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COUNCIL REGULATION (EC) No 427/2003

of 3 March 2003

on a transitional product-specific safeguard mechanism for imports originating in the People's Republic of China and amending Regulation (EC) No 519/94 on common rules for imports from certain third countries

(OJ L 65, 8.3.2003, p. 1)

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on a transitional product-specific safeguard mechanism for imports originating in the People's Republic of China and amending Regulation (EC) No 519/94 on common rules for imports from certain third countries

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,

Whereas:

(1) By Regulation (EC) No 3285/94 ([1]) the Council adopted common rules for imports which contain provisions on safeguard measures.

(2) By Regulation (EC) No 519/94 ([2]) the Council adopted common rules for imports from certain third countries which also contain provisions on safeguard measures.

(3) The Protocol on the Accession of the People's Republic of China (hereinafter referred to as 'China') to the World Trade Organisation (hereinafter referred to as 'the Protocol') provides for product-specific transitional safeguard measures (hereinafter referred to as 'safeguard measures') and product-specific transitional trade diversion measures (hereinafter referred to as 'trade diversion measures').

(4) The Protocol entered into force on 11 December 2001.

(5) In view of the considerable difference between the provisions on safeguard measures contained in the Protocol on the one hand and in Council Regulation (EC) No 519/94 and Council Regulation (EC) No 3285/94 on the other hand, it is necessary to have a specific Regulation for safeguard measures and trade diversion measures on certain imports originating in China.

(6) According to the Protocol, safeguard measures may be imposed when products of Chinese origin are being imported into the Community in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the Community industry.

(7) Market disruption shall exist whenever imports of a product are increasing rapidly so as to be a significant cause of material injury or threat of material injury to the Community industry.

(8) It seems necessary to illustrate which factors have to be taken into consideration for the determination of market disruption.

(9) The Protocol provides for the imposition of trade diversion measures in situations where an action by China or another member of the World Trade Organisation (hereinafter referred to as 'WTO') taken to prevent or remedy market disruption in that WTO member's market causes or threatens to cause an increase in imports of a product originating in China into the Community.

(10) It is appropriate to lay down guidance as to the factors which may be relevant for determining whether trade diversion has taken place.

(11) It is advisable to define the term 'Community industry'.

([1]) OJ L 349, 31.12.1994, p. 53; Regulation as last amended by Regulation (EC) No 2474/2000 (OJ L 286, 11.11.2000, p. 1).

([2]) OJ L 67, 10.03.1994, p. 89; Regulation as last amended by Regulation (EC) No 1138/98 (OJ L 159, 3.6.1998, p. 1).

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(12) It is upon a request by a Member State or the Commission that a safeguard or trade diversion investigation is initiated; it is necessary to limit the possibility of initiating an investigation concerning safeguard measures on the same subject matter before the lapse of one year after the completion of a previous investigation; there should be no such limitation concerning trade diversion measures.

(13) It is necessary to lay down the manner in which interested parties should be given notice of the information which the Community authorities require, and should have ample opportunity to present all relevant evidence and to defend their interests; it is also desirable to set out clearly the rules and procedures to be followed during the investigation, in particular the rules whereby interested parties are to make themselves known, present their views and submit information within specified time limits, if such views and information are to be taken into account; it is also appropriate to set out the conditions under which an interested party may have access to, and comment on, information presented by other interested parties.

(14) It is necessary to lay down the conditions under which provisional measures may exceptionally be imposed, including that such measures may be imposed by the Commission and only for a period of 200 days.

(15) The Protocol requires that definitive measures may only be imposed 60 days after the receipt of a request for consultations by China and if such consultations have not led to a mutually satisfactory solution.

(16) It seems advisable to foresee — under certain conditions and provided that the operation of the internal market is not disrupted — the possibility of imposing measures limited to one or several Member States.

(17) It seems appropriate to provide that safeguard measures are to lapse after four years unless a review indicates that they should be maintained.

(18) It is advisable to provide for interim reviews, in cases where a Member State or the Commission request to examine the effects of a safeguard or trade diversion measure and the necessity to maintain the measure.

(19) It is necessary to provide for a review of a trade diversion measure when the WTO member taking an action to address market disruption notified the WTO Committee on Safeguards of any modification of the action.

(20) It is expedient to permit the suspension of safeguard and trade diversion measures where there is a temporary change in market conditions which makes the continued imposition of measures temporarily inappropriate.

(21) In order to ensure proper enforcement of measures, it is necessary that Member States monitor, and report to the Commission, the import trade of products subject to investigation or subject to measures and also the amount of duties collected under this Regulation, where applicable.

(22) It is also necessary to provide for consultation of an Advisory Committee at regular and specified stages of the investigation. That Committee should consist of representatives of Member States with a representative of the Commission as chairman. Pursuant to recital 12 of Council Decision 1999/468/EC ([1]), the Advisory Committee does not fall under the scope of application of the abovementioned Council Decision.

(23) It is expedient to provide for verification visits to check information submitted on trends in import volumes and market

([1]) OJ L 184, 17.7.1999, p. 23.

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disruption, such visits being, however, conditional on proper replies to questionnaires being received.

(24) Provision should be made for the treatment of confidential information so that business or governmental secrets are not divulged.

(25) It is essential that provision be made for proper disclosure of essential facts and considerations to parties which qualify for such treatment and that such disclosure be made, with due regard to the decision-making process in the Community, within a time period which permits parties to defend their interests.

(26) It is prudent to provide for an administrative system under which arguments can be presented as to whether measures are in the Community interest, including the interests of consumers, and to lay down the time periods within which such information has to be presented as well as the disclosure rights of the parties concerned.

(27) The Report of the Working Parties on the Accession of China to the WTO (hereinafter referred to as 'the Report') provides for a gradual phasing out of the non-textile quotas which the Community maintains vis-à-vis some products of Chinese origin.

(28) It is therefore appropriate to repeal Annex II to Regulation (EC) No 519/94 to reflect this phasing out.

(29) It is appropriate to increase the quantities already allocated through import licences for 2002 and 2003 in order to take into account the increase foreseen in the phasing-out timetable.

(30) It is appropriate to remove from surveillance measures those Chinese products currently covered and listed in Annex III to Regulation (EC) No 519/94, which should be repealed.

(31) It is appropriate to remove from Annex I to Regulation (EC) No 519/94 those countries who have become members of the WTO and to delegate to the Commission the responsibility for updating the Annex.

(32) It is appropriate, in view of the continued existence of quotas with regard to certain products of Chinese origin, to exclude the application of the provisions concerning safeguard and trade diversion measures for such products during the period of application of these quotas.

(33) The Protocol provides for the expiry of the section related to safeguard and trade diversion measures 12 years after the entry into force of the Protocol; it is therefore necessary to determine that any measures taken under this Regulation shall expire at the latest on 11 December 2013,

HAS ADOPTED THIS REGULATION:

TITLE I

TRANSITIONAL PRODUCT-SPECIFIC SAFEGUARD MECHANISM

Article 1

Principles

1. In cases where products of Chinese origin are being imported into the Community in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the Community industry, a safeguard measure may be imposed in accordance with the following provisions.

2. If an action by China or another member of the WTO to prevent or remedy market disruption in that WTO member's market causes or threatens to cause significant trade diversions into the Community, a trade diversion measure may be imposed in accordance with the following provisions.

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Article 2

Determination of market disruption

1. Market disruption shall exist whenever imports of a product, like or directly competitive with a product produced by the Community industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury to the Community industry.

2. In determining if market disruption exists, only objective factors shall be considered, including:

(a) the volume of imports under investigation;

(b) the effect of such imports on prices for like or directly competitive products in the Community; and

(c) the effect of such imports on the Community industry producing like or directly competitive products.

Article 3

Determination of significant trade diversion

1. Significant trade diversion shall exist when an action by China or another WTO member taken to prevent or remedy market disruption in that WTO member's market causes or threatens to cause an increase in imports of a product from China into the Community.

2. Objective criteria have to be applied in determining whether actions to prevent or remedy market disruption cause or threaten to cause significant diversion of trade. Among the factors to be examined are:

(a) the actual or imminent increase in market share of imports from China into the Community;

(b) the nature or extent of the action taken or proposed by China or other WTO members;

(c) the actual or imminent increase in the volume of imports from China due to the action taken or proposed;

(d) conditions of demand and supply in the Community market for the products at issue; and

(e) the extent of exports from China to the WTO member(s) applying a provisional or definitive safeguard measure.

Article 4

Definition of Community industry

For the purposes of this Regulation, the term ‘Community industry’ shall be interpreted as referring to the Community producers as a whole of the like or directly competitive products operating within the territory of the Community or those of them whose collective output of the like or directly competitive products constitutes a major proportion of the total Community production of those products.

Article 5

Initiation of proceedings

1. An investigation shall be initiated upon request of a Member State or on the Commission's own initiative if it is apparent to the Commission that there is sufficient evidence to justify the initiation of an investigation.

2. The Commission shall be informed by the Member States should trends in imports appear to call for safeguard or trade diversion measures. This information shall contain the evidence available, as determined on the basis of the criteria laid down in Articles 1, 2 and 3, as appropriate. The Commission shall immediately pass this information on to all the Member States.

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3. Prior to the initiation of an investigation the Commission shall notify China of its intention to initiate an investigation. The notification may be accompanied by an invitation for consultations with the aim of clarifying the situation as to matters referred to in Articles 1, 2 and 3, as appropriate, and arriving at a mutually satisfactory solution.

4. Where, after consultation of Member States, it is apparent that there is sufficient evidence to justify initiating a proceeding and any consultations under paragraph 3 have not led to a mutually satisfactory solution, the Commission shall publish a notice in the *Official Journal of the European Union*.

5. The notice of initiation of the proceedings shall announce the initiation of an investigation, the scope of the investigation, indicate the product 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 themselves known, present 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 by the Commission in accordance with Article 6(4).

6. Except for good cause, no investigation concerning safeguard measures as defined in Article 1(1) on the same subject matter shall be initiated less than one year after the completion of a previous investigation.

7. An investigation shall not hinder the procedures of customs clearance.

Article 6

The investigation

1. Following the initiation of the proceeding, the Commission shall commence an investigation. Such investigation shall cover both the existence of increased imports and market disruption or the existence of trade diversion. The existence of increased imports and market disruption shall be investigated simultaneously. For the purpose of a representative finding, an investigation period shall be selected. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

2. The Commission shall seek all information it deems to be necessary to make a determination with regard to the criteria laid down in Articles 1, 2 and 3, as appropriate, and where it considers it appropriate, endeavour to verify this information.

3. The Commission may request Member States to supply information, and Member States shall take whatever steps are necessary in order to give effect to such requests. Where this information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to the Member States, provided it is not confidential, in which case a non-confidential summary shall be forwarded.

4. The interested parties which have made themselves known in accordance with Article 5(5) and the government of China shall be heard if they have, within the period prescribed in the notice published in the *Official Journal of the European Union*, made a written request for a hearing showing that they are an interested party actually likely to be affected by the result of the proceeding and that there are particular reasons why they should be heard.

5. Opportunities shall, on request, be provided for interested parties, which have made themselves known in accordance with Article 5(5), and the Government of China to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Oral information

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provided under this paragraph shall be taken into account by the Commission in so far as it is subsequently confirmed in writing.

6. The interested parties which have made themselves known in accordance with Article 5(5) and the Government of China, may, upon written request, 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, which is relevant to the presentation of their cases and not confidential within the meaning of Article 17, and that it is used in the investigation. Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.

7. For proceedings initiated pursuant to Article 5(4) an investigation shall, whenever possible, be concluded within 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 Union* setting forth the duration of the extension and a summary of the reasons therefor.

Article 7

Imposition of provisional safeguard measures

1. Provisional safeguard measures shall be applied in critical circumstances where delay would cause damage which it would be difficult to repair, after a preliminary determination that imports have caused or threatened to cause market disruption to the Community industry and if the Community interest calls for intervention. The Commission shall take such provisional measures after consultation with Member States or, in cases of extreme urgency, after informing the Member States. In this latter case, consultation shall take place 10 days, at the latest, after notification of the Member States of the action taken by the Commission.

2. Where a Member State requests immediate intervention by the Commission and where the conditions in paragraph 1 are met, the Commission shall, within a maximum of five working days of receipt of the request, take a decision.

3. The Commission shall forthwith inform the Council and the Member States of any decision taken under paragraphs 1 and 2. The Council, acting by a qualified majority, may decide differently within three months of having been informed by the Commission pursuant to this paragraph.

4. Provisional safeguard measures can, *inter alia*, take the form of customs duties and quantitative restrictions of imports originating in China.

5. The duration of the provisional measures shall not exceed 200 days.

6. Should the provisional safeguard measure be repealed because the conditions contained in Articles 1, 2 or 3, as appropriate, were not met, any duties collected as a result of the provisional measures shall be automatically refunded. The procedure laid down in Article 235 et seq. of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([1]) shall apply.

Article 8

Termination without measures

Where, after consultation with Member States, safeguard or trade diversion measures are unnecessary and there is no objection raised

([1]) OJ L 302, 19.10.1992, p. 1; Regulation as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council (OJ L 311, 12.12.2000, p. 17).

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within the Advisory Committee, the investigation or proceeding shall be terminated by Commission decision. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal for a Council regulation that the proceeding be terminated. The proceeding shall be deemed terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

Article 9

Imposition of definitive measures

1. Where the facts as finally established show that the conditions laid down in Articles 1, 2 and 3, as appropriate, are met, and the Community interest calls for intervention in accordance with Article 19, the Commission shall request consultations with the Government of China with a view to seeking a mutually satisfactory solution.

2. If the consultations referred to in paragraph 1 of this Article do not lead to a mutually satisfactory solution within 60 days of the receipt of a request for consultations, a definitive safeguard or trade diversion measure shall be imposed after consultation with Member States.

3. Where the imposition of a measure 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.

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

5. If a Member State refers the Commission's decision to the Council, the Council, acting by a qualified majority, may confirm, amend or revoke the decision.

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

6. Where the interests of the Community so require, the Council, acting by a qualified majority on a proposal from the Commission drawn up in accordance with the terms of this title, may adopt the appropriate measures.

7. Definitive measures can, *inter alia*, take the form of customs duties and quantitative restrictions of imports originating in China.

Article 10

Regional measures

Where it emerges, primarily on the basis of the factors referred to in Articles 2 and 3, respectively, that the conditions laid down for the adoption of measures pursuant to Articles 7 and 9 are met in one or more Member States, the Commission, after having examined alternative solutions, may exceptionally authorise the application of safeguard measures limited to the Member State 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 not disrupt the operation of the internal market. The measures shall be adopted in accordance with the provisions laid down in Articles 7 and 9 respectively.

Article 11

Duration

1. A safeguard measure shall remain in force only for such period of time as may be necessary to prevent or remedy the market disruption. The period shall not exceed four years unless it is extended under Article 12(1).

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2. A trade diversion measure shall be terminated not later than 30 days after the expiration of the action taken by the WTO member involved against imports from China.

Article 12

Review of safeguard measures

1. The initial period of duration of a safeguard measure may be extended provided it is determined that:

— the safeguard measure continues to be necessary to prevent or remedy market disruption,

— and there is evidence that Community producers are adjusting.

2. Extensions shall be adopted in accordance with the procedures of this Regulation applying to investigations and using the same procedures as the initial measures. A measure so extended shall not be more restrictive than it was at the end of the initial period.

3. While any safeguard measure is in operation, consultations shall be held within the Advisory Committee, either at the request of a Member State or on the initiative of the Commission, in order to examine the effects of the measure and to ascertain whether its application is still necessary.

4. Where, as a result of the consultations referred to in paragraph 3, the Commission considers that any safeguard measure should be revoked or amended, it shall proceed as follows:

(a) where the measure was enacted by the Council, the Commission shall propose to the Council that it be revoked or amended. The Council shall act by a qualified majority;

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

Article 13

Review of trade diversion measures

1. Trade diversion measures shall be reviewed when the WTO member who had taken an action on the basis of which a trade diversion measure was imposed under this Regulation has notified the WTO Committee on Safeguards of any modification of that action.

2. Paragraphs 3 and 4 of Article 12 apply *mutatis mutandis* to trade diversion measures.

Article 14

General provisions

1. Provisional or definitive measures shall be imposed by regulation. If the measures take the form of duties, they shall be collected by Member States in the form, at the rate specified and according to the other criteria laid down in the regulation imposing such measures. Such duties shall also be collected independently of the customs duties, taxes and other charges otherwise imposed on imports.

2. Regulations imposing provisional or definitive measures, and regulations or decisions terminating or suspending investigations or proceedings, shall be published in the *Official Journal of the European Union*. Such regulations or decisions shall contain in particular and with due regard to the protection of confidential information, a description of the product and a summary of the facts and considerations relevant to determinations of increased imports and market disruption. In each case, a copy of the regulation or decision shall be sent to known interested parties and the Government of China. The provisions of this paragraph shall apply *mutatis mutandis* to reviews.

3. Special provisions, in particular with regard to the common definition of the concept of origin, as contained in Regulation (EEC) No 2913/92, may be adopted pursuant to this Regulation.

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4. In the Community interest, measures imposed pursuant to this Regulation may, after consultation of the Advisory Committee, be suspended by a decision of the Commission for a period of nine months. The suspension may be extended for a further period, not exceeding one year, if the Council so decides, acting by simple majority on a proposal from the Commission. Measures may only be suspended where market conditions have temporarily changed to an extent that market disruption would be unlikely to resume as a result of the suspension. Measures may, at any time and after consultation, be reinstated if the reason for suspension is no longer applicable.

5. Member States shall report to the Commission every month on the import trade of products subject to investigation and to measures, and on the amount of duties collected pursuant to this Regulation.

Article 15

Consultations

1. Any consultations provided for in this Regulation except those provided for in Article 5(3) and Article 9(1) shall take place within an Advisory Committee, which shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately on request by a Member State or on the initiative of the Commission, and in any event within a period of time which allows the time limits set by this Regulation to be adhered to.

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

3. Where necessary, consultation may be in writing only; in that event, the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation which the chairman shall arrange, provided that such oral consultation can be held within a period of time which allows the time limits set by this Regulation to be adhered to.

Article 16

Verification visits

1. The Commission shall, where it considers it appropriate, carry out visits to examine the records of exporters, producers, importers and representative associations of exporters, producers or importers and the Community industry, to verify information provided on the existence of increased imports and market disruption or trade diversion. In the absence of a proper and timely reply a verification visit may not be carried out.

2. The Commission may carry out investigations in third countries, provided that it obtains the agreement of the parties concerned, that it notifies the government of the country in question and that the latter does not object to the investigation. As soon as the agreement of the parties concerned has been obtained, the Commission should notify the country of origin and/or export of the names and addresses of the parties to be visited and the dates agreed.

3. The parties concerned shall be advised of the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, though this should not preclude requests made during the verification for further details to be provided in the light of information obtained.

4. In investigations carried out pursuant to paragraphs 1, 2 and 3, the Commission shall be assisted by officials of those Member States which so request.

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Article 17

Confidentiality

1. Any information which is by nature confidential, (for example, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he/she has acquired the information) or which is provided on a confidential basis by parties to an investigation shall, if good cause is shown, be treated as such by the Community authorities.

2. Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. Those summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarisation is not possible must be provided.

3. If it is considered that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information available or to authorise its disclosure in generalised or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct. Requests for confidentiality shall not be rejected arbitrarily.

4. This Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken pursuant to this Regulation are based, nor disclosure of the evidence relied on by the Community authorities in so far as is necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interests of the parties concerned that their business or governmental secrets should not be divulged.

5. The Commission, the Council and the Member States, or the officials of any of these, shall not reveal any information received pursuant to this Regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier. Exchanges of information between the Commission, the Council and Member States, or any information relating to consultations made pursuant to Article 12, or consultations described in Article 5(3) and Article 9(1), or any internal documents prepared by the authorities of the Community or its Member States, shall not be divulged to the public or any party to the proceeding except as specifically provided for in this Regulation.

6. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

Article 18

Disclosure

1. The interested parties and the Government of China may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures, and the disclosure shall be made in writing as soon as possible thereafter.

2. The parties mentioned in paragraph 1 may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive safeguard or trade diversion measures, or the termination of an investigation or proceedings without the imposition of measures, particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures.

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3. Requests for final disclosure shall be addressed to the Commission in writing and be received, in cases where a provisional measure has been applied, not later than one month after publication of the imposition of that measure. Where a provisional measure has not been applied, parties shall be provided with an opportunity to request final disclosure within time limits set by the Commission.

4. Final disclosure shall be given in writing. It shall be made, due regard being had to the protection of confidential information, as soon as possible and, normally, not later than one month prior to a definitive decision or the submission by the Commission of any proposal for final action pursuant to Articles 8 and 9. Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision which may be taken by the Commission or the Council but where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

5. Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

Article 19

Community interest

1. A determination as to whether the Community interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers; and a determination pursuant to this Article shall only be made where all parties have been given the opportunity to make their views known pursuant to paragraph 2. Measures may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures.

2. In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Community interest, the importers and their representative associations, representative users and representative consumer organisations may, within the time limits specified in the notice of initiation of the investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this paragraph, and they shall be entitled to respond to such information.

3. The parties which have acted in conformity with paragraph 2 may request a hearing. Such requests shall be granted when they are submitted within the time limits set in paragraph 2, and when they set out the reasons, in terms of the Community interest, why the parties should be heard.

4. The parties which have acted in conformity with paragraph 2 may provide comments on the application of any provisional measures imposed. Such comments shall be received within one month of the application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.

5. The Commission shall examine the information which is properly submitted and the extent to which it is representative, and the results of such analysis, together with an opinion on its merits, shall be transmitted to the Advisory Committee. The balance of views expressed in the Committee shall be taken into account by the Commission in any proposal made pursuant to Article 9.

6. The parties which have acted in conformity with paragraph 2 may request the facts and considerations on which final decisions are likely to be taken to be made available to them. Such information shall be

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made available to the extent possible and without prejudice to any subsequent decision taken by the Commission or the Council.

7. Information shall only be taken into account where it is supported by actual evidence which substantiates its validity.

TITLE II

QUOTAS FOR CERTAIN PRODUCTS ORIGINATING IN CHINA

Article 20

Principles and phasing-out of quotas

1. Imports into the Community of products originating in China shall take place freely, except for a limited number of products originating in China which, owing to the sensitivity of certain sectors of the Community industry, are subject to quantitative quotas at Community level.

2. These quotas will be applicable until 2005, at the annual levels provided in the table of Annex I. This new Annex replaces Annex II to Regulation (EC) No 519/94.

Article 21

Attribution of import licences

1. The allocation method for the additional quantities for the years 2002 and 2003 resulting from the quota increases provided for in Annex II and an appropriate period of the time for their utilisation shall be established by a Commission Regulation.

2. For the subsequent years, the procedures established by Council Regulation (EC) No 520/94 of 7 March 1994 establishing a Community procedure for administering quantitative quotas [1] will be applicable to the allocation of import licenses for the quotas referred to in Annex I.

TITLE III

GENERAL AND FINAL PROVISIONS

Article 22

Repeal and amendment of certain provisions

1. Article 1(2) second indent, Article 1(3), Annex II listing the quotas for certain products originating in China, Annex III listing the products from China subject to surveillance measures and the references to Annex III in Article 1(4) and Article 4(3)(a) of Regulation (EC) No 519/94 are hereby repealed.

2. Albania, Georgia, China, Kyrgyzstan, Moldova and Mongolia shall be removed from Annex I to Council Regulation (EC) No 519/94.

3. The Commission may, after consultation of the Committee established under Article 4 of Regulation (EC) No 519/94, amend Annex I to Regulation (EC) 519/94 by Commission regulation, in order to remove countries from the list of third countries contained in this Annex when they become members of the WTO.

Article 23

Final provisions

1. This Regulation shall be without prejudice to the operation of the instruments establishing the common organisation of agricultural markets or of Community or national administrative provisions derived

[1] OJ L 66, 10.3.1994, p. 1; Regulation as last amended by Regulation (EC) No 138/96 (OJ L 21, 27.1.1996, p. 6).

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therefrom or of the specific instruments applicable to goods resulting from the processing of agricultural products; it shall operate by way of complement to those instruments.

2. The provisions of Title I shall not apply to those products in respect of which such instruments as referred to in paragraph 1 provide for the application of quantitative import restrictions.

3. The provisions of Title I shall not apply to products subject to quotas set out in Annex I while such quotas are in force.

4. Measures imposed under this Regulation shall at the latest expire on 11 December 2013.

Article 24

Entry into force

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*. Title I shall expire on 11 December 2013.

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

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ANNEX I

Phasing-out timetable of industrial (non-textile) quotas on imports originating in China

Product description	HS/CN code	January to December 2003	January to April 2004	May to December 2004	2005
Footwear	ex 6402 99 (1)	47 480 959	18 201 035	58 538 970	Removal
	6403 51 6403 59	3 712 459	1 423 109	3 183 457	Removal
	ex 6403 91 (1) ex 6403 99 (1)	14 698 530	5 634 436	13 992 904	Removal
	ex 6404 11 (2)	22 106 953	8 474 332	18 901 998	Removal
	6404 19 10	38 683 955	14 828 849	33 502 413	Removal
Tableware, kitchenware of porcelain or china	6911 10	73 139	28 036	67 905	Removal
Ceramic tableware, kitchenware, other than of porcelain or china	6912 00	55 334	21 212	58 124	Removal

(1) Excluding footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

(2) Excluding:

(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bars or the like, with a non-injected sole;

(b) footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

ANNEX II

Increase in the quotas for 2002 and 2003

Product description	HS/CN code	2002	2003
Footwear	ex 6402 99 (1)	10,25 %	21,28 %
	6403 51 6403 59	15,5 %	32,83 %
	ex 6403 91 (1) ex 6403 99 (1)	10,25 %	21,28 %
	ex 6404 11 (2)	10,25 %	21,28 %
	6404 19 10	10,25 %	21,28 %
Tableware, kitchenware of porcelain or china	6911 10	32,25 %	52,09 %
Ceramic tableware, kitchenware, other than of porcelain or china	6912 00	32,25 %	52,09 %

(1) Excluding footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

(2) Excluding:

a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bats or the like, with a non-injected sole;

b) footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.