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Proposal for a Council regulation establishing common principles and a Community procedure to safeguard EEC trade against abnormal practices on the part of non-member countries

(submitted by the Commission to the Council on 26 November 1963)

Explanatory Memorandum

1. Under the terms of Article 111(1) of the Treaty of Rome the Commission must submit to the Council proposals regarding the procedure to be applied, in the course of the transition period, to achieve common action and a uniform commercial policy.

The Commission accordingly submitted an action programme which was approved by the Council on 25 September 1962. This programme deals *inter alia* with the alignment of commercial safeguards to which the Community might have recourse in the event of abnormal practices on the part of a non-member country.

2. In studying the problem of the stabilization of tariff concessions granted by non-member countries (which is necessary in the interests of EEC exports), the special Committee set up under Article 111 suggested that the Community should introduce effective machinery to allow of immediate counter-measures in the case of arbitrary action taken by a non-member country.

Moreover, the experience of the United States' raising bound duties on certain exports from the Member States has shown that the Community is in need of such machinery.

3. Also, it would be desirable, in view of the impending multilateral negotiations in GATT, for the Community to have at its disposal commercial safeguards commensurate with those available to the United States under Section 252 of the Trade Expansion Act and under its anti-dumping legislation.

4. It is certain that the introduction of common procedure in this field would have a steadying effect in trade relations between the EEC and non-member countries. The existence of such machinery would prevent non-member countries from arbitrarily taking steps to restrict their trade with the Community.

5. In view of the foregoing, the Commission has drawn up a proposal for a regulation, the purpose of which, though it may seem more

ambitious than the more immediate one of the action programme in the field of commercial policy, is to meet the needs of the present general situation.

6. This proposal establishes common principles and common procedure to safeguard Community trade against abnormal practices on the part of non-member countries.

It deals in detail with the application of an internal Community procedure applicable whenever abnormal practices by one or more non-member States call for measures to protect trade.

Since no complete list of abnormal practices could be drawn up, it was necessary to define this term. A definition appears in Article 1(2) and may appear to be somewhat broad. It may, however, be considered precise in view of the impossibility of covering in more detail this constantly changing field. The definition is sufficiently elastic to cover any abnormal measure or practice, according to either its nature or its effects.

Provision has been made for consultations to be held at the request of the Member State or States having established the existence of abnormal practices; they can also be initiated by the Commission. These consultations will take place on the basis of an interim report prepared by the Member State or States affected and amplified by the Commission, or on the basis of a report by the Commission, as the case may be. They will take place before any other action is taken and will be governed by the procedure laid down in the Annex to the Council's Decision of 25 September 1962 [Chapter A(3)] on an action programme to give effect to a common commercial policy⁽¹⁾. Their purpose will be to establish the nature and effect of the practices reported, to assess the geographical extent of their incidence, to examine what measures can be adopted and to decide on representations to be made to the non-member country or countries concerned or to the competent international organizations.

(1) See official gazette of the European Communities, No. 90, 5 October 1962.

If it emerges from these consultations that the abnormal practices affect only one Member State, the latter can alone adopt whatever measures it deems appropriate.

If, however, it appears from the consultations that the interests of several Member States are adversely affected, the Commission will propose to the Council whatever commercial safeguard measures at the Community level it considers proper to resolve the difficulties encountered.

In urgent cases and under certain conditions the Commission will itself be empowered to decide what measures should be taken. The Member States may refer the matter to the Council, which can then modify or cancel the

Commission's decision. Furthermore, any Member State can, before the entry into force of the Council or Commission decisions and if it considers this course appropriate for the immediate protection of its interests, adopt under its own national legislation any safeguard measures required.

However, no Member State can apply any national arrangement likely to frustrate the measures decided at Community level so long as these are in force.

Finally, the proposal expressly lays down the principle that the provisions of the General Agreement on Tariffs and Trade must be respected.

Proposal for a Council regulation establishing common principles and a Community procedure to safeguard EEC trade against abnormal practices on the part of non-member countries

(submitted by the Commission to the Council)

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 its Decision of 25 September 1962 concerning an action programme to introduce a common commercial policy⁽¹⁾;

Having regard to the Council's working programme for 1963 which provides for accelerated implementation of the above-mentioned programme;

Having regard to the proposal of the Commission:

Whereas by the expiry of the transition period the common commercial policy must be based on uniform principles;

Whereas to put such common commercial policy into effect by the end of the transition period presupposes that it will be gradually introduced during that period;

Whereas measures to safeguard trade, including those to be applied in the case of abnormal practices on the part of one or more non-member countries, are an important part of such a policy;

Whereas it is necessary for the economic development of the Community, in which the expansion of foreign trade is one of the main factors, that the Community should possess means of remedying difficulties caused by any abnormal practices on the part of non-member countries intended to restrict trade;

Whereas in the present situation and in particular having regard to the immediate or longer-term prospects of negotiations involving trade policy it is necessary to take, even before the expiry of the transition period, steps towards the common safeguarding of commercial interests;

Whereas, therefore, an effective procedure to apply Community measures to safeguard trade should be immediately established;

Whereas the application of such procedure is dependent on a definition of abnormal practices, and this must be as precise as is practicable having regard to the very fluctuating nature of such practices;

Whereas before any action is taken consultation must take place, as envisaged in the action programme;

Whereas if it should emerge from such consultation that the difficulties are confined to the market of a single Member State, commercial safeguard measures can be

(1) See official gazette of the European Communities, No. 90, 5 October 1962, p. 2353.

adopted by that State and maintained in effect until the end of the transition period at the latest;

Whereas if the interests of several Member States or of the Community as such are involved, safeguard measures must be decided by the Council on a proposal of the Commission, in accordance with the rules laid down in the Treaty:

Whereas for the immediate safeguarding of the interests of Member States, in cases of emergency, appropriate measures must be taken without delay in order to remedy the effects in the Community of imports from non-member countries favoured by abnormal practices; and whereas, therefore, a suitable procedure must be provided;

Whereas in cases of emergency and until the entry into effect of decisions taken at Community level, Member States must be empowered to take safeguard measures under their own legislation;

Whereas commercial safeguard measures, at the national or at the Community level, must in no circumstances have a distorting effect on competition in the Community markets;

Whereas the effectiveness of common measures must not be impaired by other measures of commercial policy adopted at the national level;

Whereas when abnormal practices are engaged in by one or more non-member countries who are contracting parties to GATT, the provisions of the General Agreement which are applicable to such practices must be respected,

Has adopted the present Regulation :

Article 1

1. If as a result of abnormal practices on the part of one or more non-member countries commercial safeguard measures must be envisaged, the internal procedure laid down in the present regulation shall be observed.

2. For the purposes of the present regulation any statutory, administrative or other measures, any commercial or monetary practice, or any other provision of whatsoever kind shall be regarded as abnormal practices, if they are —

i) Incompatible with obligations contracted in relations with Member States or the Community as such either through international organizations of an economic character, in particular GATT, or under bilateral or multilateral commercial or economic treaties or agreements; or

ii) Liable to distort competition on the markets of destination to the disadvantage of Member States or of the Community as such, or to cause or threaten to cause serious disturbance within the Community; or

iii) Liable to constitute an unjustified obstacle, especially of a discriminatory nature, in trade with the Community.

Article 2

The Member State or States which have noted the existence of such practices and consider safeguard measures necessary shall submit to the Commission a request for consultation accompanied by a statement of reasons. Such consultation procedure may also be instituted by the Commission acting on its own initiative.

Consultation shall commence within two weeks from the receipt of the request by the Commission and in accordance with the procedure laid down in the Annex [Chapter A(3)] to the Council Decision on an action programme to introduce a common commercial policy of 25 September 1962 ⁽¹⁾. In cases of urgency, and on request, consultation shall take place at the latest on the fifth day following receipt of the request by the Commission.

Consultation shall precede any other action.

Article 3

The purpose of such consultation shall be —

1. To establish the nature and effects of the practices notified and in particular to decide whether they constitute a case of dumping or of export bonuses or subsidies;

2. To assess their geographical scope and incidence either within the Common Market or on the exports of Member States to non-member countries;

3. To consider measures to overcome the difficulties caused by such practices, without however thereby distorting competition within the Common Market;

4. To decide what representations may be made to the appropriate authorities of the non-member country or countries concerned or to international organizations.

Article 4

If upon consultation it is found that the abnormal practices complained of affect the interests of one Member State only, the said

(1) See official gazette of the European Communities, No. 90, 5 October 1962, p. 2356.

Member State may, if it considers this course advisable, itself take such steps as will cause the least disturbance to the functioning of the Common Market.

Such measures taken at the national level shall not be valid beyond the end of the transition period.

Article 5

If upon consultation it is found that the abnormal practices complained of affect the interests of several Member States, the Commission shall propose to the Council commercial safeguard measures to remedy at Community level the difficulties encountered. The Council shall take its decisions in the manner prescribed by the Treaty.

Article 6

1. Where, in the case referred to in Article 5 above, urgent action is necessary the Commission shall, on the request of a Member State and for the immediate safeguarding of Community interests, forthwith decide on the measures to be adopted. All Member States shall be notified of such decision, which shall become effective from the fourth working day following notification.

Any Member State may, within three working days from the said notification, refer the Commission's decision to the Council. The Council shall convene without delay. It may, by qualified majority, modify or cancel the Commission's decision.

Where such reference to the Council is made by a Member State, the Commission's decision shall be suspended. The suspension shall cease thirty days from the date of reference, unless the Council has already modified or cancelled the Commission's decision.

2. As a conservatory measure and until the entry into force of either the Commission's decision (first sub-paragraph of paragraph 1

above) or of that of the Council (second sub-paragraph of paragraph 1 above), any Member State concerned may take under its own legislation, maintain in force and until the end of the transition period, such commercial safeguard measures as it considers necessary. It shall inform the other Member States and the Commission thereof at the earliest possible date.

3. The provisions of this Article shall be applied solely to remedy the internal effects within the Community of imports from non-member countries which are favoured by dumping, export bonuses or subsidies or any other abnormal practices as defined in Article 1(2) of the present regulation, and which cause or threaten to cause a serious disturbance within the Common Market.

Article 7

While such Community measures are in force no Member State may, in respect of the same products from the non-member country concerned, apply any measures of commercial policy other than those adopted in accordance with the procedures laid down in Articles 5 and 6 above.

Article 8

If the country or countries engaging in the practices complained of are contracting parties of GATT the decisions referred to in Articles 4 to 6 of the present regulation must take due account of the provisions of the General Agreement which may be applicable to the said practices.

Article 9

The present regulation shall enter into force on...

The present regulation shall be binding in all its parts and directly enforceable in all Member States.

Proposal for a Council regulation on the financing of intervention expenditure in the cereals sector of home markets

(submitted by the Commission to the Council on 11 December 1963)

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Regulation No. 25 Financing of the Common Agricultural Policy;

Having regard to Council Regulation No. ... on the Granting of Aid by the European Agricultural Guidance and Guarantee Fund, and in particular Articles 5 and 6 thereof;

Having regard to the proposal of the Commission;

Whereas under Articles 5 and 6 Council Regulation No. ... on the Granting of Aid by the European Agricultural Guidance and Guarantee Fund the conditions of such aid must be determined for the joint financing of intervention expenditure in each sector of the common organization of markets:

Whereas in the cereals sector denaturing as provided for in Article 7(4), second paragraph, of Regulation No. 19 satisfies the conditions laid down in Article 5(1) of Council Regulation No. ... on the Granting of Aid by the European Agricultural Guidance and Guarantee Fund;

Whereas in view of the obligation of the intervention agencies to purchase home-grown cereals in accordance with Article 7(3) of Regulation No. 19, together with the existence of graduated prices during a marketing year, it is possible that at the time of transition from one such year to another losses may be sustained which satisfy the conditions laid down in Article 6(1) of Council Regulation No. ... on the Granting of Aid by the European Agricultural Guidance and Guarantee Fund;

Whereas in these two cases, in the absence of a common price level for cereals, prices differing from one Member State to another and the present price ratios within each Member State must serve as a basis;

Whereas year-end stocks occur, and denaturing is justified, mainly in areas producing a surplus; and whereas therefore the basis of calculation adopted should be the intervention price in the area of greatest surplus in each Member State;

Whereas in these two cases general criteria must be adopted such as to eliminate any difference other than that resulting from the prices and price ratios obtaining in the Member States,

Has adopted the present Regulation :

Article 1

1. For the common organization of the markets in cereals, intervention in home markets whose aim and effect are identical with those of refunds on exports to non-member countries, in accordance with Article 5(1) of Council Regulation No. ... on the Granting of Aid by the European Agricultural Guidance and Guarantee Fund, shall be understood to be expenditure arising under Article 7(4), second paragraph, of Regulation No. 19, namely —

a) Losses sustained in the sale of rye or wheat other than durum at a price below the target prices for these cereals, provided they have been rendered unfit for human consumption

b) The denaturing premiums granted by the Member States for rye and wheat other than durum.

2. In determining the losses and the denaturing premiums the following shall be taken into account :

a) The cost of the denaturing operation fixed at a standard rate for the Community according to the procedure laid down in Article 26 of Regulation No. 19;

b) Ninety per cent of the difference, in the first month of the marketing year, in each Member State between the derived target price for rye or for wheat other than durum in the area of greatest surplus and the target price for barley in the same area.

The payments made by the Fund shall not exceed the actual expenditure incurred by Member States.

Article 2

1. With regard to the common organization of the market in cereals, if, at the time of transition from one marketing year to another, the unsold stocks of home-grown cereals purchased by the Member States' intervention agencies in pursuance of Article 7(3) of Regulation No. 19 have depreciated owing to a fall in prices, the losses sustained by such intervention agencies shall be chargeable to the Fund under Article 6(1) of Regulation No. ... on the Granting of Aid by the European Agricultural Guidance and Guarantee Fund.

2. The losses sustained shall be calculated in each Member State on the basis of the difference between the intervention price for the last month of the marketing year in the area of greatest surplus and the target price for the first month of the following marketing year for the product in the same area. Nevertheless, Member States which shall not have introduced a monthly graduation of intervention prices up to the end of the marketing year shall increase the intervention price by an amount corresponding to the incidence on their price of the number of steps needed to reach the end of the said year. Such incidence shall be calculated on the basis of the average graduation in the Member State concerned.

3. The Fund shall accept no liability in respect of reserves held under international agreements independently of national or Community policies.

The present regulation shall be binding in all its parts and directly enforceable in all Member States.

Proposal for a Council regulation amending Council Regulations
Nos. 20, 21 and 22 with regard to refunds on exports to Member States

(submitted by the Commission to the Council on 12 December 1963)

The Council of the European Economic Community,

Having regard to the provisions of the Treaty establishing the European Economic Community and in particular Article 43 thereof;

Having regard to the proposal of the Commission;

Having regard to the opinion of the European Parliament;

Whereas, in conformity with Article 10 of Council Regulation No. 20 ⁽¹⁾, Article 7 of Council Regulation No. 21 ⁽²⁾ and Article 7 of Council Regulation No. 22 ⁽³⁾, a Member State may, upon exportation to a Member State of the products referred to in Article 1 of each of the above-mentioned regulations, refund either :

a) an amount corresponding to the incidence on feeding costs of the difference in feed-grain prices as between the importing and exporting Member States; or

b) an amount equal to the sum of the first two components of the levy vis-à-vis third countries;

Whereas the practice of refunds paid in accordance with b) above has not produced satisfactory results and should be discontinued;

Whereas for the products listed in Article 1(1) c) of Council Regulation No. 20 it should be possible to refund the weighted average as defined in Article 4(2) a) and b) of the said regulation,

Has adopted the present regulation :

Article 1

Article 10(1), first paragraph, of Council Regulation No. 20 on the progressive establishment of a common organization of the market in pigmeat shall read as follows :

"1. A Member State which, in accordance with the provisions of the present regulation, applies levies vis-à-vis another Member State may refund upon exports to such Member State either :

a) an amount corresponding to the incidence on feeding costs for the products referred to in Article 1(1) a) and b) of the difference in feed-grain prices as between the importing and exporting Member States; or

b) an amount corresponding to the weighted averages referred to in Article 4(2) a) and b) for the products referred to in Article 1(1) c)".

Article 2

The second paragraph of Article 10(2) of Council Regulation No. 20 shall be deleted.

Article 3

Article 7(1) of Council Regulation No. 21 on the progressive establishment of a common organization of the market in eggs, and Article 7(1) of Council Regulation No. 22 on the progressive establishment of a common organization of the market in poultry meat shall read as follows :

"1. A Member State which, in accordance with the provisions of the present regulation, applies levies vis-à-vis another Member State may, upon exportation to such Member State, refund an amount corresponding to the incidence on feeding costs of the products referred to in Article 1 of the difference in feed-grain prices as between the importing and exporting Member States."

Article 4

The second paragraph of Article 7(2) of Council Regulations Nos. 21 and 22 shall be deleted.

The present regulation shall be binding in all its parts and directly applicable in all Member States.

(1) See official gazette of the European Communities, No. 30, 20 April 1962, p. 945.

(2) *ibid.*, p. 953.

(3) *ibid.*, p. 959.

Explanatory Memorandum

1. Amendment of Council Regulation No. 20

Intra-Community refunds are governed as desired by one or other of the two arrangements laid down in Article 10(1) *a*) and *b*) of Council Regulation No. 20. By an agreement of 19-20 June 1962 the Member States decided to use only the refund facilities granted under Article 10(1) *b*) for intra-Community exports of pigmeat, and to waive refunds of amounts corresponding to the incidence on feeding costs of the products referred to in Council Regulation No. 20 Article 1(1) of the difference between the prices of feed-grain in the importing and exporting Member States.

In practice, however, application of Article 10(1) *b*) has led to considerable difficulties and given rise to abnormal trade flows. It therefore appears desirable to rescind the agreement of 19-20 June 1962 and to authorize refunds solely on the basis of the incidence of the difference between the prices of feed-grain, in accordance with Article 10(1) *a*).

A distinction should be made between the products referred to in Article 1 *a*) and *b*), and those referred to in *c*) : for the former, only the difference of the raw material costs, that is to say the feed costs, should be refunded, whereas for the second the same refund should be made, but from now on in the form of the weighted average of the levies fixed for these products, such weighted average being calculated in accordance with Article 4(2) *a*) and *b*).

2. Amendment of Council Regulations Nos. 21 and 22

Article 7 of Council Regulations Nos. 21 and 22 provides that :

A Member State which in accordance with the provisions of the said regulations applies levies vis-à-vis another Member State may, upon exportation to such Member State, refund either :

a) an amount corresponding to the incidence on feeding costs of the products referred to in Article 1 of the difference in feed-grain prices as between the importing and exporting Member State; or

b) an amount equal to the sum of the first two components of the levy vis-à-vis third countries as determined in Article 4(1) *a*) and *b*) of the said regulations and, in respect of the products referred to in Article 1 of Council Regulation No. 21, other than shell eggs, and in respect of the products referred to in Article 1(1) of Council Regulation No. 22, other than slaughtered poultry, by taking account of the rules set out in Article 4(2) of the said regulations.

At the request of the Netherlands delegation the Council on 20 and 21 March 1963 considered the second form of refund provided for in Article 7 of Council Regulations Nos. 21 and 22.

The Netherlands delegation felt that refunds of this type, which were being applied by Belgium and France on their exports of slaughtered poultry to the Federal Republic of Germany, considerably disturbed the conditions of competition; unduly high refunds do, in fact, create an artificial export stimulus so that poultry-raising expands at a faster rate than normal.

Meanwhile the Council took note on 30 May 1963 of a joint declaration, by which —

Belgium and France undertook, in the case of exports to the Federal Republic of Germany, not to make full use of the second form of refund provided for in Article 7 of Council Regulations Nos. 21 and 22;

The Netherlands undertook not to grant any refund on exports of slaughtered poultry to the Federal Republic of Germany.

Since the application of Article 7 of Council Regulations Nos. 21 and 22 is limited by these agreements and since the grounds for these agreements will continue to exist in the future, Article 7 of the above-mentioned regulations should be amended to conform with these agreements.