Analysis of the cost-efficiency relationship

9.1. Specific and quantifiable objectives, groups targeted

Action in the commercial policy framework, which is the Community's responsibility (art. 113 of the EEC Treaty).

9.2. Justification of the action

No other alternative legislative measures envisaged.

9.3. Follow-up and evaluation of the action

- Indications of performance :
Reestablishment of fair competition in the commercial field and protection of Community industry against unfair practices.
- Method and periodicity of the evaluation :
Annual report of the Commission to the European Parliament on the Community's anti-dumping and anti-subsidy activities.
- Appraisal of the results obtained :
The Commission has the obligation to present to the European Parliament an annual report on the Community's anti-dumping and anti-subsidy activities. This obligation arises from the "Welsh Resolution" adopted by the Parliament on 16 December 1982.
This report contains information on most of the aspects of the Community's anti-dumping and anti-subsidy activities during the year covered. It is completed by very detailed statistical annexes on each of the actions taken in that year.

9.4. Coherence with financial planning

Is the action foreseen in the financial planning of the DG for the years in question ?

Yes.

10. Administrative expenses (part A of the budget)

10.1 The proposed action implies an increase of the Commission's staffing complement.

Number of additional staff
By category and grade

- For DG I

	<u>Total posts necessary</u>	<u>Existing posts</u>	<u>Additional posts</u>
<u>Officials</u>			
1. A Grade (offic.)	96	39	57
2. Replacements (Seconded national experts) (see 6 below)	8		8
3. B Grade (offic.)	70	28	42
4. Replacements (Seconded national experts) (see 7 below)	15		15
5. C Grade (offic.)	38	18	20
SUB-TOTAL	<u>227</u>	<u>85</u>	<u>142</u>
<u>Other staff</u>			
6. A Grade (Seconded national experts)		8	
7. B Grade (Seconded national experts)		15	
8. C Grade (auxiliary)	28	11	17
SUB-TOTAL	<u>255</u>	<u>119</u>	<u>159</u>
<u>- For the translation services</u>			
<u>Official</u>			
9. LA Grade	9	-	9
<u>Outside staff</u>			
10. C Grade (auxiliary)	3	-	3
SUB-TOTAL	<u>12</u>		<u>12</u>
GRAND TOTAL	<u>267</u>	<u>119</u>	<u>171⁽¹⁾</u>

(1) The number of additional posts takes account of the replacement of seconded national experts by Community officials. Of these 171 additional posts, 10 Community officials' posts will be filled from existing resources. According to this forecast, the Commission will request, in principle, 82 permanent posts within the 1995 budgetary procedure and 59 permanent posts within the 1996 budgetary procedure (total 141), as well as credits relative to 14 external staff in 1995 and 6 external staff in 1996 (total 20).

10.2 Total amount of operational and staffing expenditure required for the proposed action :

10.2.1 Staffing expenditure (in 1.000 ECU)

	1995	1996	1997	1998
Lines A1,A2,A5	5.332	12.341	14.624	14.624
Line A1110	252	612	720	720
Financ. req. <u>TOTAL</u>	5.584	12.953	15.344	15.344
	*	**	***	

* This amount corresponds to the cost of 82 officials and 14 external staff employed for 6 months of 1995.

** This amount corresponds to the cost of 82 officials and 14 external staff employed for 12 months in 1996 and of 59 officials and 6 external staff employed during 6 months in 1996.

*** This amount corresponds to the cost of 141 officials and 20 external staff employed for 12 months in 1997.

Average cost over	<u>12 months</u>	<u>6 months</u>
Officials	103.716	65.030
External staff	36.000	18.000

The expenditure for the 23 seconded national experts should no longer be entered under line A1520; this represents 1.345.500 ECU per annum.

10.2.2. Expenditure for mission expenses to be entered on under art. A 130

Method of calculation
1993 budget 973.000 ECU

973.000 ECU : 84 investigators = 11.583 ECU for 12 months

For 1995 (forecast) 364.865 ECU

This amount corresponds to the total expenses for 10 investigators for 12 months (redeployment) and for 43 additional investigators for 6 months.

For 1996 (forecast) 862.934 ECU

This amount corresponds to the total expenses for 53 investigators for 12 months and for 43 additional investigators for 6 months.

For 1997 (forecast) 1.112.046 ECU

This amount corresponds to the total expenses for 96 additional investigators for 12 months.

10.2.3 Global recapitulation

	1995	1996	1997	1998
Titles A1,A2,A5	5.332	12.341	14.624	14.624
Line A1110	252	612	720	720
Art. A130	365	863	1.112	1.112
Total expenditure	5.949	13.906	16.456	16.456
Line A1520	673	1.346	1.346	1.346
Net expenditure	5.276	12.560	15.110	15.110

ISSN 0254-1475

COM(93) 541 final

DOCUMENTS

EN

02

Catalogue number : CB-CO-93-588-EN-C

ISBN 92-77-60729-7

Office for Official Publications of the European Communities

L-2985 Luxembourg

ISSN 0254-1475

COM(93) 541/2 final

DOCUMENTS

EN

02

Catalogue number : CB-CO-93-612-EN-C

ISBN 92-77-61494-3

Office for Official Publications of the European Communities
L-2985 Luxembourg