



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

**on special conditions for trade with those areas of the Republic of Cyprus
in which the Government of the Republic of Cyprus does not exercise effective control**

(presented by the Commission)

EXPLANATORY MEMORANDUM

The European Council has repeatedly underlined its strong preference for accession by a reunited Cyprus. As yet a comprehensive settlement has not been reached.

“The Comprehensive Settlement of the Cyprus Problem” as finalised by UN Secretary-General Kofi Annan was approved by the Turkish Cypriot electorate at the separate simultaneous referenda on 24 April 2004. In view of the Turkish Cypriot vote the UN Secretary-General, reporting on his mission of good offices in Cyprus¹, expressed his hope that the Members of the UN Security Council “*can give a strong lead to all States to cooperate both bilaterally and in international bodies to eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots and impeding their development*” (para. 93).

Following the outcome of the referenda the Council stated on 26 April 2004:

“The Turkish Cypriot community have expressed their clear desire for a future within the European Union. The Council is determined to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community. The Council invited the Commission to bring forward comprehensive proposals to this end, with particular emphasis on the economic integration of the island and on improving contact between the two communities and with the EU.”

The attached draft proposal for a Council Regulation takes up the invitation of the Council and puts forward an important measure for putting an end to the economic isolation of the Turkish Cypriot community as it facilitates trade between the northern part of Cyprus and the EU Customs Territory.

The draft proposal offers a preferential regime for products entering the Customs Territory of the EU and contains *inter alia* detailed rules concerning the documents which would certify the origin of goods and which would be issued by the Turkish Cypriot Chamber of Commerce or another duly authorised body, phytosanitary inspection, food and product safety, taxation issues, communication obligations, and safeguard measures in the event of ineffective cooperation, irregularities or fraud. It is proposed that the preferential regime take the form of a tariff quota system which should be established with a view to encouraging economic development while avoiding the creation of artificial trade patterns or facilitating fraud.

It should be noted that this Regulation covers trade and not other issues such as transport. This Regulation is therefore without prejudice to the requirements which have to be fulfilled in order to comply with the international rules on security and safety of maritime and air transport. Moreover to the extent that special conditions are not determined, the general rules governing the Community’s external trade are applicable, including for example Council Regulation (EEC) No 339/93 concerning controls of imported goods for the purpose of ensuring product safety.

¹ Report of the Secretary-General on his mission of good offices in Cyprus of 28 May 2004, UN Doc S/2004/437.

The legal basis for this Regulation can only be Article 133 EC. Cyprus in its full territory became a Member State on 1 May 2004. However, the *acquis* is suspended in the areas not under effective control of the Government of the Republic of Cyprus (the “Areas”) according to Article 1(1) of Protocol 10 of the Act of Accession. This means *inter alia* that the Community's customs code which defines the EC customs territory is not applicable in the “Areas”. Consequently, trade with the Areas follows the rules applicable to third countries. This situation is not unique. There are other territories of the EU which are not included in the EC customs territory. For Ceuta, Melilla and Gibraltar, apart from special rules, trade rules based on Article 133 EC exist, whilst for Büsingen, Campione d'Italia and Helgoland the relevant third country rules apply generally.

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**on special conditions for trade with those areas of the Republic of Cyprus
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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,²

Whereas:

- (1) The European Council has repeatedly underlined its strong preference for accession by a reunited Cyprus. As yet a comprehensive settlement has not been reached. Having in mind that the Turkish Cypriot community in the referendum on a comprehensive settlement of the Cyprus problem as proposed by the UN Secretary General has expressed its clear desire for a future within the European Union, the Council on 26 April 2004 expressed its determination to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community. The Council invited the Commission to bring forward comprehensive proposals to this end.
- (2) Pending a settlement, the application of the *acquis* has been suspended pursuant to Article 1(1) of Protocol No 10 of the Act of Accession 2003³ in the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control, hereafter referred to as “the Areas”.
- (3) Pursuant to Article 3(1) of Protocol No 10, measures to promote the development of the Areas are not precluded by the suspension of the *acquis*. The development of trade with the Areas would contribute to the process of economic development of the above-mentioned Areas. Special rules to facilitate trade between those areas and Member States other than Cyprus may therefore be devised. They should not undermine the standard of safety protection in the EU, in particular the EC rules on health, safety, environmental and consumer protection and on the prohibition on the bringing in of counterfeit and pirated goods, or lead to unacceptable risks to plant health in the Community and should not harm its economic interests.

² OJ L [...], [...], p. [...].

³ OJ L 236, 23.9.2003, p. 955.

- (4) The Commission should determine annual tariff quotas for products in such a way as to encourage the development of trade, while avoiding the creation of artificial trade patterns or facilitating fraud.
- (5) In the interest of safeguarding Community interests, the measures should in particular be accompanied by provisions allowing for their temporary or permanent withdrawal, in whole or in part, in cases where fraud or other irregularities are suspected or established.
- (6) Until adequate veterinary and public health standards are achieved, the movement of animals and animal products should be prohibited.
- (7) Entitlement to benefit from these measures is conditional on the involvement of the Turkish Cypriot Chamber of Commerce or any other body duly authorized for that purpose by the Commission, in effective cooperation with the Commission and the customs authorities of the Member States in order to prevent any risk of fraud. This authorisation should be subject to prior written commitments by the authorized body and should be revoked if this body fails to fulfil one or more of these commitments in such a way as to endanger the correct application of this Regulation.
- (8) The provisions of this Regulation, in particular when terms taken from the *acquis* are used should be interpreted in the light of the special circumstances prevailing in the Areas.
- (9) Certain provisions of Council Regulation (EEC) No 2913/92⁴, Commission Regulation (EEC) No 2454/93⁵ and Commission Regulation (XX) on the implementation of Article 4 of Council Regulation (EC) No 866/2004⁶ ought also to apply in the framework of this Regulation.
- (10) These arrangements should be reviewed in light of the experience gained in the implementation of this Regulation.
- (11) To the extent that this Regulation does not determine special conditions, the general rules governing the Community's external trade are applicable.
- (12) This Regulation is without prejudice to the requirements which have to be fulfilled in order to comply with the international rules on the security and safety of maritime and air transport.
- (13) The measures are part of the abovementioned comprehensive proposals in a response to a specific situation in Cyprus. They will not constitute a precedent for the Community's trade policy,

⁴ OJ L 302, 19.10.1992, p. 1.

⁵ OJ L 253, 11.10.1993, p. 1.

⁶ OJ L [...], [...], p. [...].

HAS ADOPTED THIS REGULATION:

Article 1
Treatment of goods arriving from the Areas

1. Products that, within the meaning of Articles 23 and 24 of Council Regulation (EEC) No 2913/92, originate in the Areas and are transported directly there from, may be released for free circulation into the customs territory of the Community with exemption from customs duties and charges having equivalent effect within the limits of annual tariff quotas fixed in accordance with Article 4, provided that they are accompanied by the document referred to in Article 2(2) and provided that they are not eligible for export refunds or intervention measures. This is without prejudice to indirect taxes due on importation.
2. By derogation from the above, the Commission may, in accordance with the relevant management committee procedure established under the common agriculture policy, determine preferential conditions and modalities of access for products eligible for export refunds or intervention measures.
3. The entry into the Community of live animals and animal products which are subject to Community legislation on veterinary requirements from the Areas shall be prohibited until an adequate veterinary and public health standard can be ensured. The lifting of this prohibition shall require the adoption of Commission decisions pursuant to Article 58 of Regulation (EC) No 178/2002 of the European Parliament and the Council⁷ laying down the conditions applicable for trade.
4. For food safety reasons, the entry into the Community of feedingstuff from the Areas shall be prohibited.
5. For food safety reasons, the entry into the Community via the Areas of goods of a type falling under the Commission Decisions listed in Annex IV shall be prohibited. The same shall apply to goods covered by similar decisions adopted in future safeguard measures under Directive 93/43/EC⁸ or Regulation 178/2002/EC. For other foodstuffs the testing and checks of food safety requirements as set out in measures adopted under Article 95 of the EC Treaty shall be fully observed.
6. The entry into the Community of goods which are subject to EU trade defence measures, including goods incorporating materials subject to such measures, shall be prohibited. This is without prejudice to the application of the Community's anti-dumping, anti-subsidy, safeguard or other trade defence instruments.

⁷ OJ L 31, 1.2.2002, p. 1.

⁸ OJ L 175, 19.7.1993, p. 1.

Article 2
Conditions for special treatment

1. The arrangements referred to in Article 1 shall be conditional on no new or increased duties or charges having equivalent effect, no new quantitative restrictions or measures having equivalent effect, nor any other restrictions, being applied in the Areas on the entry of goods of Community origin from the day of entry into force of this Regulation.
2. The Turkish Cypriot Chamber of Commerce or another body duly authorised for that purpose by the Commission in conformity with Article 5, shall issue an accompanying document certifying that the goods referred to in Article 1(1) originate in the Areas within the meaning of Articles 23 and 24 of Council Regulation (EEC) No 2913/92. The accompanying document shall be made out on forms corresponding to the specimen given in Annex I.
3. Operators who wish to request an accompanying document shall submit a written application to the issuing bodies referred to above. The application form shall be made out on forms corresponding to the specimen given in Annex II.
4. The Turkish Cypriot Chamber of Commerce or another body duly authorized shall communicate to the Commission on a monthly basis the type, volume, and value of goods for which it has issued the documents referred to in Article 2 (2), and details of any irregularities discovered and any sanctions applied.

Article 3
Rules of origin

1. The origin of any product to which this Regulation applies shall be determined in accordance with the provisions in force in the Community concerning the definition of non preferential origin.

Article 4
Tariff Quotas

1. The Commission shall, in accordance with the procedure set out by Article 248 of Council Regulation (EEC) No 2913/92, determine the annual tariff quotas for products referred to in Article 1 (1) in such a way as to encourage the development of trade, while avoiding the creation of artificial trade patterns or facilitating fraud. When defining categories of products and the levels of tariff quotas for such categories, the Commission shall collect and take into account information from the Turkish Cypriot Chamber of Commerce or other appropriate bodies on the existing production capacities and their potential growth, traditional consumption patterns and any other relevant data.
2. The tariff quotas shall be managed by the Commission in accordance with Articles 308a to 308c of Regulation (EEC) No 2454/93.

Article 5
Authorisation

1. The authorisation referred to in Article 2 (2) shall be in particular subject to the prior written commitment by the Turkish Cypriot Chamber of Commerce or any other duly authorised body to apply correctly, and supervise the correct application by the requesting operators, the Community legislation concerning the definition of non preferential origin according to Articles 23 and 24 of Council Regulation (EEC) No 2913/92 and its implementing provisions, including the commitments, *inter alia*:
 - (a) to carry out controls as necessary to ascertain that the specifications given by the requesting operator on the application form as referred to in Article 2 (3) are accurate;
 - (b) to issue the accompanying document and to certify unambiguously that the goods to which it relates originate in the areas as defined in Article 1(1) of Protocol No 10 of the Act of Accession 2003 according to Articles 23 and 24 of Council Regulation (EEC) No 2913/92 and its implementing provisions;
 - (c) to send to the Commission specimen impressions of the stamps used for the issue of the accompanying document;
 - (d) to undertake to keep available for at least three years the application form for the accompanying document and all supporting documents;
 - (e) to co-operate with the Commission and the competent authorities of the Member States as to the verification of the authenticity and correctness of the accompanying document as well as to prevent any risk of fraud or other irregularities;
 - (f) to carry out on its own initiative or at the request of the Commission or the administration of a Member State, appropriate enquiries when any information appears to indicate that the provisions of this Regulation are being contravened;
 - (g) to accept checks, audits or investigations on the spot within the body and facilitate those checks, audits or investigations in the premises of operators having requested the establishment of an accompanying document as to the validity of such document;
 - (h) to communicate to the Commission on a monthly basis the type, the volume and the value of goods for which it has issued accompanying documents, and details of any irregularities discovered and any sanctions applied.
2. Where the authorised body fails to fulfil this commitment, and this failing is such as to endanger the correct application of this Regulation, the Commission shall revoke the authorisation.

Article 6
Phytosanitary Inspection and Reporting

1. Where the goods consist of plants, plant products and other objects covered by Part B of Annex V to Council Directive 2000/29/EC⁹, independent phytosanitary experts appointed by the Commission and operating in coordination with the Turkish Cypriot Chamber of Commerce or any other duly authorised body, shall inspect the goods at the stage of production and again at harvest and at the stage of preparation for marketing.

In the case of potatoes, the above experts shall verify that the potatoes in the consignment were grown directly from seed potatoes certified in one of the Member States or from seed potatoes certified in any other country for which the entry into the Community of potatoes intended for planting is not prohibited pursuant to Annex III to Directive 2000/29/EC.

In the case of citrus fruits, the above experts shall verify that the fruits have been found to be free from leaves and peduncles and bear the appropriate origin mark.

2. If the above experts, to the best of their knowledge and as far as can be determined, establish that the relevant plants, plant products or other objects in the consignment are considered to be free from the harmful organisms in Annex I and, where applicable, Annex II to Directive 2000/29/EC as amended, and comply with the provisions of the second and third subparagraph of paragraph 1, they shall report their findings, using the model form of “Report of Phytosanitary inspection” under Annex III. The “Report of Phytosanitary inspection” shall be added as a supplement to the accompanying document as referred to in Article 2 (2).

The experts shall not issue “Reports of Phytosanitary inspection” in respect of plants intended for planting, including tubers of *Solanum tuberosum* (L.) intended for planting.

3. The experts shall seal or close the packaging of the consignment or the means of transport used for the consignment in such a way that the products concerned cannot cause infestation or infection during their transport and that their identity remains unchanged. No commodities covered by the provisions of this Article shall be moved to the customs territory of the Community unless the said report form is filled in completely and duly signed by at least one of the above mentioned phytosanitary experts.
4. Upon arrival in the customs territory of the Community, the competent authorities shall examine the consignment. Where applicable, the report of Phytosanitary inspection shall be replaced by a plant passport, issued in conformity with the provisions of Commission Directives 92/105/EEC¹⁰ and 93/51/EEC¹¹.

⁹ OJ L 169, 19.7.2000, p. 1.

¹⁰ OJ L 4, 8.1.1993, p. 22.

¹¹ OJ L 205, 17.8.1993, p. 24.

5. If the consignment consists of or contains potato lots, an appropriate part of these lots shall be examined in respect of *Ralstonia solanacearum* (Smith) Yabuuchi et al. and *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckermann et Kotthoff) Davis et al., in accordance with the Community established methods for the detection and diagnosis of those harmful organisms.

Article 7 *Temporary suspension*

1. Without prejudice to the Commission's power to revoke the authorisation referred to in Article 5 (2), the Commission may temporarily suspend the special arrangement provided for in this Regulation, where it has made a finding, on the basis of objective information, allowing the presumption of irregularities or fraud.
2. For the purpose of this Article a finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without satisfactory explanation, in the entry of goods originating in the Areas in the customs territory of the Community exceeding the usual level of production capacity of the Areas that is linked to objective information concerning irregularities or fraud.
3. The application of a temporary suspension shall be subject to the following conditions:
 - (a) When the Commission has made a finding, on the basis of objective information, of the irregularities or fraud, it shall without undue delay inform the Customs Code Committee instituted by Article 247 of Council Regulation (EEC) No 2913/92 of its findings together with the objective information.
 - (b) Temporary suspensions under this Article shall be limited to that necessary to protect the financial interests of the Community. They shall not exceed a period of six months, which may be renewed as appropriate.
4. The Commission shall publish a notice to economic operators in the *Official Journal of the European Union*. The notice to economic operators should indicate that there is a finding, on the basis of objective information, of the irregularities or fraud.

Article 8 *Implementing Rules*

The Commission may adopt implementing rules in accordance with the procedure set out in Article 4 (12), last sentence of Council Regulation (EC) No 866/2004; with regard to Article 4, 5 and 7 implementing provisions may be adopted in accordance with the procedures set out in Council Regulation (EEC) 2913/92.

Article 9
Review, Monitoring and Cooperation

1. The Commission shall report to the Council on an annual basis, starting not later than one year after the date of entry into force of this Regulation, on the implementation of the Regulation and the situation resulting from its application, attaching to this report suitable proposals for amendments if necessary.
2. The Commission shall examine in particular the patterns of the trade which will develop under this Regulation, including the volume and value of trade and products traded.
3. The Member States and the Commission shall closely cooperate to ensure compliance with this Regulation.

Article 10
Entry into force

This Regulation shall enter into force on the 10th day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, [...]

For the Council
The President
[...]

ANNEX I

Specimen of the accompanying document referred to in Article 2(2)

ACCOMPANYING DOCUMENT UNDER COUNCIL REGULATION No XXX		ORIGINAL	
		No: 00001	
Producer (Name, or name of firm, and full address):			
Consignor (Name, or name of firm, and full address):			
Consignee (Name, or name of firm, and full address):			
Description of goods, item number, marks numbers, number and kind of packages (for goods not packed indicate number or 'in bulk'):	Volume/Quantity		Transaction Value
	Net weight (kg) /other units of measure		
Certification of the Turkish Cypriot Chamber of Commerce It is hereby certified, on the basis of controls carried out, that the above-mentioned goods originate, within the meaning of Articles 23 and 24 of Council Regulation (EEC) No 2913/93, in the areas as defined in Article 1 (1) of Protocol No. 10 of the Act of Accession 2003, and that the specifications given by the producer are accurate.			
Date		Authorised signature and stamp	

ANNEX II

Specimen of the application form referred to in Article 2(3)

APPLICATION FORM UNDER COUNCIL REGULATION No XXX		APPLICATION	
		No: 00001	
Producer (Name, or name of firm, and full address):			
Consignor (Name, or name of firm, and full address):			
Consignee (Name, or name of firm, and full address):			
Description of goods, item number, marks numbers, number and kind of packages (for goods not packed indicate number or 'in bulk'):	Volume/Quantity		Transaction Value
	Net weight (kg) /other units of measure		
Declaration by the Producer I, the undersigned, - declare that the goods described above originate, within the meaning of Articles 23 and 24 of Council Regulation (EEC) No 2913/93, in the areas as defined in Article 1 (1) of Protocol No. 10 of the Act of Accession 2003, - declare that the particulars given in this application are correct, - declare that I keep available for control purposes for a time period of at least three years all accounts concerning the production (including the purchase of raw materials) and the sale of the goods, - accept that controls can be made at any reasonable time by the Turkish Cypriot Chamber of Commerce, by the phytosanitary experts under Council Regulation (EC) XXX/2004 or by the Commission services.			
Date		Signature	
Application by Consignor I, the undersigned, apply for the issue of an accompanying document under Council Regulation (EC) XXX			
Date		Signature	

ANNEX III

Model of the “Report of Phytosanitary inspection” referred to in Article 6(2)

1. Report of Phytosanitary inspection under Council Regulation xxx/2004		Number
2. Name, or name of firm, and full address of consignor	3. Name, or name of firm, and full address of consignee	
4. Registration number of producer (with the phytosanitary experts) and place of production	5. Name and full address of packing station	
6. Description of consignment (distinguishing marks; name of produce; botanical name)	7. Quantity declared	
8. Mean of conveyance	9. Post-harvest treatment (Treatment; Active ingredient; Concentration; Temperature)	
10. The undersigning phytosanitary expert under Council Regulation (EC) xxx/2004, having – inspected the above mentioned produce according to appropriate procedures, at the stage of production and again at harvest and at the stage of preparation for marketing – witnessed the loading of the mean of conveyance and sealed it when loading was finished, hereby concludes that to the best of his knowledge and as far as can be determined the goods – are considered to conform with the current phytosanitary regulations of the EU and in particular – are considered to be free from the harmful organisms in Annex I and, where applicable, Annex II to Directive 2000/29/EC, as amended, – in the case of potatoes, that the potatoes in the consignment were grown directly from seed potatoes certified in one of the Member States or from seed potatoes certified in any other country for which the entry into the Community of potatoes intended for planting is not prohibited pursuant to Annex III to Directive 2000/29/EC, – in the case of citrus fruits, that the fruits have been found to be free from leaves and peduncles and bear the appropriate origin mark. Name and signature of the phytosanitary expert(s) Place and date of issue (1) (2) (optional co-signing expert)		

ANNEX IV

List of Commission Decisions referred to in Article 1 (5)

- Commission Decision 2002/80/EC, as last amended by Decision 2004/429/EC, imposing special conditions on the import of figs, hazelnuts and pistachios and certain products derived thereof originating in or consigned from Turkey
- Commission Decision 2002/79/EC, as last amended by 2004/429/EC, imposing special conditions on the import of peanuts and certain products derived from peanuts originating in or consigned from China
- Commission Decision 2000/49/EC, as last amended by 2004/429/EC, imposing special conditions on the import of peanuts and certain products derived from peanuts originating in or consigned from Egypt
- Commission Decision 2003/493/EC, as last amended by 2004/428/EC, imposing special conditions on the import Brazil nuts in shell originating in or consigned from Brazil
- Commission Decisions 1997/830/EC, as last amended by 2004/429/EC imposing special conditions on the import of pistachios and certain products derived from pistachios originating in or consigned from Iran
- Commission Decision 2004/92/EC of 21 January 2004 on emergency measures regarding chilli and chilli products