

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(92) 288 final

Brussels, 20 July 1992

Proposal for a

COUNCIL REGULATION (EEC)

**establishing a Community procedure for
administering quantitative quotas**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Under the provisions currently in force (Council Regulation (EEC) No 1023/70 of 25 May 1970), import and export quantitative quotas imposed by the Community are, as a rule, administered by each Member State after being allocated as national shares. Such a system leads to a certain compartmentalization of the market for the products concerned and may involve controls at the internal frontiers of the Community.
2. The Single European Act, by inserting Article 8a in the Treaty, provided for the creation of the internal market by 1 January 1993. This market "shall comprise an area without internal frontiers" in which in particular the free movement of goods is ensured. Retaining the procedure for administering the quotas as laid down in Regulation (EEC) No 1023/70 would give rise to difficulties in achieving this objective. A new system for administering the quantitative quotas, based on the principle of a uniform common commercial policy, should therefore be established taking into account the guidelines set by the Court of Justice in Case 51/87.
3. From an operational standpoint, under such a system quotas would be administered on community level particularly the criteria for allocation. To this end, the attached draft provides for the possibility of choosing between several methods, depending on market conditions in the Community, the nature of the products, the specific features of the supplier countries and the Community's international obligations, in particular those which undertake to allow for traditional trade flows.
4. Thus, administration of the quantitative quotas centers on the examination at Community level of import applications with reference to the method selected, and on the identification of quantitative criteria on the basis of which the Member States issue documents to economic operators. Special attention is devoted to the question of how to ensure optimum use of quotas through provisions intended to prevent the "sterilization" of import or export documents.
5. Lastly, the annexed draft takes into account the need to set up a Committee to ensure close and effective cooperation between the Member States and the Commission when implementing the new system.
6. In view of the extent of the amendments required, the annexed draft proposes to recast the existing rules, repealing Regulation (EEC) No 1023/70 (and Regulation (EEC) No 1024/70 which had extended the applicability of Regulation (EEC) No 1023/70 to the French overseas departments).

**Proposal for a
Council Regulation (EEC) No**

of

**establishing a Community procedure for
administering quantitative quotas**

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;

Whereas Council Regulation (EEC) No 1023/70 of 25 May 1970¹ established a common procedure for administering quantitative quotas based on the allocation of quotas among the Member States, which might entail the compartmentalization of the Community market and checks at internal frontiers for the products concerned;

Whereas Article 8 A of the Treaty provides for the creation of an internal market by 1 January 1993, comprising "an area without internal frontiers" in which the free movement of goods is ensured;

Whereas a new system for administering quantitative quotas should be established in line with this objective, and based on the principle of a uniform common commercial policy, in accordance with the guidelines laid down by the Court of Justice of the European Communities;

¹ OJ L 124, 8.6.1970, p.1.

Whereas there should be a choice between several allocation methods, depending on criteria such as the situation of the Community market, the type of product concerned, specific characteristics of the supplier countries and the Community's international obligations, particularly those which undertake to allow for traditional trade flows;

Whereas the procedure for administering import and export quotas should be based on a system of licences issued by the Member States in line with quantitative criteria established at Community level;

Whereas the administrative procedure must ensure that all applicants have fair access to quotas, and whereas the documents issued must be such that they can be used throughout the Community;

Whereas it is necessary to set up a committee to organize close and effective cooperation between the Member States and the Commission for the purposes of the implementation of this Regulation;

Whereas the provisions of this Regulation and those governing its implementation should not prejudice existing national and Community legislation concerning professional secrecy;

Whereas the products listed in Annex II to the Treaty, together with textiles and other products that are subject to specific common import arrangements laying down specific provisions as regards quota administration should be excluded from the scope of this regulation;

Whereas the provisions of this Regulation should replace those laid down by Council Regulation (EEC) No 1023/70; whereas the said Regulation should therefore be repealed; whereas Council Regulation (EEC) No 1024/70 of 25 May 1970¹ applied the repealed Regulation to the French overseas departments; whereas there is no longer any need for a separate regulation, given that the common provisions laid down in the present Regulation apply to Community territory in its entirety, as defined in Article 227 of the Treaty; whereas said Regulation No 1024/70 should therefore also be repealed;

HAS ADOPTED THIS REGULATION:

PART I: GENERAL ADMINISTRATIVE PRINCIPLES

Article 1

1. This Regulation establishes the rules governing the administration of quantitative import and export quotas (hereafter referred to as quotas), whether autonomous or conventional, established by the Community.
2. This Regulation shall not apply to products listed in Annex II to the EEC Treaty, nor to textiles or other products that are subject to specific common import or export arrangements laying down special provisions for quota administration.

1 OJ L 124, 8.6.1970, p. 5.

Article 2

1. Quotas shall be allocated among applicants as soon as possible after they have been opened, as a rule in their entirety and in a single tranche. Nevertheless, it may be decided, in accordance with the procedure detailed in Article 24, to allocate them in several tranches.
2. Quotas shall be administered using one of the following methods, or a combination of these methods:

- (a) taking account of traditional trade flows, with part of the quota set aside for traditional importers and exporters and the remainder allocated to other importers and exporters. Traditional importers and exporters are defined as those who can provide evidence that they have imported the product or products concerned into the Community, or exported it (them) from the Community, during a previous period designated the reference period;

The allocation of quotas using this method shall be carried out in accordance with the provisions of Articles 7 - 10.

- (b) in the order in which applications are submitted (on a "first come, first served" basis), in accordance with the provisions of Article 11;
- (c) in proportion to the quantities requested when the applications are submitted (using the "simultaneous examination" procedure), in accordance with the provisions of Article 12;

- (d) by a tendering procedure, in accordance with the provisions of Article 13.
3. The allocation method to be used shall be determined by following the procedure laid down in Article 24.
 4. A reserve shall be established, into which any part of a quota or tranche of a quota that is not allocated, assigned or used shall automatically be transferred.

The reserves shall be allocated in time to allow them to be used before the end of the period covered by the quota, in accordance with the provisions of Article 14.

5. Save where other provisions are adopted when the quota is set, the release for free circulation or export of products subject to quotas shall be conditional on the presentation of an import or export licence issued by the Member States in accordance with the provisions of this Regulation.
6. The Member States shall designate the authorities competent to carry out implementing measures for which they are responsible under this Regulation. They shall notify the Commission of the authority thus designated.

Article 3

The Commission shall publish a notice announcing the opening of quotas in the Official Journal of the European Communities, setting out the conditions to be met by licence applications, time limits for submitting them, a list of the competent national authorities to which they must be sent and the allocation method chosen.

Article 4

1. All Community Importers and exporters, no matter where they are established in the Community, may submit licence applications to the competent authority of the Member State of their choice.

Importers' or exporters' applications shall, where necessary, be accompanied by documentary evidence of previous imports or exports in line with the procedure laid down in Article 24.

2. Applications for licences shall be submitted in accordance with the procedures laid down in Article 24.

Article 5

The competent authorities in the Member States shall forward information concerning the licence applications they receive to the Commission, within the time limits and in line with the conditions set out in the procedure laid down in Article 24. This information shall comprise the data required for the method chosen and the associated allocation criteria.

Article 6

1. The Commission shall, within the time limit specified under the procedure laid down in Article 24, simultaneously examine the information forwarded by the competent authorities in the Member States and determine the quantity of the quota or of its tranches for which these authorities must issue import or export licences.
2. The Commission shall also ensure that that the licences issued are for economically significant quantities, having regard to the nature of the product concerned.

PART II: SPECIFIC RULES FOR THE DIFFERENT ADMINISTRATIVE METHODS

Section A: Method based on traditional trade flows

Article 7

Where quota allocation takes account of traditional trade flows, the portion set aside for traditional importers or exporters, the reference period specified in Article 2 (2)(a) and the portion allocated to other applicants shall be determined using the procedure laid down in Article 24. The allocation shall be carried out in accordance with the principles set out in Articles 8 to 10.

Article 8

1. Where aggregate applications by traditional importers or exporters are equal to or smaller than the quantity set aside for them, the applications shall be met in full.

2. Where aggregate applications by traditional importers or exporters exceed the quantity set aside for them, they shall be met on a pro rata basis, calculated on the basis of each importer or exporter's share of total imports or exports by this group during the reference period adopted.

Article 9

1. Where aggregate applications by other importers or exporters are equal to or smaller than the quantity set aside for them, the applications shall be met in full.
2. Where aggregate applications by this group exceed the quantity set aside for them, the said quantity shall be distributed equally among the applicants. However, individual importers or exporters applying for smaller quantities, i.e. for less than the quantity they would receive from such a distribution, shall receive the quantity for which they applied, with the remainder being transferred to the reserve.

Article 10

Where no applications are received from traditional importers or exporters, the importers or exporters that do apply shall have access to the whole quota or tranche concerned.

In such cases, the allocation shall be carried out following the procedure laid down in Article 9.

**Section B: Method based on the order
in which applications are submitted**

Article 11

1. Where the quota is allocated on a "first come, first served" basis, licence applications shall be met on the basis of the order in which they are submitted to the competent authorities, each importer or exporter being assigned the quantities applied for until the quota is exhausted, or until the period covered by the quota expires.
2. Should more than one application be submitted at the same time, exceeding the quantity available under the quota concerned, the allocation shall be carried out in proportion to the quantities applied for.
3. In establishing the order of applications, they shall be filed by the date on which they are submitted. Consequently, all applications submitted to a competent authority on the same day shall be deemed to have been submitted simultaneously.

**Section C: method allocating quotas
in proportion to the quantities requested**

Article 12

1. Where a quota is allocated in proportion to the quantities applied for and aggregate applications are equal to or smaller than the quota concerned, applications shall be met in full.

2. Where aggregate applications exceed the quantity of the quota concerned, they shall be met on a pro rata basis, in proportion to the quantities applied for.

Section D: Method based on a tendering procedure

Article 13

Where quotas are allocated via a tendering procedure, invitations to tender shall be issued in such a way as to spread imports and exports throughout the period covered by the quota. Only parties providing assurances that they will carry out their obligations, specifically by lodging a guarantee securing their offer, shall be permitted to take part in the tendering procedure. The successful tenderers shall be those whose bids are of greatest benefit to the Community. In some cases, no award may be made.

Tendering procedures shall, within the constraints imposed by quota administration, be organized in such a way as to avoid an unfair concentration of imports or exports among a small number of large operators.

Section E: Principles governing the allocation of the reserve

Article 14

Quantities transferred to the reserve shall be allocated on the basis of applications submitted within the period allowed, in line with the procedure and conditions laid down in Article 24.

PART III: RULES CONCERNING IMPORT OR EXPORT LICENCES

Article 15

The Commission shall notify the competent authorities in the Member States of the quantities for which they issue licences to the various applicants. It shall also inform the other Member States.

Article 16

The competent authorities in the Member States shall issue import or export licences within ten working days of notification of the Commission decision or within the time limit set by the Commission.

The said authorities shall inform the Commission that import or export licences have been issued.

Article 17

The issue of licences may be made conditional upon the lodging of a security, in accordance with the procedure laid down in Article 24.

Article 18

1. Import or export licences shall authorize the import or export of products which are subject to quotas and shall be valid throughout the Community, regardless of the place of import or export mentioned in the applications by the operators.

2. The period of validity of import or export licences to be issued by the competent authorities of the Member States shall be established in accordance with the procedure laid down in Article 24.

3. The holders of import or export licences may apply to the competent authorities to obtain extracts of the licences.

Such extracts shall have the same legal effects as the licences from which they are derived up to the quantity for which they were issued.

4. Applications for import or export licences, licences and extracts shall be drawn up on forms conforming to a specimen the characteristics of which shall be established in accordance with the procedure laid down in Article 24.

Article 19

Without prejudice to the specific provisions to be adopted in accordance with the procedure laid down in Article 24, import or export licences and their extracts may not be loaned or transferred, whether for a consideration or free of charge, by the person in whose name the document was issued.

Article 20

1. Import or export licences or extracts which are wholly or partly unused shall be returned to the competent authorities of the Member State of issue within ten working days of their expiry date at the latest, except in cases of force majeure.

2. Where the issue of import or export licences was conditional upon the lodging of a security, the security shall be forfeit where the time limit referred to above is not complied with, except in cases of force majeure.

Article 21

The competent authorities of the Member States shall notify the Commission, immediately upon being so informed and in any case no later than 20 days after the expiry date of the licences, of the quantities of quotas assigned and not used with a view to their being transferred to the reserve pursuant to Article 2(4).

Article 22

The competent authorities of the Member States shall inform the Commission, by the 20th of each month of the quantities of products subject to Community quotas which have been imported or exported during the preceding month.

PART IV: FINAL PROVISIONS

Article 23

The Commission shall be assisted by a Committee made up of representatives of the Member States and chaired by a Commission representative.

Article 24

1. Where reference is made to the procedure laid down in this article, the representative of the Commission shall put before the Committee a draft of the measures to be adopted. The Committee shall give its opinion within a time limit set by the chairman with reference to the degree of urgency of the matter. The opinion shall be adopted by a majority as laid down in Article 148(2) of the Treaty on decisions to be adopted by the Council acting on a proposal from the Commission. Where votes are taken within the Committee, the votes of the representatives of the Member States shall be weighted as laid down in the said Article. The chairman shall not vote.

2. The Commission shall adopt measures which are immediately applicable. However, where the measures do not conform with the opinion delivered by the Committee, the Commission shall immediately notify the Council accordingly.

In this case, the Commission may postpone implementation of the measures it has adopted for up to one month following the said notification to the Council.

3. The Council, acting by a qualified majority, may, within the time limit referred to in the preceding subparagraph, adopt a different decision.

Article 25

The implementing provisions for this Regulation shall be adopted by the Commission in accordance with the procedure laid down in Article 24. They shall in particular lay down the detailed procedures governing the allocation of the quotas, the information to be transmitted by the competent authorities in the Member States and the measures intended to ensure compliance with this Regulation.

Article 26

1. The information received by the Council, the Commission or the Member States pursuant to this Regulation may not be used for purposes other than that for which it was requested.
2. The Council, the Commission and the Member States, and those acting on their behalf shall not disclose information in respect of which a duly substantiated request for confidential treatment has been lodged, except where express authorization is granted by the party providing the information.
3. This article shall not prevent the Community authorities from disclosing information of a general nature, in particular the grounds on which decisions are taken pursuant to this Regulation, or evidence used by them to justify their arguments in the event of legal proceedings. Such disclosure must take into account the legitimate interest of the parties concerned in preserving commercial confidentiality.

Article 27

Council Regulation (EEC) No 1023/70 of 25 May 1970 establishing a common procedure for administering quantitative quotas and Council Regulation (EEC) No 1024/70 of 25 May 1970 applying to the French overseas departments Regulation (EEC) No 1023/70 are hereby repealed.

References to the repealed Regulations shall be construed as references to this Regulation.

Article 28

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

It shall apply from 1 January 1993.

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

COM(92) 288 final

DOCUMENTS

EN

02

Catalogue number : CB-CO-92-302-EN-C

ISBN 92-77-45961-1

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