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Contents

	Page
Proposed Council directive on the alignment of postal rates for letters up to 20 grammes and postcards	2
Proposal for a Council directive on the approximation of laws, regulations and administrative instructions concerning dangerous substances and preparations	4
Proposal for a Council regulation on protection against dumping or the payment of bounties or subsidies by countries not members of the European Economic Community	8
Draft Council regulation on the gradual introduction of common procedure for the administration of import quotas	22

**Proposed Council directive on the alignment of postal rates
for letters up to 20 grammes and postcards**
(submitted by the Commission to the Council on 15 April 1965)

Explanatory Memorandum

I. GENERAL

The Ministers for Postal Services and Telecommunications met in Brussels on 7 and 8 September 1964. Following this meeting the Commission decided to begin work on the harmonization of postal and telecommunications rates in pursuance of Article 100. This is in accordance with the desire expressed at the Messina Conference that developments in the field of postal services should reflect those taking place in the economic sphere.

The Commission is proposing action under Article 100 because there are discrepancies in the postal charges of Member States which cause distortions and impede the working of the Common Market.

After consulting experts from the member countries the Commission has drafted a directive on the harmonization of postal rates for letters up to 20 grammes and postcards. The national postal departments had in fact already agreed in principle to the establishment of standard rates for such mail.

**II. COMMENTARY
ON THE DIRECTIVE**

The object of the directive is to fix standard rates both for postal services within each Member State and for intra-Community services. This will be the first step towards a standard rate within the Community for all classes of mail.

Postal rates are calculated by Member States mainly on the basis of operating costs. It was therefore necessary to take the differences in such costs into account, since expenditure on personnel represents, according to expert opinion, 80 % of running costs.

Provision has therefore been made on one hand for the harmonization of operational accounts. This will allow a semi-automatic adjustment of rates whenever a marked variation in running costs occurs. An amount of the order of 15 % seems a reasonable basis. Provisionally this percentage will only be taken into account in the case of staff costs. Member States experiencing a variation of this order will inform other States and the Commission. The Council, acting by qualified majority, will then issue directives for the desired adjustment. Qualified majority will give the system the desired flexibility and allow harmonious development in this field. However, a period of 18 months is provided for to enable certain Member States to adapt to the new rates.

Again with the object of making the new arrangements flexible, it has been proposed that the new directive shall not come in force for a further year as regards adjustments to internal postage rates.

Member States will therefore not introduce the single rate until 1 January 1968, rates in gold francs being converted into national currencies, applying the methods of rounding off used in the various national systems.

**Proposed Council directive on the alignment of postal rates for letters
not exceeding 20 grammes and for postcards**

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof;

Having regard to the Commission's proposal;

Whereas postal services play an important role in a highly industrialized group of States such as the European Economic Community;

Whereas postal rates are an important aspect of economic policy in the broad sense and differences between these rates may impede the establishment and functioning of the Common Market by distorting competition system and diverting postal traffic;

Whereas such obstacles may be eliminated by introducing standard rates for all Member States;

Whereas such an alignment of postal rates involves the harmonization of regulation

weight, dimensions, packing and handling of postal material;

Whereas the adoption by Member States of equal postal rates for letters up to 20 grammes and for postcards is the first important step towards a harmonization of rates throughout the Community;

Whereas variations in certain elements of costs in the postal services, especially costs relating to staff, may necessitate adjustment of postal rates;

Whereas the establishment of precise criteria is a necessary preliminary to any modification of rates and calls for a procedure to facilitate the adjustment of such rates; and whereas in the first stage, pending harmonization of the operational accounts of the Member States' postal services, a significant variation in staff costs is the most valid criterion for such an adjustment;

Whereas such an adjustment may create difficulties for certain Member States, which should be palliated by allowing a certain time for adaptation.

Has adopted the present directive :

Article 1

The purpose of this directive is to establish throughout the European Economic Community postal rates for letters of the first weight category and for postcards.

Article 2

In this directive,

a) internal postal traffic means the dispatch, transport and delivery of postal material within a Member State;

b) intra-Community post means the dispatch, transport and delivery of postal material posted in one Member State and going to another Member State.

Article 3

1. Member States, for their internal and intra-Community traffic in letters of the first weight category and postcards, shall apply postal charges which expressed in units of account are identical.

2. The monetary unit taken as the unit of account in this directive is the gold franc (100 centimes) weighing 10/31 of a gramme 900 fine.

3. The rates expressed in gold francs shall be as follows :

i) 18 gold centimes for letters up to 20 grammes;

ii) 13 gold centimes for postcards.

4. These rates shall be converted into national currency by the Member States, using their individual systems of rounding off.

5. No rounding off shall be more than 10 % higher or lower than an exact conversion.

Article 4

If in any Member State a change of the order of 15 % occurs in running costs as compared with those obtaining at the time of issue of this directive or of any subsequent rate adjustments, they shall inform the other Member States and the Commission.

2. In the case provided for in the foregoing paragraph, the Council, acting on the proposal of the Commission by qualified majority, may issue within two months any directive necessary for the adjustment of rates.

3. Before the end of the transition period the Member States shall harmonize their operational accounts.

Provisionally, the procedure set out in the foregoing paragraphs may be followed by any Member State experiencing a variation of 15 % solely in the staff costs of its postal services.

Article 5

From the time of receiving a directive on the adjustment of postal rates, any Member State, after notifying the Commission and the other Member States, may maintain for an adjustment period of not more than 18 months the postal rates in force at the time of this modification.

Article 6

Member States shall take the necessary measures to give effect to this directive before 31 December 1966, and shall inform the Commission forthwith of the action taken.

A further period of one year from the date stipulated in the foregoing paragraph shall be allowed to enable the Member States to bring their internal postal rates into line with those prescribed in this directive.

Article 7

This directive is addressed to the Member States.

**Proposal for a Council directive on the approximation of laws,
regulations and administrative instructions
concerning dangerous substances and preparations
(outline directive)**

(submitted by the Commission to the Council on 10 May 1965)

Explanatory Memorandum

I. GENERAL CONSIDERATIONS

The present directive is intended as a first step towards the approximation of national regulations concerning dangerous chemical substances and preparations.

These are complex regulations designed to safeguard the life and health of the population, and especially of those who handle dangerous substances in the course of their employment. In unifying these regulations, therefore, the consideration of protection must be kept to the fore; at the same time care must be taken to safeguard the free movement of these substances and to regulate their handling.

The directive defines the substances and preparations concerned, indicating their dangerous nature. It provides for the alignment of national regulations by means of supplementary directives and for co-operation between Member States in this field.

**II. COMMENTARY
ON THE ARTICLES
OF THE DIRECTIVE**

Chapter I - Scope and definitions

Article 1

It is stipulated in this article that the directive covers all dangerous substances and preparations; however, radioactive substances, medicinal preparations and narcotics remain outside the scope of the directive, because they are generally subject to special regulations, which in most

cases have in fact already been aligned in Europe.

Nor is the directive applicable to the transport of dangerous substances and preparations. This is an understandable omission, since there have long existed special regulations governing the transport of dangerous goods, drawn up by the Member States in pursuance of international conventions.

Article 2

This article defines the dangerous substances and preparations.

It defining the term "dangerous substances", it has been borne in mind that chemical elements are scarcely ever obtainable in a perfectly pure state.

Two classes of substances and preparations are described as dangerous. The first comprises substances and preparations which are explosive or inflammable. The second covers toxic, noxious, corrosive and irritant substances and preparations. These definitions are based on the present state of scientific and technical knowledge.

Article 3

This article provides for the classification of dangerous substances and preparations according to the degree and specific nature of the risks they present.

Classification by these criteria will in the ordinary way be done in the supplementary directives [see Art. 4(1)]. However, this article will also be applicable in cases where dangerous substances and preparations which are not mentioned in the supplementary directives but which are to be classified at least provisionally by the national bodies are subsequently put on the market.

Chapter II - Supplementary directives

Article 4

This article indicates the fields in which national regulations are to be aligned, for the information of the circles concerned, in particular industrial and commercial circles. The supplementary directives are intended — and this will be the most important aim in each case and the most difficult to achieve — to introduce a classification of the substances and preparations according to the nature and extent of the risks they present. They will also include, first, regulations on packaging and labelling; and, secondly, it may also be necessary to include certain restrictions on the handling of such substances and preparations (for example, in the case of preparations containing benzol) or the procedures to be followed for their approval or distribution.

Article 5

This article is the essential part of the directive. It obliges the Member States to authorize the importation and marketing of dangerous substances and preparations covered by this directive and fulfilling all the conditions laid down in the various supplementary directives.

The Member States must also be able, at their discretion, to introduce or as the case may be maintain any safety measures they consider necessary for the marketing and handling of dangerous substances and preparations, such as provisions to the

effect that such dangerous substances or preparations may be issued only in specified quantities or to duly authorized persons or laying down special conditions for stock-taking or warehousing, or prescribing special measures, where appropriate, to avoid any possibility of confusion. However, if the supplementary directives referred to under Article 4 already contain provisions on this subject, the latter will of course be binding on the Member States.

Article 6

This article lays down the procedure to be followed if there is a difference of opinion among Member States as to whether or not the dangerous substances and preparations satisfy the conditions laid down in the directives referred to under Article 4.

Chapter III - Final provisions

Article 7

In view of expected developments in the chemical industry, it is essential that the regulations on dangerous substances and preparations should be reviewed periodically, and amended and supplemented in the light of scientific and technical advances.

For this reason, Article 7 makes provision for procedure whereby the directives may be kept up to date in this respect.

Articles 8-10

These articles do not call for comment.

Proposal for a Council directive on the approximation of laws, regulations and administrative instructions concerning dangerous substances and preparations

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof;

Having regard to the Commission's proposal;

Having regard to the opinion of the European Parliament;

Having regard to the opinion of the Economic and Social Committee;

Whereas any regulations on the marketing and use of dangerous substances and preparations must have as their object the protection of the life and health of the population, and especially of those who handle dangerous substances in the course of their work;

Whereas disparities between national rules in this field are a hindrance to trade in such substances and preparations and their use within the Community; whereas such disparities thus have a direct effect on the development and working of the Common Market;

Whereas it is therefore essential to remove these obstacles and for this purpose to bring into alignment the national laws, regulations and administrative instructions governing these dangerous substances and preparations;

Whereas, since this is a wide field and a large number of detailed measures will be necessary in order to bring regulations into line, it would appear advisable, first, to define the scope of the supplementary directives;

Whereas it is feasible to harmonize forthwith the laws, regulations and administrative instructions on the classification, packaging and labelling of dangerous substances; whereas it is nevertheless desirable to draw up a supplementary directive for this purpose, to be adopted at the same time as the present directive;

Whereas it is at the same time necessary to ensure, first, that dangerous substances and preparations covered by this directive and fulfilling the conditions laid down in the supplementary directives can freely be offered for sale in all the Member States; whereas, moreover, the Member States must retain the right to make their own arrangements for the distribution and use of these substances and preparations where such arrangements have not already been laid down in the supplementary directives;

Whereas, without prejudice to Articles 169 and 170 of the EEC Treaty, it is desirable to provide for arrangements whereby the Member States can co-operate in settling any disputes which may arise between their competent authorities in connection with the marketing of dangerous substances and preparations;

Whereas the approximation of national rules provided for in the present directive must be without prejudice to Articles 31 and 32 of the EEC Treaty,

Has adopted the present directive :

CHAPTER I

Scope and definitions

Article 1

1. The present directive shall govern the marketing and use of dangerous substances and preparations.

2. Unless otherwise stipulated in the supplementary directives (see Article 4), the present directive shall not apply to radioactive substances, medicinal preparations or narcotics or to the use thereof.

3. The present directive is not concerned with regulations on the transport of dangerous substances and preparations by rail, road, inland waterway, sea or air.

Article 2

1. For the purposes of the present directive, the following definitions shall apply :

a) *Substances* : chemical elements and their compounds either in their natural state or processed;

b) *Preparations* : mixtures or solutions composed of two or more substances.

2. For the purposes of the present directive, the following substances and preparations shall be considered "dangerous" :

a) substances and preparations liable to explode when exposed to flame or more sensitive to percussion or friction than dinitrobenzene (explosive substances and preparations);

b) substances and preparations which, when brought into contact with other substances, and particularly with inflammable substances, have a strong exothermic reaction (combustive substances and preparations);

c) substances and preparations liable to become heated and to ignite when exposed to air at normal temperatures without the application of force or pressure;

solid substances and preparations liable to ignite easily when exposed to heat and which continue to burn or to be consumed after the source of heat has been removed; liquid substances and preparations whose flashpoint is below 21°C;

gaseous substances and preparations, inflammable when exposed to air at normal pressures;

substances and preparations which, when brought into contact with water or damp air, give off highly inflammable gases in dangerous quantities (highly inflammable substances and preparations);

d) liquid substances and preparations whose flashpoint lies between 21°C and 55°C (inflammable substances and preparations);

e) substances and preparations which, when inhaled, ingested or injected, may cause serious, acute or chronic danger to health or even cause death (toxic substances and preparations);

f) substances and preparations which, when inhaled, ingested or injected, may cause a lesser degree of harm (noxious substances and preparations);

g) substances and preparations which may destroy living tissues when brought into contact with them (corrosive substances and preparations);

h) non-corrosive substances and preparations which on immediate, prolonged or repeated contact are liable to cause inflammation of the skin or mucous membranes (irritant substances and preparations).

Article 3

1. The classification of dangerous substances and preparations according to the degree and the specific nature of the danger they present shall be based on the categories described in Article 2.

2. The substances must be classified by the highest degree of danger they present; the classification of a preparation will depend either on the danger presented by its most dangerous constituent, or on the danger presented by the mixture of constituents in cases where the danger is increased or lessened by reason of their being mixed.

CHAPTER II

Supplementary directives

Article 4

1. The detailed classification of dangerous substances and preparations shall be laid down in supplementary directives.

2. The supplementary directives shall also deal *inter alia* with the following matters:

a) packaging requirements;

b) labelling;

c) methods of obviating any danger of confusion with harmless products;

d) the extent to which the marketing and use of dangerous substances and prep-

arations may be prohibited, restricted or made subject to special conditions in order to protect workers or third parties.

Article 5

1. The Member States shall not hinder the import and marketing of dangerous substances and preparations covered by this directive and meeting the requirements laid down in the directives referred to under Article 4.

2. National regulations concerning the distribution and use of dangerous substances and preparations, and in particular those regulations which make the distribution and use thereof subject to personal qualifications, shall be unaffected by the present directive, provided that they do not run counter to the directives referred to in Article 4.

Article 6

1. Should a Member State consider that dangerous substances or preparations covered by the present directive and imported from another Member State fail to meet the requirements laid down in the supplementary directives referred to in Article 4, it shall make representations to the other Member State concerned. If the competent authorities of the two Member States are unable to reach agreement, they shall so inform the Commission of the European Economic Community. The latter shall call in experts designated by the Member States. The Commission shall draw up a report on the results of the inquiry and propose measures whereby the difficulties may be overcome.

2. In the cases referred to in paragraph 1, the competent authorities of each Member State may, without prejudice to Article 5(1), prohibit the import and marketing of the said dangerous substances or preparations until such time as the dispute is settled, in cases where the substances or preparations concerned present special hazards to those handling them in the course of their work or to third parties.

CHAPTER III

Final provisions

Article 7

At the request of each Member State, and at least once a year, the Commission shall convene experts designated by the

Member States, in order to hold an exchange of views on the application of this directive and of the supplementary directives referred to in Article 4. The experts shall also discuss any amendments or additions proposed by the Member States or by the Commission in the light of technical advances in order to improve the protection of those handling such substances and preparations in the course of their work and of third parties.

Article 8

The Member States shall inform the Commission, in time to allow it to submit comments, of any later draft laws, regula-

tions or administrative instructions which they contemplate adopting on the subjects covered by the present directive.

Article 9

The Member States shall take the necessary steps to comply with the present directive, within from the date of its notification and shall inform the Commission thereof immediately.

Article 10

The present directive is addressed to the Member States.

Proposal for a Council regulation on protection against dumping or the payment of bounties or subsidies by countries not members of the European Economic Community

(submitted by the Commission to the Council on 6 May 1965)

Explanatory Memorandum

INTRODUCTION

1. Article 113 of the Rome Treaty stipulates that, after the expiry of the transitional period, the common commercial policy shall be based on uniform principles, particularly in regard to protective commercial measures, including measures to be taken in cases of dumping or subsidies.

The preliminary conditions for the adoption of a common policy in this field are to be fulfilled during the transitional period. The Commission is required to make the necessary proposals.

2. In compliance with this mandate, the Commission submitted to the Council on 25 September 1962 an Action Programme on the common commercial policy, concerned, *inter alia*, with the alignment of measures of protection implemented by the States, including measures against dumping or the payment of bounties or subsidies⁽¹⁾.

3. Under this Action Programme, the Commission submitted a general proposal to the Council in November 1963 for a

Council regulation laying down common principles and a Community procedure for EEC protective measures against abnormal practices by non-member countries.

So far, the Council has taken no decision on this proposal.

4. However, the Commission is convinced of the need for the early adoption of effective measures of commercial protection at Community level, and it believes that Community defence against dumping and the payment of bounties or subsidies, which are the most common of the abnormal practices, is of vital importance.

a) Legislation in the various Member States differs considerably in this field. In three of them there is not anti-dumping legislation, properly so-called, but only safeguard clauses of quite general scope. The Community, as such, does not possess the necessary legal bases for the adoption — if necessary, the immediate adoption — of effective measures of protection. Since liberalization of the free movement of goods within the Community has now reached an advanced stage, this situation is bound to be harmful to the Community

⁽¹⁾ See official gazette No. 90, 5 October 1962.

at a time when it is seriously threatened by practices such as dumping and the payment of bounties or subsidies. If products which were the object of such practices were imported through one Member State, this might result in the circumvention of the national protective measures taken by another Member State. It is true that, by invoking Article 115, the States concerned might remedy this situation to a certain extent. However, recourse to this article always constitutes a step backwards in progress towards the Common Market, jeopardizing the harmonious and progressive integration of the economies of the Member States.

This does not necessarily mean that the uniform legal bases will be used frequently, once they are established. In practice, anti-dumping or countervailing duties are being used less and less frequently. The importance of Community anti-dumping legislation lies mainly in its preventive influence, inasmuch as it is itself an effective safeguard for Community producers. There can be little doubt, therefore, that the adoption of common rules in this field would already constitute a moderating factor in the conduct of commercial relations between the EEC and non-member countries.

b) The need for Community legislation is particularly pressing because of the Kennedy round of multilateral tariff negotiations. All the important trading nations taking part in these negotiations possess anti-dumping legislation which, in most cases, has proved its effectiveness over a period of many years. Only the Community lacks the means required for immediate and effective action. Now, the worldwide tariff reductions which the Community is advocating could well increase its vulnerability to dumping practices and the payment of bounties or subsidies. It therefore follows that the Community must possess suitable machinery in this field to enable it to take uniform action.

c) Moreover, the anti-dumping legislation enacted by the various Contracting Parties to the GATT will itself form the subject of special negotiations within the framework of the Kennedy round. From this standpoint, too, it appears essential for the Community to adopt a common position on this subject: by adopting anti-dumping legislation in conformity with GATT principles the Community should be able to set an example and encourage its trading partners to review their rules, some of

which are out of date and harmful to Community exports.

5. The Commission's views on this subject have frequently found support in various quarters. Thus, as early as 1963, the Special Committee referred to in Article 111 recommended the establishment, at Community level, of effective machinery so as to make immediate counter-action possible should non-member countries act arbitrarily in this field. Industrialists in the Community have expressed their wish to see the Community endowed with the same protective legislation as its trading partners. The Union of Industries of the European Community has recently re-emphasized the great importance it attaches to the introduction by the Community in the near future of common principles and a Community procedure to safeguard Community interests against dumping and the payment of bounties or subsidies. During the discussions on the initial proposal for protective measures put forward in November 1963, the delegations of the Member States agreed in the main with the Commission's view that it was essential to adopt a common position in this field. For this reason, the Committee of Permanent Representatives recommended, at its meeting on 23 July 1964, that the Commission should work out proposals on:

a) speeding up the harmonization of national legislation.

b) the creation of more effective consultation machinery,

c) the immediate implementation of Community decisions by the national authorities.

6. The Commission has endeavoured to find a solution along these lines. Its departments have held a large number of meetings with experts from the Member States, which have resulted in the present set of proposals, most of which have been favourably received by the competent government departments in the Member States. Taking into account the conclusions reached at these meetings, it has made provision for common anti-dumping rules, setting up common legislation of the necessary scope in all the Member States and establishing the legal bases essential to protect the Community, as such, against dumping and the payment of bounties or subsidies. The procedure worked out is based on strengthened consultation arrangements. Finally, the legal form proposed

— the regulation, which will allow of implementing acts also in the form of regulations — takes into account the desire expressed by the Committee of Permanent Representatives that any concrete Community decision on the establishment of an anti-dumping or countervailing duty by the Community could be given immediate effect by the national authorities.

7. The Commission stresses that the present proposal is not intended to affect the proposal it laid before the Council in November 1963 on EEC protective measures against abnormal practices by non-member countries. It takes the view that the present proposal on protective measures against dumping and the payment of bounties or subsidies constitutes special legislation as distinct from the more general proposal on protective measures.

THE SCOPE OF THE REGULATION

8. The scope of the proposed regulation covers only dumping and the payment of bounties or subsidies by countries not members of the European Economic Community [Art. 1(1)]. A clear distinction is thus made between the scope of the present regulation and that of Article 91 of the EEC Treaty, which concerns dumping within the Community. Moreover, the Commission has wished to respect special commitments resulting from agreements concluded between the Community and non-member countries, including association agreements. For this reason, it has stressed that the regulation cannot prejudice any special rules laid down in agreements concluded between the Community and non-member countries.

9. The substantive provisions contained in the proposed regulation, defining dumping, bounties or subsidies and the permissible counter-measures (Title I), correspond to the strict rules contained in Article VI of the General Agreement (see Sect. 10). Normally the Member States are bound by the latter only vis-à-vis the other GATT Contracting Parties. For this reason, Article 1(2) of the proposal stipulates that the provisions contained in Title I shall not be an impediment to the adoption of special measures, in cases where countries not party to the General Agreement are responsible for the practices in question. Accordingly, the Community and (under Article 24 of the proposal) the

Member States retain their present freedom of action: they may, at their discretion, ignore Title I in respect both of the conditions to be fulfilled for the adoption of protective measures and of their content and of implementing procedures, but they may also, if they so prefer, adhere to the strict rules set out in this Title. This freedom of action will naturally be restricted by any agreements concluded with non-member countries not belonging to GATT which include an undertaking to apply Title I. The Commission considers that such agreements could well constitute a moderating factor in the conduct of commercial relations between the EEC and non-member countries. It therefore regards them, in principle, as desirable.

Dumping and anti-dumping duties

10. The provisions contained in Articles 2 to 7 constitute the substantive legal bases for the adoption of protective measures against dumping and the payment of bounties or subsidies in respect of products imported into the Community.

As has already been stated in Section 9 these provisions are an exact replica of the rules contained in Article VI of the GATT and in the addenda to Annex I. It follows that the powers of the national and Community authorities will thus be exercised without infringement of the commitments undertaken in the General Agreement on Tariffs and Trade.

11. Thus, anti-dumping duties may be charged only in cases where a given product is sold at a dumping price, i.e. where its price has been fixed by overt or hidden manipulation, and where the importation of this product into the Community is harmful to Community producers.

12. The "normal value" to be taken as a yardstick whereby dumping can be ascertained is taken to be the commercial price for a like product in the exporting country or the country of origin; in the absence of such a price in the said country, the comparison is based on the price for the like product for export to another country or on the cost of production of the product [Art. 3(1)].

Consequently, the margin of dumping can in no circumstances be calculated by taking as the "normal value" the price of the like product produced or manufactured

in any given Member State of the Community or in the Community taken as a whole.

13. Anti-dumping duties may also be imposed [Art. 3(2)] where dumping takes place not at the time when the goods are imported but subsequently, i.e. when the importer "resells" the product concerned at a price below both that charged in the foreign country and the price invoiced by the exporter. This is known as "hidden" dumping, also mentioned by GATT in its addendum to Article VI. By making explicit provision for the two cases which are commonest at the present time, i.e. reselling at a loss, in the case of which some form of compensation is paid by the exporter to the importer, or reselling at a loss by an importer associated with an exporter, the Commission has wished to exclude all other cases which do not come under the heading of hidden dumping, such as end-of-season clearing, and sales of oddments and of articles no longer in fashion.

14. An anti-dumping duty can be imposed on a dumped product — whether the case is one of dumping on import or of "hidden" dumping — only in cases where such dumping causes or threatens serious injury to an industry established in the Community or materially retards the establishment of such an industry [Art. 2(a)].

15. As regards the meaning of the term "industry", according to the interpretation given by GATT itself⁽¹⁾, it includes such activities as agriculture, forestry, mining, etc. as well as industry proper.

16. In order to establish whether an injury is "serious" or not, it will be incumbent on the Commission, assisted by the Advisory Committee referred to in Article 14, to carry out a case-by-case analysis of all factors involved and to assess their effect. It would certainly be desirable for the Commission and the Advisory Committee to lay down general criteria, at some time in the future, for the purposes of assessing what constitutes serious injury in this context, on the basis of past experience and of the general conclusions reached by the GATT experts. It should be noted, however, that it is very difficult and often impossible to define the term "serious injury" and to formulate exact rules.

Bounties, subsidies and countervailing duties

17. The legal bases for the application of countervailing duties are provided by Articles 2 and 5 of the proposal. In this field, too, the Commission has adhered to the rules contained in Article VI of the GATT. Although in certain foreign countries there is no legal requirement that serious injury must have been caused or threatened to an industry before a countervailing duty can be charged, the Commission has considered that, as is explicitly stipulated in Article VI(6 a) of the GATT, this condition must be fulfilled before countervailing duties are levied, just as it must be to warrant the imposition of anti-dumping duties.

18. As regards the nature of the bounties or subsidies, the Commission takes the view that Article 5 should cover not only the various known practices but also any which might be devised in the future. This article states that the "bounties" and "subsidies" to be taken as a basis for the levying of countervailing duties are those bestowed, directly or indirectly, in the exporting country or the country of origin, on whatever basis, and whatever the nature or manner of payment, on the production, manufacture, exportation or transport of the said product. This means that although the Commission has been guided by the conclusions reached by GATT on this subject⁽¹⁾, it has taken the view that the terms "bounties" and "subsidies" should cover not only actual payments but also practices having equivalent effect, such as the use of multiple exchange rates which, in certain cases, may be regarded as being indirect subsidies, granted in order to give a country's exports a privileged position on foreign markets.

19. The Commission does not consider that the provisions contained in Articles 6 and 7 call for special comment, since they are rules taken from the GATT.

For example, the amount of the anti-dumping duty may not exceed the margin of dumping, nor the amount of the countervailing duty the amount of the bounty or subsidy.

Furthermore, it is stipulated in Article 7 that in no circumstances shall any product be subject to both anti-dumping and countervailing duties to remedy the same situation resulting from dumping, bounties or subsidies.

¹⁾ See "Index to the General Agreement", 1959 edition.

⁽¹⁾ See "Anti-dumping Duties and Countervailing Duties: Report of Group of Experts", Geneva, March 1961.

20. It follows that in Title I the Community assumes a set of commitments which confirm its intention of observing the general rules of international trade laid down by the GATT. It will thus be in a position, when subsequently negotiating tariff concessions, to call on non-member countries to adopt the same attitude and to obtain undertakings that the tariff reductions negotiated will not be distorted by protectionist measures disguised as protection against unfair practices.

COMPLAINTS AND THE EXAMINATION OF THE FACTUAL SITUATION

21. The rules of procedure are laid down in Title II of the proposal. Normally, this procedure will be set in motion by the lodging of a complaint. This complaint may be lodged by any natural or legal person believing himself injured or threatened by dumping, bounties or subsidies [Art. 8(1)]. Any commercial organizations or groupings to which the said persons may belong will also be entitled to lodge complaints, in their capacity as representatives.

22. The complaint should be lodged in writing with the competent authority of the Member State in which the complainant carries on his business, whatever the Member State in which the practices complained of produce their effects [Art. 8(2)]. In view of the practical experience acquired by the Governments of the Member States in investigations of this kind and also their direct knowledge of the circles concerned, the Commission has considered this the most effective arrangement at the present time.

The only exception made is for commercial organizations or groupings set up at Community level. The latter are in fact generally set up to put their members' views to the Commission and, in most cases, have their head offices close to those of the European institutions: it therefore seemed inappropriate that they should be required to approach the national authorities on these matters. Complaints from these bodies may therefore be lodged directly with the Commission. However, it should be noted that the latter must forthwith inform the Member States thereof [Art. 8(3)].

23. In order to qualify for consideration by the authorities in the Member States or by the Commission, the complaint must fulfil certain conditions. The effect of these is that the complainant must give the fullest possible details, providing the Commission with all the information at his disposal (Art. 9).

Where a complaint containing the information stipulated in Article 9 has been lodged with a Member State, that State will forthwith inform the Commission thereof, and of the results of any examination of the factual situation carried out at the national level [Art. 10 (1 and 3)]. The Commission must also be informed in cases where a Member State, whether a complaint has been made or not, is convinced that dumping, bounties or subsidies are causing or threatening material injury to an industry established in the Community. The Commission has taken the view that the Member States could not be denied the right to take the initiative in such cases, particularly as this right exists at present in several of these countries, and has been recognized, subject to fulfilment of the conditions mentioned in Article 10(2), by the GATT Group of Experts⁽¹⁾.

24. With a view to examining the factual situation at Community level, the Commission will be required to gather without delay, in co-operation with the Member States, all useful information and make all the necessary inquiries (Art. 11).

In order to enable the Commission to discharge these duties, certain powers have been assigned to the Commission in accordance with Article 213 of the EEC Treaty. It will have power, first of all, to hear the parties concerned. Secondly, it may collect any useful information and request the competent authorities in the Member States to make all necessary inquiries. Finally, it may order importers of products suspected of being dumped or of having benefited from bounties or subsidies to supply particulars concerning these products, notably with a view to the comparison of prices referred to in Article 3. In proposing this last rule, the Commission followed the example of a great many non-member countries, which require an indication on import forms of the price of the product concerned in the exporting country.

⁽¹⁾ See "Anti-dumping Duties and Countervailing Duties: Report of Group of Experts", Geneva 1961, p. 15.

25. This procedure may be given some publicity by the publication of a notice in the official gazette of the European Communities (Art. 12). This notice will warn foreign exporters and Community importers that protective measures may be taken. It will also accelerate procedure by encouraging the parties concerned to transmit all the relevant information at their disposal to the Commission.

The Commission is aware of the possible effects of such a step. In certain circumstances, it might hamper or even put a stop to all subsequent imports. For this reason, one condition has to be fulfilled: the Commission must be convinced, on the basis of the information available, that protective measures may be necessary as a result of dumping or the payment of bounties or subsidies.

In other circumstances, it may have the opposite effect: it may stimulate imports of the goods concerned before anti-dumping or countervailing duties have been introduced. This is why the Commission has made this rule a flexible one: it will retain the right, at its discretion, to refrain from publication.

CONSULTATIONS

26. In accordance with the wishes expressed by the Permanent Representatives of the Member States (Sect. 5), consultations form an essential part of the procedure. They will enable the Commission and the Governments of the Member States to examine together the questions raised during the procedure, such as the actual existence of the practices complained of, the margin of dumping or the amount of the bounty or subsidy granted, the reality and the extent of the injury caused, and the most appropriate protective measures (Art. 15). For this reason, these consultations must commence at once, whatever the stage reached in the process of examining the factual situation, as soon as a Member State requests or as soon as the Commission considers such action necessary (Art. 13). The consultations will take place in an Advisory Committee, comprising representatives of each Member State and presided over by a representative of the Commission (Article 14).

Adoption of protective measures

Since the procedure may lead to a number of different results, the Commission has

endeavoured to take all possible contingencies into account.

27. The procedure may finally result in the conclusion that such practices do not exist: on the basis of an examination of the factual situation at Community level and of the opinions expressed during the consultations, the Commission may conclude that no protective measures are necessary. In this event, a report will be submitted to the Council. In cases where a notice has been published in the official gazette of the European Communities pursuant to Article 12, it is the Commission's responsibility to announce in the same organ that the procedure is closed (Art. 16).

28. In cases where, on the other hand, an examination of the facts leads to the conclusion that such practices do in fact exist, the Commission must submit a proposal to the Council. In general, this proposal will make provision for the institution of an anti-dumping or countervailing duty, as laid down in Article 2 (Art. 18). However, the proposal of special measures is permitted where the practices in question occur in countries which are not Contracting Parties to GATT [Art. 1(2)].

29. Experience has shown, however, that an assessment of the factual situation may require a great deal of time. This consideration, which applies at the national level, is all the more valid at the Community level, where every decision requires agreement between sovereign states. If, during this period, the Community had no power to act, its measures of defence would be to a great extent ineffective. For this reason, the Commission has imitated foreign legislation on the subject by making provision for the introduction of provisional duties, in cases where, before the factual situation has been finally assessed, it is decided that the interests of the Community demand immediate action.

Here the adoption of the ordinary procedure, involving the submission of a proposal by the Commission, followed by a Council decision, has seemed inadvisable. The fact is that the inevitable loss of time would make effective protection impossible.

30. The proposal therefore stipulates that provisional measures shall be adopted by the Commission (Art. 17). However, its freedom of action is subject to certain specific restrictions:

a) A number of preliminary conditions must be fulfilled before each provisional duty is introduced: as to the facts of the

matter, the Commission must be in no doubt that there really is a case of dumping, bounties or subsidies causing or threatening serious and imminent injury to an industry established in the Community. The only factors which remain to be determined are the exact margin of dumping or the actual amount of the bounty or subsidy bestowed. The Commission must also take all the interests involved into account.

b) The intended measures will be restricted in nature and scope. The only possible measure is the institution of a provisional anti-dumping or countervailing duty. The amount of this duty may not exceed the margin of dumping provisionally determined or the estimated amount of the bounty or subsidy.

c) The measures will be applicable for only three months.

d) Finally, it has been decided that the Council shall be responsible for adopting the Community's final position in this matter and for deciding how the sums levied are to be disposed of [Art. 18(2)]. In general, they will be irrecoverable only as regards the amount of the anti-dumping or countervailing duties instituted by the Council; any excess amounts will be refunded. Should the Council decide that there is no reason to apply an anti-dumping or countervailing duty, these sums shall be refunded in their entirety. However, the Council may, acting on a proposal from the Commission, adopt other measures. Thus, it will have power to take into consideration special circumstances in which it might, for example, approve the provisional measures for the past but introduce a lower duty for the future.

31. The Commission believes that, in respect of the provisional measures, its proposal complies with the wishes and meets the requirements of the Member States and the interested parties: the conditions which must be fulfilled before any provisional duty can be introduced ensure a full guarantee that this duty would be justifiable at international level and would not depart from accepted principles in the Member States.

Furthermore, the Commission's powers make it possible to take rapid action, through the emergency procedure. At the request of a Member State, the Commission, without prejudice to the provisions of Article 17, must institute the provisional duties within not more than four business days from the receipt of the request.

The proposed system is extremely flexible: in the period during which the provisional duties are charged, the Committee will examine their effects and check at regular intervals whether the conditions having necessitated their application still obtain (Art. 19). If, for example, the situation has changed as a result of the introduction of the provisional duties, the Commission will withdraw or adjust the duties it has instituted. In cases where the duties are withdrawn or adjusted retrospectively, the relevant sums will be refunded. When withdrawal is without retrospective effect, all duties paid will be irrecoverable. The Commission feels that, for convenience, in this exceptional case, it is reasonable to depart from the principle of the Council's sole power to decide whether the sums collected are to be deemed irrecoverable or to be refunded. If the Commission has not withdrawn provisional duties and if the Council has not adopted a final position on behalf of the Community by the end of a period of three months, the same solution is envisaged [Art. 17(3)].

Anti-dumping and countervailing duties

32. Articles 21 and 22 of the proposal form a kind of corollary to the preceding provisions: once the procedural and substantive rules are established, provisions are needed to ensure that the anti-dumping or countervailing duties are properly levied. For this purpose, a number of general rules have been proposed; an opportunity is also provided for the adoption of any special measures which may prove necessary when an anti-dumping or countervailing duty is instituted.

33. As for the "general rules", it is stated in Article 21(1) that the measures adopted must give all the information required for the application of anti-dumping or countervailing duties, such as their description in the customs tariff, their commercial name, the exporting country or the country of origin, and, where appropriate, the name of the foreign producing or marketing firm, the nature of the duty (*ad valorem* or specific), the rate of duty, etc.

34. For the purposes of determining the origin of the product, it is stipulated that in the absence of special provisions laid down when the said duty was instituted, the provisions of the regulation on the common definition of the origin of goods

shall be applicable. A proposal on this subject was submitted to the Council for approval on 29 December 1964.

It should be noted in this connection that the country of origin of a product [Art. 21(1 c)] on which anti-dumping or countervailing duties are payable would not be able to claim most-favoured-nation treatment: anti-dumping and countervailing duties are not covered by the most-favoured-nation rules.

35. Article 22(1) lays down a general rule to the effect that anti-dumping or countervailing duties shall be payable independently of normal customs duties, taxes or other charges on imports. This indicates that the duties may be charged without reference to the rules and procedure laid down by customs legislation, an arrangement dictated by the very nature and function of anti-dumping and countervailing duties, and also by the need to solve the problem of administrative competences at national level: anti-dumping or countervailing duties are collected by the Ministries of Economic Affairs in three Member States, before the goods concerned are declared for customs purposes while in the other Member States these duties are normally collected by the customs authorities when the goods are cleared. Finally, provision has had to be made for anti-dumping duties to be levied after normal customs duties, taxes and other charges had been collected: arrangements have had to be made, in particular, to levy these duties in cases where it is decided to apply these measures to products benefitting from "hidden" dumping [Art. 3(2)].

36. The "adoption of any special measures which may prove necessary when an anti-dumping or countervailing duty is instituted" (see Sect. 32 above) is a reference to the fact that arrangements other than those laid down in the Council regulation on the common definition of the origin of goods may, if necessary, be made [Art. 21(2)]. The point is that this regulation might prove inadequate to deal with special cases.

37. In the same connection, although anti-dumping or countervailing duties will normally be charged on products intended to pass into free circulation, the Commission has wished to make it possible for these duties to be charged even on products on which customs duties, taxes or other charges on importation into the Community have been suspended [Art. 22(2)]. The Commission has taken the view that the

importation of products benefiting from dumping and the payment of bounties or subsidies and on which customs duties have been suspended might cause injury to the Community's economy. This might happen, for example, in cases where products imported at dumping prices were intended for processing or working under processing traffic arrangements. In such cases, the industry concerned, which would be a victim of unfair competition inasmuch as its processing customers had replaced its own products by foreign products purchased at abnormally low prices, cannot be denied its right to lodge a complaint nor can the Community be deprived of its protective machinery, provided always, however, that serious injury has been caused or threatened to an industry established in the Community. In any event, it would appear necessary to take this precaution at the present time, in view of the uncertainty surrounding the Community's future policy with regard to processing traffic.

The same dangers may arise in cases where the products concerned have been placed in bonded warehouses: because no anti-dumping or countervailing duties are charged on products stored in bonded warehouses, the purchase of large quantities of such products at abnormally low prices may have a harmful effect on the price level of like products manufactured in the country concerned.

38. Article 23 of the regulation takes account of the legitimate interests of the parties concerned that their business secrets should not be divulged. For this reason, information obtained must not normally be disclosed if it is a professional secret.

TRANSITIONAL MEASURES

39. Article 24 lays down the procedure to be followed until the regulation is fully applied.

Here the Commission has taken the view that, at the stage now reached in the transitional period, current arrangements can for the most part be maintained. Without prejudice to any action taken by the Community, the Member States may therefore take any appropriate measures to safeguard their interests. They are required only to observe the rules contained in Title I, based on the principles contained in Article VI of the GATT (which they

have already accepted) and to comply with the strengthened consultation procedure adopted at the request of the Committee of Permanent Representatives (see Sect. 5).

40. However, there is no longer a case for maintaining current arrangements in fields where so much progress has been made towards the organization of a single market that a Community policy is now required not only in respect of customs duties or farm levies but also in respect of anti-dumping or countervailing duties.

a) In the agricultural sector, which is in any case subject in all countries, as far as protective measures against dumping and the payment of bounties or subsidies are concerned, to the same rules as govern the industrial sector, common market organizations cover more than 85 % of the products. This being so, an anti-dumping procedure the only Community feature of which was a consultation arrangement would seem anachronistic. The Commission believes that it would be advisable to introduce straight-away a Community policy in respect of anti-dumping and countervailing duties for these products, in order to supplement, in general, the

agricultural measures at present in force. This would obviate the need for the Community to devise special solutions in each case. These are seldom satisfactory, as has been demonstrated by the difficulties which have arisen recently in connection with the charging of differentiated supplementary amounts on egg imports.

b) In the industrial sector, progress in dismantling tariff barriers within the Community and in aligning national tariffs with the Common Customs Tariff has been so rapid that the Commission has declared itself in favour of completing a full customs union in the near future. In view of this, an anti-dumping procedure mainly implemented at the national level would appear unjustified, too, in the case of industrial products coming under the Common Customs Tariff.

41. The final article binds the Member States to ensure that the proposed regulation is applied properly and rapidly. To this end, they are required, not later than six months after the entry into force of the regulation, to adopt any general or special measures which may be required, notably for the implementation of Articles 8 and 11

Proposal for a Council regulation on protection against dumping or the payment of bounties or subsidies by countries not members of the European Economic Community

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 111 and 113 thereof;

Having regard to its decision of 25 September 1962 on an Action Programme in the field of commercial policy⁽¹⁾;

Having regard to the proposal of the Commission;

Whereas by the end of the transition period the common commercial policy must be based on uniform principles, which implies that it must be gradually established during that period;

Whereas measures of protection against dumping or the payment of bounties or

subsidies by non-member countries form an important element of the said policy;

Whereas the laws of Member States differ appreciably in this field and whereas the Community as such does not possess the necessary legal basis for the adoption of effective measures of protection;

Whereas, if the external trade of the Community is to develop harmoniously, it is essential that the Community should possess uniform means of protection capable of resolving promptly and effectively any difficulties caused by dumping, bounties or subsidies, and constituting by their very existence a moderating factor in the conduct of commercial relations between the EEC and non-member countries;

Whereas common arrangements should accordingly be made in this field forthwith;

Whereas, having regard to the international commitments of the Community and of the

⁽¹⁾ See official gazette No. 90, 5 October 1962, p. 2353.

Member States, the present regulation must be in conformity with the rules laid down in Article VI of GATT;

Whereas, however, the Community and its Member States must, in their respective spheres of action, remain free to adopt special measures with regard to those countries with which there is no treaty commitment to apply strict rules in conformity with the said Article VI;

Whereas any natural or legal person believing himself injured or threatened by dumping, bounties or subsidies must be able to lodge a complaint; and whereas such complaint must comply with certain conditions enabling the factual situation to be examined as rapidly as possible;

Whereas the interests of the Community require that arrangements should be made for the Member States and the Commission to keep each other fully informed with regard to complaints lodged and to official measures adopted against the practices in question;

Whereas the examination of the factual situation at Community level must be carried out by the Commission, which, in close co-operation with the Member States, should obtain all relevant information without delay and carry out the necessary investigations;

Whereas it may be necessary to give the procedure some degree of publicity by the insertion of a notice in the official gazette of the Communities warning foreign exporters and Community importers that protective measures may be taken and calling upon interested parties to send to the Commission all relevant information;

Whereas on the basis of the said information appropriate protective measures must be examined at Community level by an advisory committee; and whereas it will be for the Commission to lay before the Council the necessary proposals;

Whereas experience shows that the practices of dumping or payment of bounties or subsidies may, in certain cases, necessitate the prompt imposition of anti-dumping or countervailing duties, and whereas, if this situation arises for the Community, the latter must not be deprived of adequate means of protection during the relatively long periods which may elapse pending final determination of the facts;

Whereas consequently a procedure more rapid than normal must be provided as a

precautionary measure to deal with unexpected practices, and whereas the need for expeditious and effective action justifies empowering the Commission, exceptionally and without prejudice to the subsequent attitude of the Council, to institute by emergency procedure provisional anti-dumping or countervailing duties on its own initiative or at the request of a Member State;

Whereas, in cases of extreme emergency and where a Member State so requests, the time-limit by which the Commission must institute provisional duties where the conditions necessitating their application are fulfilled must be no more than four business days from the reception of the request;

Whereas it is essential to adopt common rules on the application of anti-dumping or countervailing duties, so that they may be exact in amount and collected in the same way; and whereas the said rules, given the nature and scope of these duties, may differ from the rules for collecting normal duties;

Whereas during the transition period Member States have power to take independent measures to safeguard their interests, but stricter arrangements for consultation are needed, and common rules concerning the material conditions must be applied, for the adoption of protective measures;

Whereas it is, however, reasonable to apply all the Community regulations to products for which, before the end of the transition period, the common customs tariff is fully in effect or for which there is a common market organization.

Has adopted the present regulation:

Article 1

1. The provisions of the present regulation shall be applicable for the purpose of protection against dumping, bounties or subsidies practised by countries not members of the Community, without prejudice to any special rules embodied in agreements between the Community and such countries.

2. Where such practices occur in countries which are not Contracting Parties to GATT, the provisions of Title I thereof shall not be an impediment to the adoption of special measures.

3. The present regulation shall apply to all products. It shall not, however, be an impediment to the application of Community regulations in the field of common agricultural policy.

TITLE I

Article 2

a) An anti-dumping duty may be imposed on products sold at a dumping price within the meaning of Article 3, and

b) A countervailing duty may be levied on products benefiting in the country of origin or the exporting country by a bounty or a subsidy within the meaning of Article 5,

where the introduction of such products causes or threatens material injury to an industry established in the Community or materially retards the establishment of an industry in the Community.

Article 3

1. A product shall be deemed to have been introduced into the Community at a dumping price where the price of this product is:

a) Less than the comparable price, in the ordinary course of trade, for the like product when intended for consumption in the exporting country or country of origin; or,

b) In the absence of such a price in the said country, is less than either:

i) The highest comparable price for the like product for export to another country in the ordinary course of trade, or,

ii) The cost of production of the product in the country of origin with due allowance for selling costs and profit.

2. Any product resold by an importer at a price below both that charged in the exporting country or country of origin and the price invoiced by the exporter shall also be considered as being introduced into the Community at a dumping price:

a) Where the exporter in any way compensates the importer for the loss suffered; or,

b) Where the importer and the exporter are commercially associated.

Article 4

For the comparison of prices referred to in Articles 3, due allowance shall be made in each case:

a) For adjustments to be made in relation with the volume and the stage of the commercial transactions;

b) Differences in terms and conditions of sale;

c) Differences in taxation;

d) Other differences affecting price comparability.

Article 5

A product shall be deemed to have benefited from bounties or subsidies where the same have been bestowed directly or indirectly, on whatever legal basis and whatever the nature or manner of payment, on the production, manufacture, export or transport of the said product.

Article 6

1. The anti-dumping duty to be charged on a product sold at a dumping price shall not exceed the margin of dumping for this product.

For the purposes of this article, the margin of dumping is the price difference determined in accordance with the provisions of Articles 3 and 4.

In cases covered by Article 3(2), the margin of dumping shall be calculated on the basis of the price at which the product is resold by the importer.

2. The countervailing duty charged on any product benefiting from bounties or subsidies shall not exceed the estimated amount of the bounties or subsidies referred to in Article 5.

Article 7

1. No product shall be subject to both anti-dumping and countervailing duties to remedy the same situation resulting from dumping, bounties or subsidies.

2. No product shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when intended for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

TITLE II

Article 8

1. Any natural or legal person believing himself injured or threatened by dumping, bounties or subsidies may lodge a complaint against such practices in the manner provided hereunder.

2. The complaint shall be lodged in writing with the competent authority of the Member State in which the complainant carries on his business, whatever the Member State in which the practices complained of produce their effects.

3. However, where the complaint is lodged by a commercial organization or grouping set up at Community level, the complaint may be lodged with the Commission, which must forthwith inform the Member States thereof.

Article 9

A complaint must contain :

a) The name of the product which the complainant alleges to have been dumped or to be benefiting from bounties or subsidies;

b) The name of the exporting country and, where possible, of the country of origin of the product concerned;

c) Information enabling the competent authority of the Member State concerned or the Commission to ascertain the existence of dumping, bounties or subsidies causing or threatening material injury to an industry established in the Community or materially retarding the establishment of an industry in the Community.

Article 10

1. Where a complaint containing the information stipulated in Article 9 has been lodged with a Member State, that State shall forthwith inform the Commission thereof.

2. Similarly a Member State may, in the absence of a complaint, bring the matter to the attention of the Commission if it considers that dumping, bounties or subsidies are causing or threatening material injury to an industry established in the Community or are materially retarding the establishment of an industry in the Community.

3. Where the Member State concerned has examined the factual situation at national level, the results of this examination shall be transmitted to the Commission.

4. The Commission shall transmit the information referred to above to the other Member States without delay.

Article 11

1. With a view to an immediate examination of the factual situation at Community level, the Commission shall, when it has received the communications referred to in Article 10(1 and 2) or a complaint under Article 8(3) containing the information referred to in Article 9, gather in co-operation with the Member States all useful information and make all appropriate investigations.

2. In discharging these duties, the Commission may, as it thinks fit :

i) Hear the parties concerned;

ii) Obtain information from the competent authorities of the Member States and from all natural or legal persons, including importers, dealers, producers, and commercial groupings and organizations;

iii) Request the competent authorities of the Member States to make all necessary inquiries, notably among Community importers, dealers or producers;

iv) Order importers of products suspected of being dumped or of having benefited from bounties or subsidies to supply particulars, capable of substantiation, concerning these products, notably with a view to the comparison of prices referred to in Article 3.

3. The authorized servants of the Commission, may, at the request of the Commission or of the responsible authority of the Member State on the territory of which the inquiries provided for in the preceding paragraph are to be made, assist the servants of that authority in the discharge of their duties.

Article 12

Where information obtained shows that measures of protection against dumping, bounties or subsidies may be necessary, the Commission may, at its discretion, decide on the publication of a notice in the official gazette of the European Communities. This notice shall name the products con-

cerned and their country of exportation or origin. It shall also state that all relevant information may be communicated to the Commission.

Article 13

Where a Member State so requests, consultations shall commence forthwith. They may also be initiated by the Commission.

Article 14

1. The consultations referred to in Article 13 shall take place in an advisory committee, hereinafter referred to as the "Committee", comprising representatives of each Member State and presided over by a representative of the Commission.
2. The Committee shall be convened by its chairman, who shall supply to the Member States all necessary information.

Article 15

The consultations shall deal, *inter alia*, with:

- a) The existence of the practices complained of;
- b) The margin of dumping or the amount of the bounty or subsidy granted;
- c) The reality and the extent of the injury caused or threatened to an industry established in the Community, or

The danger that the establishment of an industry in the Community may be materially retarded;

- d) Measures and implementing procedures, having regard to all the circumstances, to remedy the effects of dumping, bounties or subsidies.

Article 16

Where, having due regard to the opinions expressed in the Committee, the Commission deems no protective measure necessary, it shall report to the Council on the outcome of the consultations. In this case, if a notice has been published pursuant to Article 12, the Commission shall immediately announce in the official gazette of the Communities that the procedure is closed.

Article 17

1. Where the Commission forms the view that the practices complained of are

threatening material and imminent injury to an industry established in the Community and that the interests of the Community necessitate immediate action, it shall institute, by emergency procedure and after consulting the Committee if circumstances permit, a provisional anti-dumping or countervailing duty pending the final determination of the margin of dumping or an exact assessment of the amount of the bounty or subsidy accorded.

Where such action has been requested by a Member State, the emergency procedure referred to above must be completed within four business days from the date of reception of the request.

2. Under no circumstances may the amount of the provisional duty exceed the margin of dumping provisionally determined or the estimated amount of the bounty or subsidy.

3. Without prejudice to the provisions of Article 19, the measures adopted pursuant to paragraph 1 shall remain applicable until the entry into force of a Council decision under Article 18 but in any case for not more than three months; on the expiry of this time-limit the provisional duties collected shall be irrecoverable.

Article 18

1. Where, after a definite finding has been made as to the facts, the Commission considers, having due regard to the views expressed in the Committee, that the interests of the Community necessitate protective measures against dumping, bounties or subsidies, it shall submit a proposal to the Council.

2. Where Article 17 has been applied, the sums received as provisional duties shall be irrecoverable as regards the amount of the anti-dumping or countervailing duties instituted by the Council pursuant to paragraph 1 above. Any excess amounts shall be refunded. Should the Council decide that there is no reason to apply an anti-dumping or countervailing duty, these sums shall be refunded in their entirety. However, in order to make allowance for special situations, the Council shall have power, on a proposal from the Commission, to make other arrangements concerning the final accrual of the provisional duties or their refunding.

Article 19

1. During the period of application of the measures referred to in Articles 17 and 18, the Committee shall examine their effects and check at regular intervals whether the conditions having necessitated their application still obtain.

2. Where, having due regard to the views expressed in the Committee, the Commission considers that these measures must be withdrawn or amended, it shall:

i) Propose without delay to the Council the withdrawal or amendment of the measures adopted pursuant to Article 18. Where a duty in force is reduced or withdrawn retrospectively, the relevant sums shall be refunded;

ii) Itself withdraw or amend forthwith the measures applied by virtue of Article 17. Where a duty in force is reduced or withdrawn retrospectively, the relevant sums shall be refunded. Where the withdrawal is without retrospective effect, all duties paid shall be irrecoverable.

Article 20

The measures adopted by the Council or by the Commission under the present regulation shall apply immediately from the date specified or, where no date is specified, from the third day after their publication in the official gazette of the Communities.

TITLE III

Article 21

1. Products to which the measures set out in the foregoing articles apply shall be designated according to:

- a) Their description in the customs tariff;
- b) Their commercial name, and
- c) Their country of exportation or origin, and, as appropriate, the name of the foreign producing or marketing firm.

2. Where no special provisions are made at the time of instituting an anti-dumping or countervailing duty, the provisions of Council Regulation of... relating to a common definition of the origin of goods and any provisions made thereunder shall apply.

Article 22

1. Anti-dumping or countervailing duties shall be payable independently of normal customs duties, taxes or other charges on imports. Their nature, rate and other factors entering into their computation shall be fixed when the duties themselves are established.

2. The suspension of normal customs duties and charges on imports shall not exclude the imposition of anti-dumping or countervailing duties; it shall be stated in the enactments instituting these duties in what cases, in what amount and by what arrangements they are to be collected.

Article 23

1. The Council, the Commission and the Member States and their officials and other servants are required not to disclose any information they may have obtained in pursuance of the present regulation which, by its nature, is a professional secret.

2. The provision of paragraph 1 shall not prevent the publication of general information in pursuance of Article 12 or the publication of grounds for measures taken under the present regulation. The legitimate interests of the parties concerned that their business secrets should not be divulged shall be respected.

TITLE IV

Article 24

1. During the transition period, and at latest up to the time when the common customs tariff is fully applied or a common market organization is in operation for the product in question, each Member State may adopt, in accordance with the rules laid down in Title I, any appropriate measures to safeguard its interests.

2. Where such a measure is contemplated, and prior to any other action, the Member State shall inform the Commission and the other Member States thereof, transmitting to them the results of the examination of the factual situation carried out at national level. Consultations shall begin forthwith, at the instance of a Member State or of the Commission. Article 14 and 23 shall apply.

3. The objects of the consultations shall *inter alia* be :

a) To enable the Member States and the Commission to express their views on the points referred to in Article 15;

b) To ensure that the national measures shall disturb as little as possible the working of the Common Market;

c) To enable the other Member States to adopt corresponding measures and to enable the Commission to submit to the Council a proposal under Article 111 of the Treaty.

4. During the time when measures adopted pursuant to the present article are in force, the Committee shall examine their effects and check at regular intervals whether the conditions having necessitated their application still obtain.

If, having regard to the views expressed in the Committee, the Commission con-

siders that the said measures should be amended or withdrawn, it shall without delay submit to the Council proposals to this effect.

Article 25

Not later than six months after the entry into force of the present regulation, the Member States shall adopt any general or special measures required for its implementation. They shall advise the Commission and the other Member States as soon as this has been done.

Article 26

The present regulation shall enter into force on 1 July 1965.

The present regulation shall be binding in every respect and directly applicable in each Member State.

Draft Council regulation on the gradual introduction of common procedure for the administration of import quotas

(submitted by the Commission to the Council on 18 May 1965)

Explanatory Memorandum

I

1. In spite of considerable progress towards greater freedom of trade, in particular through GATT, none of the Member States has so far been able, in its commercial policy, to lift completely quantitative restrictions on imports. Relations between Member States and state-trading countries are normally based on quotas fixed either autonomously or on a contractual basis. Quotas also play a particularly important part in relations between Member States and certain of their partners in GATT, particularly with Japan and, in the case of France, also with most of the developing countries.

There are great differences between the Member States in their treatment of imports. This is true for lists of products subject to quota, for outside countries in whose respect quotas are applied, and for the amount of quotas where all Member States apply quantitative restrictions to the same product from the same outside countries.

As long as trade policy measures are taken by individual Member States, and total imports of sensitive products cannot be limited by Community decisions, the risk of deflection of trade and of economic difficulties cannot be ignored.

Disparities in the regulations of the Member States regarding imports from third countries have therefore often led to the application of the safeguard clause of Article 115, with consequent impairment of the free flow of goods within the Community.

2. As all differences in imports policy must be ironed out, at latest by the end of the transition period, by the introduction of a joint commercial policy, the Council adopted in 25 September 1962 on the proposal of the Commission a programme of action for the unification of such policy. Chapter A(1) of this programme lays down the action to be taken to achieve the fullest liberalization of imports in the sense of Article 111 of the Treaty. It is proposed to bring lists of products into line and to

introduce Community regulations on the geographical scope of this liberalization. On the other hand, in so far as quotas on imports must be maintained, especially in respect of state-trading countries and to a lesser extent Japan, Chapter A(2) of this programme lays down, for at latest the end of the transition period, joint import regulations and the replacement of national quotas by Community quotas fixed by the Council on the proposal of the Commission.

3. Preparatory work on the establishment of joint liberalization lists, undertaken by the Commission and Member States, has been in progress for some time and in certain sectors has reached an advanced stage. The Commission should soon be able to submit to the Council proposals for Community liberalization of trade. Concurrently, the question of Community procedure for quota fixing will very soon arise, as the Community may well have to lay down quotas for certain products from third countries, either by negotiation or independently. The Committee of Permanent Representatives, with whom this question was examined in accordance with the Commission's proposal of 26 June 1963 concerning the opening of exploratory talks with Japan, has rightly emphasized that the Community still has no rules to apply in such cases. The object of the present proposal is to meet this need.

4. In drafting this directive the Commission was guided by the following considerations:

a) The Community must be able as regards import quotas to pursue a common policy whenever the Council so decides.

Such a common policy should be envisaged whenever Community negotiations make it necessary, or (if such negotiations do not seem at the moment possible or desirable) whenever it appears necessary to decide independently on a common policy concerning imports from certain outside countries.

b) Common rules for such a policy on Community imports should at first be on a minimum scale, so that national laws and practices which have proved their worth can be maintained in effect indefinitely without essential changes and so that information can be gathered on the measures taken at national level.

From another angle, it would be useful to eliminate the divergencies in import procedures between Member States so that —

i) Quotas can be fully utilized in the case of contractual commitments between the Community and third countries;

ii) In the case of quotas fixed independently or contractually by the Community, distortions of competition and diversion of trade can be avoided as far as possible, and recourse to Article 115 thus be kept to a minimum.

These considerations have prompted the Commission to consider initially only a provisional procedure to meet these limited requirements, and to reserve to a future stage of Common Market development the working out of final Community regulations required up to the end of the transition period.

The attached draft directive therefore provides for the gradual introduction of a common procedure for the administration of quotas.

II

1. The directive is limited to quotas for products for which the Community assumes obligations under an international agreement, or for which it limits total imports into the Community.

This regulations does not apply to products which are only subject to maxima (the Community ceiling) which Member States must not exceed without the consent of the Community, nor does it apply to products for which Member States are free to fix their own import quotas. Until further notice, individual national regulations alone will remain in force for these products.

2) It is not proposed to set up a central Community service for the administration of quotas. Quotas will be apportioned amongst the Member States and the appropriate national authorities will issue import licences.

In so far as the regulation provides for the administration of quotas, this will be undertaken in close collaboration between the Commission and the Member States through an *ad hoc* committee.

3) Quotas should be apportioned in such a way as to take into account the importing capacity of each Member State (i.e. its interest in limiting imports) and to ensure that the Community meets its international obligations to import up to the limit of the quotas.

The best way of establishing the importing capacity of the Member States is to take as a basis their imports over a given reference period. Their previous imports, however, can only be taken as a yardstick in determining future requirements. It is quite possible that applications for licences in one Member State will not reach the import limits fixed under such a scheme, whereas in another Member State, it might be impossible to meet applications for licences since the quota has been reached. It therefore seems desirable to allocate at the beginning of the period for which a quota has been established only a portion of the quota and to establish a quota reserve from which further import facilities can be allocated. This quota reserve will enable Member States which had not previously imported to begin doing so.

In addition, in order to meet demands for imports within a contractually fixed quota, provision must be made for the possible re-allocation of quotas already apportioned, even if the Community reserve is exhausted.

4. The Member States must allocate import licences to cover the whole of the quota allotted them. The regulation is that calculations of quotas should be uniform in all Member States and based on the net weight or the fob value of the imported products, and that all imports, except for outward processing and temporary admission, should be reckoned in the same way.

The Member States inform the Commission every quarter of the total of import licences applied for, of the licences granted and of actual imports, to enable it to make new allocations from the Community reserve and if need be a re-allocation of quotas.

In order to allow an allocation of quotas to be made in good time and, if

necessary, a new allocation of quotas not later than three months before the end of the period for which quotas are fixed, it is necessary to provide for uniform periods for the announcement of permitted import totals, applications for and issue of licences, and to limit the term thereof.

The regulations in force in each Member State determine the procedure for obtaining licences. In particular, national offices are left to set their own criteria for allocating import licences if the country's quota does not allow of satisfying all applications.

5. A departure must be made from the general rules covering quota allocations and the issue of licences should the nature of a product (e.g. seasonal) or the special features of trade in certain goods (e.g. long delivery dates) make it necessary. Furthermore, it must be possible to supplement the uniform regulations laid down for the issue of licences, in so far as experience of applying the regulations points to this necessity.

For such exceptions or complementary arrangements the directive lays down procedure. The Commission or any Member State may submit relevant proposals to a special committee set up to deal with them. The Commission will decide after consultation of this committee. If the Commission's decision is not what the committee recommended, the Commission refers its decision to the Council, which may order some different course of action within one month.

This procedure makes for prompt and smooth application of the regulation and accommodation of the interests of Member States. But in this way the Council will not usually have to deal with technical details.

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The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community and in particular Article 111 thereof:

Having regard to the decision of the Council of 25 September 1962 concerning an action programme in commercial matters (1);

(1) Official gazette No. 90, 5 October 1962, pp. 2353-57.

Having regard to the Commission's proposal;

Whereas at latest by the end of the transition period national quotas for products of which import is not liberalized will be replaced by quotas to be negotiated or established on the proposal of the Commission;

Whereas a common system of quota administration must be instituted in order

to ensure that the Community meets its commitments, and to offer all importers in the Community, without distinction of nationality or domicile, all existing import facilities;

Whereas the Member States must, by the end of the transition period, co-ordinate their trade relations with other countries so as to create the necessary conditions for the pursuit of a common policy in this field;

Whereas, in so far as the Community commits itself, even before the end of the transition period, by agreement with one or more third countries, to set quotas on imports into the Community, it is necessary to establish provisional procedure for common quota administration; and whereas such a procedure is necessary to carry out commitments accepted by the Community and must also be a first step towards a definitive procedure for quota administration and thus also be applicable to quotas fixed unilaterally by the Community during the transition period;

Whereas it is necessary to provide, after constitution of a Community reserve, for an apportionment of Community quotas among Member States and the establishment of uniform regulations for the issue of licences;

Whereas the apportionment of quotas and the application of uniform rules can only be done in close collaboration between the Commission and Member States;

Whereas a modification in the recommended procedure will be necessary at latest when frontier controls between Member States are eliminated or when all national quotas are superseded by quotas settled on the Commission's proposal,

Has adopted the present regulation:

Article 1

The provisions of this regulation shall apply to the import of products for which the Community has agreed on quotas with one or more third countries or has independently fixed such quotas.

Article 2

Community quotas shall be apportioned among Member States.

Article 3

A Community reserve of at least 25 % of each quota shall be constituted. A higher percentage may be fixed as a Community reserve in accordance with the procedure set out in Article 15 hereof.

Article 4

Upon the conclusion of such agreement or independent fixing of quotas, and unless the Council itself has made an apportionment, the Commission shall allocate among Member States the quotas remaining after constitution of the Community reserve.

The Commission shall effect this apportionment on the basis of average imports of the Member States during the last two years for which statistics are available. A different scale of allocation may be decided by the procedure set out in Article 15 hereof.

If no imports have been brought into a Member State during the reference period stated in the foregoing paragraph, the Commission may allocate to such Member State by the procedure set out in Article 15 hereof a share *pro rata* from the Community reserve.

Article 5

During the period for which Community quotas are fixed, apportionments will be made from the Community reserve, by the procedure set out in Article 15 hereof, where the Commission finds that one or more Member States need further imports.

If the Community reserve is exhausted and the Commission finds, from communications made under Article 13 hereof, that in one or more Member States import facilities have not been fully utilized, the Commission shall re-allocate quotas, not later than three months from the end of the period for which quotas are fixed, by the procedure set out in Article 15 hereof. If the total of the quotas is established independently, the Commission may abstain from reallocating quotas.

Article 6

Quota shares allocated to Member States will be published in the official gazette of the European Communities.

Article 7

Member States shall issue import licences to cover the whole of the quota apportioned to them.

Article 8

Not later than three weeks after the publication stipulated in Article 6, Member States shall make known by official publication the products for which import licences can be requested and the procedure by which this is to be done. A different time-limit may be set under Article 15 hereof.

Article 9

Licences shall be issued in strict rotation. In any likelihood that the quotas apportioned will not suffice to meet demand, all applications will be held up, for not more than a month, to permit simultaneous scrutiny. In this event, licences will be issued not later than a month after the last permitted date of application.

In accordance with Article 15 hereof different time-limits may be fixed for application for and issue of licences, or it may be decided that issue shall be by instalments.

Article 10

Licences shall be valid for six months. On good grounds they may be renewed for a further period of four months.

Article 11

Consignments shall be reckoned against the quota by net weight or fob value.

Goods imported for re-export shall be carried on the quotas, but provided that a careful check on re-export is made, such goods can be allowed as addition to quotas by the procedure of Article 15 hereof. Goods for processing traffic shall not be reckoned against quotas.

Licences shall be issued on condition that the country for which the quota applies is both the country of origin and of source or purchase of the goods to be imported.

Article 12

In accordance with Article 15, supplementary regulations concerning the issue of licences may be made by Member States if this appears necessary for full use of import facilities.

Article 13

Member States shall notify the Commission every quarter of the total amount represented by licences applied for and issued and the total of imports effected.

Article 14

A committee for the administration of quotas — hereinafter called "The Committee" — shall be formed, consisting of representatives of Member States under a Commission chairman.

Voting shall be as provided for in Article 148(2) of the Treaty. The chairman shall not vote.

Article 15

In cases in which this regulation expressly calls for the procedure set out in this article, the chairman shall refer the matter to the committee, either on his own initiative or at the request of a representative of a Member State.

The representative of the Commission shall submit a draft of the measures to be taken. The Committee shall deliver its opinion on such measures within a time-limit which the chairman may fix according to the urgency of the matter. Such opinion shall be rendered by a majority of twelve.

The Commission shall propose measures for immediate adoption. If, however, these are not in accordance with the opinion of the Committee, the Council will be immediately notified. In such case the Commission may defer for not more than one month from the date of such notification the application of the measures it has decided.

The Council may by qualified majority adopt a different decision within one month.

Article 16

The Committee may consider any other matter concerning the administration of Community quotas as specified in Article 1 of this regulation raised by its chairman on his own initiative or at the request of a representative of a Member State.

Article 17

This regulation shall come into force on the day following publication in the official gazette of the European Communities.

Not later than six months before the date fixed for the completion of customs union, the Council shall make such amendments to this regulation as are necessitated by the removal of frontier controls between Member States and by the introduction of the common commercial policy.

This regulation is binding in all its parts and directly applicable in all Member States.

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