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PRESS RELEASE

The EEC Commission refers to the Court of Justice
a dispute concerning the French tariff on "Diofan"

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The EEC Commission has appealed to the Court of Justice
of the European Communities against the French Republic, alleging
infringement of obligations under Articles 12 and 14 of the Treaty.

The case concerns the levying, after the entry into force
of the Treaty and with retroactive effect to 1 October 1959, of
customs duties on the product known as "Diofan" imported into
France from the Federal Republic of Germany.

From the beginning of 1954 until May 1961 this product was
imported into France regularly and in growing quantities and
treated for customs purposes as a "polyvinylidene chloride" at a
duty of 30%. The whole of this duty had been suspended
vis-à-vis all countries from 1944 until August 1957 and was
abolished from 1 January 1959 for imports from other EEC countries.
From 1 January 1954 to August 1957 (therefore including 1 January
1957) and from 1 January 1959 to 31 May 1961 imports of Diofan
into France were consequently exempted from duty. This consistent
customs practice was based mainly on the many chemical analyses
carried out at the Ministry of Finance laboratory in Strasbourg
to determine the composition of the product.

From May 1961 onwards, after an analysis in the Ministry's
central laboratory in Paris, which, it is claimed, showed that the
product was not a chemically pure polyvinylidene chloride, but a
copolymer coming under another sub-heading on which a duty of
35% was chargeable on 1 January 1957, the French Government imposed
this duty on Diofan imports into France subject to the successive
reductions provided for in Article 14 of the Treaty and in the
acceleration decisions. This decision was made retroactive within
the limits of the three-year rule, and the Government declared
that the duty-free admission of the product in the past was the
result of a classification error overlooked by the French customs
authorities.

The Commission takes the view that this constituted an infringement of Article 14, which requires the Member States to make successive tariff reductions on the basis of the duty applied on 1 January 1957. A subsidiary submission is that there has been infringement of Article 12, which forbids the Member States to increase the duties they applied in their trade relations with each other on 1 January 1958.

The Court of Justice has ruled in the past that the expression "duty applied", on the meaning of which these provisions hinge, refers to "the duties actually charged" on 1 January 1958 (Article 12) and on 1 January 1957 (Article 14) respectively and not to the "duties legally applicable" on these dates. Any increase in relation to the duties actually charged on the reference dates laid down therefore constitutes an infringement of the Treaty Articles, irrespective of whether this increase arises from the application of a higher rate or reference to a different tariff heading, and whatever the classification error now invoked by the French Government. In any case the Commission is not convinced that any such error actually took place.

For these reasons, the Commission initiated the procedure of Article 169 of the Treaty against the French Republic. After giving this State an opportunity to submit its comments it issued a reasoned opinion on 21 October 1964 declaring that there was an infringement of the Treaty. The French Government having failed to put an end to the alleged infringement, the Commission has appealed to the Court of Justice to rule whether in this instance the French Republic disregarded the obligations incumbent upon it under Articles 12 and 14 of the Treaty.

The Commission is represented before the Court of Justice by its Legal Adviser, M. Marc Schier.
