# COUNCIL REGULATION (EC) No 518/94

## of 7 March 1994

## on common rules for imports and repealing Regulation (EEC) No 288/82

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the instruments establishing common organization of agricultural markets and to the instruments concerning processed agricultural products adopted in pursuance of Article 235 of the Treaty, in particular the provisions of those instruments which allow for derogation from the general principle that all quantitative restrictions or measures having equivalent effect may be replaced solely by the measures provided for in those same instruments,

Having regard to the proposal from the Commission,

Whereas the common commercial policy should be based on uniform principles; whereas, while the common rules for imports established by Council Regulation (EEC) No 288/82 of 5 February 1982 on common rules for imports [1], constitute an important part of the policy, they still allow exceptions and derogations enabling Member States to continue applying national measures to imports of certain products, so that the policy needs to be completed;

Whereas under Article 7 a of the Treaty, the internal market comprises since 1 January 1993 an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas completion of the common commercial policy as it pertains to rules for imports is a necessary complement to the completion of the internal market and is the only means of ensuring that the rules applying to the Community's trade with third countries correctly reflect the integration of the markets;

Whereas in order to achieve greater uniformity in the rules for imports it is necessary to eliminate the exceptions and derogations resulting from the remaining national commercial policy measures and in particular the quantitative restrictions maintained by Member States under Regulation (EEC) No 288/82; whereas the economic and industrial repercussions of their elimination have been or can be taken into account in the Community's horizontal policies for the market concerned;

Whereas the liberalization of imports, namely the absence of any quantitative restrictions, should therefore form the starting point for the Community rules;

Whereas the Commission should be informed by the Member States of any danger created by trends in imports which might call for protective measures;

Whereas, in such a case, the Commisison should examine import terms and conditions, import trends, the various aspects of the economic and commercial situation, and the measures, if any, to be taken;

Whereas it may become apparent that there should be Community surveillance over certain of these imports;

Whereas surveillance or safeguard measures confined to one or more regions of the Community may nevertheless prove more suitable than measures appliyng to the whole Community; whereas, however, such measures should be authorized only exceptionally and where no alternative exists; whereas it is necessary to ensure that such measures are temporary and cause the minimum of disruption to the operation of the internal market;

Whereas if Community surveillance is applied, release for free circulation of the products concerned should be made subject to presentation of an import document meeting uniform criteria; whereas that document should, on simple application by the importer, be endorsed by the authorities of the Member States within a certain period but without the importer thereby acquiring any right to import; whereas the document should therefore be valid only during such period as the import rules remain unchanged;

Whereas it is in the interests of the Community that the Member States and the Commission should make as full as possible an exchange of information resulting from Community surveillance;

Whereas it is for the Commission and the Council to adopt the safeguard measures called for by the interests of the Community with due regard for existing international obligations; whereas, therefore, safeguard measures against a country whichis a contracting party to GATT may be considered only if the product in question

[1] OJ No L 35, 9. 2. 1982, p. 1, as last amended by Regulation (EEC) No 2875/92 (OJ No L 287, 2. 10. 1992, p. 1).

is imported into the Community in such greatly increased quantities and on such terms or conditions as to cause, or threaten to cause, serious injury to Community producers of like or directly competing products, unless international obligations permit derogation from this rule;

Whereas experience has shown that it is necessary to adopt more precise criteria for assessing possible injury and to introduce an investigation while still allowing the Commission to introduce appropriate measures in urgent cases;

Whereas, to this end, more detailed provisions should be introduced on the opening of investigations, on the checks and inspections required, on the hearing of those concerned, the treatment of information obtained and the criteria for assessing injury;

Whereas the provisions on the investigations introduced by this Regulation do not prejudice Community or national rules concerning professional secrecy;

Whereas 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 economy operators concerned;

Whereas in the interests of uniformity in rules for imports, the formalities to be carried out by importers should be simplified and must be identical regardless of the place where the goods clear customs; whereas it is therefore desirable to provide that any formalities should be carried out using forms corresponding to the specimen annexed to the Regulation;

Whereas import documents issued in connection with Community surveillance measures should be valid throughout the Community irrespective of the Member State of issue;

Whereas the textile products falling under Regulation (EC) No 517/94 of 7 March 1994 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules [1] are subject treatment at Community and international level; whereas they should therefore be completely excluded from the scope of this Regulation;

Whereas the provisions of this Regulation are applicable without prejudice to Articles 77, 81, 244, 249 and 280 of the Act of Accession of Spain and Portugal;

Whereas Regulation (EEC) No 288/92 should consequently be repealed,

[1] See page 1 of this Official Journal.

HAS ADOPTED THIS REGULATION:

## TITLE I

## General principles

### *Article 1*

1. This Regulation applies to imports of products covered by the Treaty originating in third countries, except for:

— textile products covered by Regulation (EC) No 517/94,

— the products originating in certain third countries listed in Regulation (EC) No 519/94 on common rules for imports from certain third countries,

2. Imports into the Community of the products referred to in paragraph 1 shall take place freely and so shall not be subject to any quantitative restrictions, without prejudice to the measures which may be taken under Title V.

## TITLE II

## Community information and consultation procedure

### *Article 2*

The Commission shall be informed by the Member States should trends in imports appear to call for surveillance or safeguard measures. This information shall contain the available evidence on the basis of the criteria laid down in Article 8. The Commission shall pass on this information to all the Member States forthwith.

### *Article 3*

Consultations may be held, either at the request of a Member State or on the initiative of the Commission. They shall take place within eight working days following receipt by the Commission of the information provided for in Article 2 and, in any event, before the introduction of any Community surveillance or safeguard measure.

### *Article 4*

1. Consultation shall take place within an advisory committee, hereinafter called 'the Committee', made up of representatives of each Member State with a representative of the Commission as chairman.

2. The Commission shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, with all relevant information.

3. Consultations shall cover in particular:

(a) terms and conditions of importation, import trends, and the various aspects of the economic and commercial situation as regards the product in question;

(b) the measures, if any, to be taken.

4. Consultations may be in writing if necessary. The Commission shall in this event inform the Member States, which may express their opinion or request oral consultations within a period of five to eight working days to be decided by the Commission.

TITLE III

## Community investigation procedure

*Article 5*

1. Where after consultation, it is apparent to the Commission that there is sufficient edvidence to justify an investigation, the Commission shall:

(a) initiate an investigation within one month of receipt of information from a Member State 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, it 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;

(b) commence the investigation, acting in cooperation with the Member States.

2. The Commission shall seek all information it deems to be necessary and, where it considers it appropriate, after consulting the Committee, endeavour to check this information with importers, traders, agents, producers, trade associations and organizations.

The Commission shall be assisted in this task by staff of the Member State on whose territory these checks are being carried out, provided this Member State so wishes.

Interested parties which have made themselves known in accordance with paragraph (1) (a), as well as the representatives of the exporting country, may inspect all information made available to the Commission within the framework of the 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 7 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.

3. The Member States shall supply the Commission, at its request and following procedures laid down by it, with the information at their disposal on developments in the market of the product being investigated.

4. The Commission may hear the interested parties. Such parties must be heard where they have applied in writing within the period laid down in the notice published in the *Official Journal of the European Communities,* showing that they are actually likely to be affected by the outcome of the investigations and that there are special reasons for them to be heard orally.

5. When 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 party has supplied it which false or misleading information, it shall disregard the information and may make use of facts available.

6. Where it appears to the Commission, after the consultation referred to in paragraph 1, that there is insufficient evidence to justify an investigation, it shall inform the Member States of its decision within one month of receipt of the information from the Member States.

*Article 6*

1. At the end of the investigation, the Commission shall submit a report on the results to the Committee.

2. Where, within nine months of the initiation of the investigation, the Commission considers that no Community surveillance or safeguard measures are necessary, the investigation shall be terminated, within one month, after consulting the Committee. The decision to terminate the investigation, stating the main conclusions of the investigation and a summary of the reasons therefor, shall be published in the *Official Journal of the European Communities.*

3. If the Commission considers that Community surveillance or safeguard measures are necessary, it shall take the necessary decisions in accordance with Titles IV and V, 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.

4. The provisions of this Title shall not preclude the taking, at any time, of surveillance measures in accordance with Articles 9 to 13 or, where a critical situation, in which any delay would cause injury which it would be difficult to remedy, calls for immediate intervention, safeguard measures in accordance with Articles 14 to 16.

The Commission shall immediately take the investigation measures it considers to be still necessary. The results of the investigation shall be used to re-examine the measures taken.

*Article 7*

1. Information received in pursuance of this Regulation shall be used only for the purpose for which it was requested.

2. (a) Neither the Council, nor the Commission, nor the Member States, nor the officials of any of these, shall reveal any information of a confidential nature received in pursuance of this Regulation, or any information provided on a confidential basis, without specific permission from the supplier of such information.

(b) Each request for confidentiality shall state the reasons why the information is confidential.

However, if it appears that a request for confidentiality is unjustified and if the supplier of the information wishes neither to make it public nor to authorize its disclosure in general terms or in the form of a summary, the information concerned may be disregarded.

3. Information will in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

4. The preceding paragraphs shall not preclude reference by the Community authorities to general information and in particular to reasons on which decisions taken in pursuance of this Regulation are based. These authorities must, however, take into account the legitimate interest of the legal and natural persons concerned that their business secrets should not be divulged.

*Article 8*

1. The examination of the trend of imports, of the conditions in which they take place and of the serious injury or threat of serious injury to Community producers resulting from such imports, shall cover in particular the following factors:

(a) the volume of imports, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in the Community;

(b) the price of the imports, in particular where there has been a significant price undercutting as compared with the price of a like product in the Community;

(c) the consequent impact on the Community producers of similar or directly competitive products as indicated by trends in certain economic factors such as:

— production,
— utilization of capacity,
— stocks,
— sales,
— market share,
— prices (i.e. depression of prices or prevention of price increases which would normally have occurred),
— profits,
— return on capital employed,
— cash flow,
— employment.

2. Where a threat of serious injury is alleged the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury. In this regard account may be taken of factors such as:

(a) the rate of increase of the exports to the Community;

(b) the export capacity in the country of origin or export, already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to the Community.

TITLE IV

**Surveillance**

*Article 9*

1. Where developments on the market in respect of a product originating in a third country covered by this Regulation threaten to cause injury to Community producers of like or directly competing products and where the interests of the Community so require, importation of that product may be subject, as the case may be, to:

(a) retrospective Community surveillance carried out according to the provisions laid down in the decision referred to in paragraph 2,

or

(b) prior Community surveillance carried out according to Article 10.

2. The decision to impose surveillance shall be taken by the Commission according to the procedure laid down in Article 14 (5) and (6).

3. The surveillance measures shall have a limited period of validity. Unless otherwise stipulated, they shall cease to be valid at the end of the second six-month period following the six months in which the measures were introduced.

*Article 10*

1. Products under prior Community surveillance may be put into free circulation only on production of an import document. Such a document shall be endorsed by the competent authority designated by Member States, free of charge, for any quantity requested and within a maximum of five working days following receipt by the national competent authority of a declaration by any Community importer, regardless of his place of business in the Community. This declaration shall be deemed to be received by the national competent authority no later than three working days after submission, unless it is proven otherwise.

2. A form corresponding to the model given in the Annex shall be used for the import document and the declaration by the importer.

Additional information to that provided in the aforementioned form may be required. Such information shall be set out in the decision to impose surveillance.

3. The import document shall be valid throughout the Community, regardless of the Member State of issue.

4. A finding that the unit price at which the transaction is effected exceeds that indicated in the import document by less than 5 % or that the total value or quantity of the products presented for importation exceeds the value or quantity given in the import document by less than 5 % shall not preclude the release for free circulation of the product in question. The Commission, having heard the opinions expressed in the Committee and taking account of the nature of the products and other special features of the transactions concerned, may fix a different percentage, which, however, should not normally exceed 10 %.

5. Import documents may be used only for such time as arrangements for the liberalization of imports remain in force in respect of the transactions concerned. The said import documents may not in any event be used beyond the expiry of the period which will be laid down at the same time and by means of the same procedure as the imposition of surveillance, and which will take account of the nature of the products and other special features of the transactions.

6. Where the decision taken under Article 9 so requires, the origin of products under Community surveillance must be proved by a certificate of origin. This paragraph shall not prejudice other provisions concerning the production of any such certificate.

7. Where the product under prior Community surveillance is subject to regional safeguard measures in a Member State, the import authorization granted by that Member State may replace the import document.

*Article 11*

Where importation of a product has not been made subject to prior Community surveillance within a period of eight working days following the end of consultations, the Commission may introduce, in accordance with Article 16, surveillance confined to imports to one or more regions of the Community.

*Article 12*

1. Products under regional surveillance may be put into free circulation in the region concerned only on production of an import document. Such document shall be endorsed by the competent authority designated by the Member State(s) concerned, free of charge, for any quantity requested and within a maximum of five working days following receipt by the national competent authority of a declaration by any Community importer, regardless of his place of business in the Community. This declaration shall be deemed to be received by the national competent authority no later than three working days after submission, unless it is proven otherwise. Import documents may be used only for such time as arrangements for the liberalization of imports remain in force in respect of the transactions concerned.

2. A form corresponding to the model given in the Annex shall be used for the import document and the declaration by the importer.

Additional information to that provided in the aforementioned form may be required. Such information shall be set out in the decision to impose surveillance.

*Article 13*

1. Member States shall communicate to the Commission within the first ten days of each month in the case of Community or regional surveillance :

(a) in the case of prior surveillance, details of the sums of money (calculated on the basis of cif prices) and quantities of goods in respect of which import documents were issued or endorsed during the preceding period ;

(b) in every case, details of imports during the period preceding the period referred to in subparagraph (a).

The information supplied by Member States shall be broken down by product and by country.

Different provisions may be laid down at the same time and by the same procedure as the surveillance arrangements.

2. Where the nature of the products or special circumstances so require, the Commission may, at the request of a Member State or on its own initiative, amend the timetables for submitting this information.

3. The Commission shall inform the Member States.

TITLE V

## Safeguard measures

*Article 14*

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, serious injury to Community producers of like or directly competing products, the Commission, in order to safeguard the interests of the Community, 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 10 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 authorization, 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. When establishing a quota, account shall be taken in particular of :

— the desirability of maintaining, as far as possible, traditional trade flows,

— the volume of goods exported under contracts concluded on normal terms and conditions before the entry into force of a safeguard measure within the meaning of this Title, where such contracts have been notified to the Commission by the Member State concerned,

— the need to avoid jeopardizing achievement of the aim pursued in establishing the quota.

3. (a) The measures referred to in this Article shall apply to every product which is put into free circulation after their entry into force. In accordance with Article 16 they may be confined to one or more regions of the Community.

(b) However, such measures shall not prevent the release for free circulation of products already on their way to the Community provided that the destination of such products cannot be changed and that those products which, under Articles 9 and 10, may be put into free circulation only on production of an import document are in fact accompanied by such a document.

4. Where intervention by the Commission has been requested by a Member State, the Commission shall take a decision within a maximum of five working days of receipt of such a request.

5. Any decision taken by the Commission under this Article shall be communicated to the Council and to the Member States. Any Member State may, within one month following the day of communication, refer such decision to the Council.

6. If a Member State refers the decision taken by the Commission to the Council, the Council may acting by a qualified majority, confirm, amend or revoke the decision of the Commission.

If within three months of the referral of the matter to the Council, the latter has not taken a decision, the measure taken by the Commission shall be deemed revoked.

*Article 15*

1. Where the interests of the Community so require, the Council may, acting by a qualified majority on a proposal from the Commission, adopt appropriate measures :

(a) to prevent a product being imported into the Community in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, serious injury to Community producers of like or directly competing products ;

(b) to allow the rights and obligations of the Community or of all its Member States to be exercised and fulfilled at international level, in particular those relating to trade in primary products.

2. Article 14 (2) and (3) shall apply.

*Article 16*

Where, on the basis, in particular, of the factors referred to in Article 8, it emerges that the conditions laid down for the adoption of measures under Articles 9 and 14 are met in one or more regions of the Community, the Commission, after having examined alternative solutions, may exceptionally authorize the application of surveillance or safeguard measures limited to the region(s) concerned if it considers that such measures applied at that level are more appropriate than measures applied throughout the Community.

These measures must be temporary and must disrupt the operation of the internal market as little as possible.

These measures shall be adopted in accordance with the provisions laid down in Articles 9 and 14 respectively.

*Article 17*

1. While any surveillance or safeguard measure applied in accordance with Titles IV and V is in operation, consultations within the Committee shall be held, either at the request of a Member State or on the initiative of the Commission. The purpose of such consultations shall be :

(a) to examine the effects of the measure ;

(b) to ascertain whether its application is still necessary.

2. Where, as a result of the consultations referred to in paragraph 1, the Commission considers that any surveillance or safeguard measure referred to in Articles 9, 11, 14, 15 and 16 should be revoked or amended, it shall proceed as follows :

(a) where the Council has acted on a measure, the Commission shall propose to the Council that the measures be revoked or amended. The Council shall act by a qualified majority.

(b) in all other cases, the Commission shall amend or revoke Community safeguard measures and measures of surveillance.

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

TITLE VI

**Final provisions**

*Article 18*

1. This Regulation shall not preclude the fulfilment of obligations arising from special rules contained in agreements concluded between the Community and third countries.

2. (a) Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by Member States :

(i) of prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security ; the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property ;

(ii) of special formalities concerning foreign exchange ;

(iii) of formalities introduced pursuant to international agreements in accordance with the Treaty.

(b) The Member States shall inform the Commission of the measures or formalities to be introduced or amended in accordance with this paragraph. In the event of extreme urgency, the national measures or formalities in question shall be communicated to the Commission immediately upon their adoption.

*Article 19*

1. This Regulation shall be without prejudice to the operation of the instruments establishing the common organization of agricultural markets or of Community or national administrative provisions derived therefrom or of the specific instruments adopted under Article 235 of the Treaty applicable to goods resulting from the processing of agricultural products ; it shall operate by way of complement to those instruments.

2. However, in the case of products covered by the instruments referred to in paragraph 1, Articles 9 to 13 and 17 shall not apply to those in respect of which the Community rules on trade with third countries require the production of a licence or other import document.

Articles 14, 16 and 17 shall not apply to those products in respect of which such rules make provision for the application of quantitative import restrictions.

*Article 20*

Until 31 December 1995, Spain and Portugal may maintain the quantitative restrictions on agricultural products referred to in Articles 77, 81, 244, 249 and 280 of the Act of Accession.

*Article 21*

Regulation (EEC) No 288/82 is hereby repealed. References to the repealed Regulation shall be understood as referring to this Regulation.

*Article 22*

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

It shall apply from 15 March 1994.

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

Done at Brussels, 7 March 1994.

*For the Council*

*The President*

Th. PANGALOS

*ANNEX*

**List of particulars to be given in the boxes of the surveillance document**

SURVEILLANCE DOCUMENT

1. Applicant
   (name, full address, country)
2. Registration No
3. Consignor (name, address, country)
4. Competent authorities of issue
   (name and address)
5. Declarant (name and address)
6. Last day of validity
7. Country of origin
8. Country of consignment
9. Proposed place and date of importation
10. Reference to Regulation (EC) which imposed surveillance
11. Description of goods, marks and numbers, number and kind of packages
12. Goods code (CN)
13. Gross mass (kg)
14. Net mass (kg)
15. Additional units
16. cif value EC frontier in ecu
17. Further particulars
18. Certification by the applicant:
    I, the undersigned, certify that the information provided in this application is true and given in good faith.

    Date and place
    (signature) (stamp)
19. Stamp of the competent authorities
    Date

    (signature) (stamp)

Original for the applicant

Copy for the competent authorities

**EUROPEAN COMMUNITIES** **SURVEILLANCE DOCUMENT**

1

Original for the applicant

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19. Stamp of the competent authorities

Date:

(signature) (stamp)

Place and date

(signature) (stamp)

**EUROPEAN COMMUNITIES** **SURVEILLANCE DOCUMENT**

2

Copy for the competent authorities

2

1. Applicant (name, full address, country)

2. Registration No

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4. Competent authorities of issue (name and address)

5. Declarant (name and address)

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(signature) (stamp)

Place and date

(signature) (stamp)