

## REGULATION (EEC) No 459/68 OF THE COUNCIL

of 5 April 1968

on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 111, 113 and 227 thereof;

Having regard to Regulations Nos 160/66/EEC<sup>1</sup>, 189/66/EEC<sup>2</sup> and 170/67/EEC<sup>3</sup> and to the Regulations establishing common organisation of agricultural markets, in particular the provisions of those Regulations which allow for derogation from the general principle that protective measures at frontiers may be replaced solely by agricultural levies, or by the charges provided for in Regulations Nos 160/66/EEC and 170/67/EEC;

Having regard to the proposal from the Commission;

Whereas, after the transitional period has ended, the common commercial policy must be based on uniform principles; whereas implementation of this policy necessarily involves its progressive introduction during the transitional period; whereas, by its Decision of 25 September 1962<sup>4</sup>, the Council adopted a programme of action in this matter;

Whereas protective measures against dumping or the granting of bounties or subsidies by countries which are not members of the EEC are an important part of the common commercial policy;

Whereas the laws of Member States in this field vary considerably and there are as yet no Community rules for adopting effective protective measures;

Whereas, if the external trade of the Community is to develop harmoniously, it is nevertheless essential that it should possess uniform means of protection capable of dealing effectively and promptly with the difficulties created by dumping or by the granting of bounties or subsidies, and of exerting,

by their very existence, a moderating influence on trade relations between the EEC and non-member countries;

Whereas it is therefore necessary to adopt common measures in this field forthwith;

Whereas, in view of the international obligations of the Community and its Member States, this Regulation must be drawn up with due regard for the rules laid down in Article VI of the General Agreement on Tariff and Trade and in the Agreement on Implementation of that Article;

Whereas within their respective spheres of action the Community and its Member States must however remain at liberty to adopt special measures where this does not run counter to their contractual obligations under the GATT;

Whereas dumping and the granting of bounties and subsidies are practices which may also concern agricultural products and products derived therefrom; whereas it is therefore necessary to supplement the import rules generally applicable to such products by making provisions for protective measures against such practices;

Whereas it must be possible for anyone acting on behalf of a Community industry which considers itself injured or threatened by any act of dumping or by any bounty or subsidy granted to lodge a complaint; whereas such complaints must satisfy certain requirements, in particular as regards the provision of evidence of dumping, or of the granting of any bounty or subsidy, and of injury resulting therefrom;

Whereas it is in the Community interest that Member States and the Commission should keep each other as fully informed as possible regarding both complaints and the steps taken by the competent authorities to counteract the practices in question;

Whereas examination of the matter at Community level should involve close and constant co-operation between Member States and the Commission;

<sup>1</sup> OJ No 195, 28.10.1966, p. 3361/66.

<sup>2</sup> OJ No 218, 28.11.1966, p. 3713/66.

<sup>3</sup> OJ No 130, 28.6.1967, p. 2596/67.

<sup>4</sup> OJ No 90, 5.10.1962, p. 2353/62.

Whereas proceedings must be adequately publicised, and in particular by publication of a notice in the *Official Journal of the European Communities* designed to warn foreign exporters and Community importers of the possible adoption of protective measures, and to help expedite examination of the matter;

Whereas it is essential that, on the basis of information exchanged, examination should take place at Community level, within an advisory committee, of appropriate protective measures; whereas it is for the Commission to submit the necessary proposals to the Council;

Whereas experience has shown that protection against dumping, bounties or subsidies may in certain cases call for a more expeditious protective procedure; whereas the Community must therefore be able to provide appropriate protection during the relatively lengthy period which may be required before the facts of the matter are finally established;

Whereas a more expeditious procedure than normal should therefore be provided for as a safeguard against unforeseen practices; whereas the need for rapid and effective action makes it justifiable for the Commission to be empowered, as an exceptional measure and without prejudice to the subsequent position of the Council, to introduce, on its own initiative or at the request of a Member State, and under an emergency procedure, provisional anti-dumping or countervailing duties;

Whereas, where a Member State requests immediate intervention and the conditions for the application of a provisional duty are satisfied, the period within which the Commission, acting under the emergency procedure, may introduce such duty should be limited to five working days from receipt of the request;

Whereas it is essential, in order to ensure that anti-dumping and countervailing duties are levied in a correct and uniform manner, that common rules for the application of such duties be laid down; whereas, by reason of the nature of the said duties, such rules may differ from the rules for the levying of normal import duties;

Whereas during the transitional period Member States must be empowered, subject to certain conditions, to take appropriate measures to protect the interests of their domestic industries;

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. The provisions of this Regulation shall apply for the purposes of protection against dumping or

the granting of bounties or subsidies by countries which are not members of the Community, but without prejudice to any special rules laid down in agreements concluded between the Community and such countries.

2. Provided that such action does not run counter to obligations under the GATT, the provisions of Articles 2 to 5 and 22 to 24 shall not preclude the adoption of special measures.

3. This Regulation shall apply to all products. It shall preclude neither the application of the Community Regulations in the agricultural sector nor the application of Regulations Nos 160/66/EEC, 189/66/EEC and 170/67/EEC. This Regulation shall operate by way of complement to those Regulations and in derogation from any provisions thereof which preclude the application of anti-dumping or countervailing duties.

### TITLE I

#### **Dumping; Anti-dumping duties**

##### *Article 2*

1. An anti-dumping duty may be applied to any dumped product whose introduction into Community commerce causes, or threatens to cause, material injury to an established Community industry or materially retards the setting up of an industry whose early establishment in the Community is envisaged.

2. Where in this Regulation the term 'injury' is used without qualification, it shall be interpreted as referring to the three cases mentioned above.

##### *Article 3*

1. (a) A product introduced into Community commerce shall be considered to have been dumped if the price of the product when exported to the Community is less than the comparable price, in the ordinary course of trade, of the like product within the meaning of Article 5 when destined for consumption in the exporting country of origin.

(b) Where a product is not imported directly from the country of origin but is exported to the Community from an intermediate country, the prices to be compared for the purpose of determining whether dumping within the meaning of this paragraph has occurred shall normally be the price of the product when exported to the Community and the comparable price of the like product on the domestic market of the country of export.

However, comparison may be made with the price in the country of origin if, for example, the product is merely transhipped through the country of export or such products are not produced in the country of export, or there is no comparable price for it in the country of export.

2. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, a product shall be considered to have been dumped if the price of the product when exported to the Community is less than:

— the comparable price of the like product when exported to any third country, which may be the highest such export price but should be a representative price; or

— the cost of production in the country of origin plus a reasonable amount for administration, selling and any other costs and for profits; as a general rule, the addition for profit shall not exceed the profit normally realised on sales of products of the same general category in the domestic market of the country of origin.

3. In cases where there is no export price or where it appears that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may, for the purposes of paragraphs 1 and 2, be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the product is not resold to an independent buyer, or not resold in the condition imported, on any reasonable basis.

4. (a) The comparison between the export price and the domestic price in the country of origin or the exporting country or, if applicable, the price of the product when sold to a third country, or the cost of production referred to in paragraph 2, shall be based on the prices ruling at the same level of trade, normally at the ex-factory level, and in respect of sales made as nearly as possible at the same time.

(b) Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability. In the cases referred to in paragraph 3, allowance for costs incurred between importation and resale, and for profits accruing, should also be made.

5. No product shall be considered to have been dumped by reason of the exemption of such product

from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

6. In the case of imports from countries where trade is on a basis of near or total monopoly and where domestic prices are fixed by the State, account may be taken of the fact that an exact comparison between the export price of a product to the Community and the domestic prices in that country may not always be appropriate, since in such cases special difficulties may arise in determining the comparability of prices.

7. 'Margin of dumping' means the price difference determined in accordance with the foregoing provisions.

#### Article 4

1. (a) A determination of injury shall be made only when the dumped imports are demonstrably the principal cause of such injury. For the purpose of establishing whether injury exists, the consequences of the dumping positively found to be as such shall be weighed against all other factors taken together which may be adversely affecting the Community industry in question.

(b) A determination of threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which dumping would cause injury must be clearly foreseen and imminent.

2. The evaluation of injury shall be based on examination of all factors having a bearing on the state of the industry in question, such as: developments and prospects with regard to turnover, market share, profits, prices (including the extent to which the delivered, duty-paid price is lower or higher than the most representative comparable price of the like product prevailing in the ordinary course of trade within the Community), export performance, employment, volume of dumped and other imports, utilisation of capacity of Community industry, productivity; and restrictive trade practices. No one or several of these factors can necessarily give decisive guidance.

3. In order to establish whether dumped imports are causing injury, all other factors which individually or in combination may be adversely affecting the Community industry shall be examined. The factors to be considered are, among others: the volume and prices of undumped imports of the product in question, competition between the Community producers themselves, contraction in demand due to

substitution of other products or to changes in consumer tastes.

4. The effect of the dumped imports shall be assessed in relation to the Community production of the like product when available data permit the separate identification of production on the basis of such criteria as: the production process, the producers' realisations and profits. When the Community production of the like product has no separate identity in these terms the effect of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products which includes the like product for which the necessary information can be obtained.

5. (a) For the purposes of this Regulation, the term 'Community industry' shall be interpreted as referring to the Community producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total Community production of those products except that:

— when producers are also importers of the allegedly dumped product the term 'Community industry' may be interpreted as referring only to the rest of the producers;

— in exceptional circumstances the Community may, for the product in question, be divided into two or more competitive markets and the producers within each market regarded as a Community industry, if, because of transport costs, all the producers within such a market sell all or almost all their production of the product in question in that market and none, or almost none, of the product in question produced elsewhere in the Community is sold in that market or if there exist special regional marketing conditions which result in an equal degree of isolation of the producers in such a market from the rest of the industry, provided, however, that injury may be found in such circumstances only if there is injury to all or almost all of the total production of the product in the market as defined.

(b) The provisions of paragraph 4 shall be applicable to this paragraph.

#### Article 5

For the purposes of this Regulation, the term 'like product' shall be interpreted to mean a product which is identical, i.e. alike in all respects, to the product under consideration, or in the absence of such product, another product which has characteristics

closely resembling those of the product under consideration.

#### Article 6

1. Any natural or legal person, or any association not having legal personality, acting on behalf of a Community industry which considers itself injured or threatened by dumping may lodge a complaint, which shall fulfil the conditions set out below. Such complaints shall be submitted in writing.

2. (a) The complaint may be submitted to any Member State in which the Community industry in question is carried on, irrespective of which Member State may be affected by the dumping complained of. A copy of the complaint shall be sent to the Commission by each Member State receiving such complaint.

(b) If a complaint is submitted to the Commission, the latter shall forward it to the Member States forthwith.

#### Article 7

The complaint shall give:

- (a) a description of the allegedly dumped product;
- (b) the name of the exporting country;
- (c) where possible, the names of the country of origin, the producer and the exporter of the product in question;
- (d) evidence both of dumping and of injury resulting therefrom for the industry which considers itself injured or threatened.

#### Article 8

1. Where a Member State is satisfied that a complaint contains the particulars specified in Article 7, it shall at once inform the Commission and shall forward to the Commission any other information which it considers necessary for an examination of the matter at Community level.

2. Where, in the absence of any complaint, a Member State is in possession of sufficient evidence both of dumping and of injury resulting therefrom for a Community industry, it shall immediately communicate such evidence to the Commission.

3. The Commission shall in either case forward the information received to the other Member States forthwith.

#### Article 9

Where a Member State finds that the complaint does not contain the particulars specified in Article 7 or

that the margin of dumping, the volume of dumped imports, actual or potential, or the injury is negligible, it shall so inform the Commission. The latter shall immediately advise the other Member States. If, within a period of ten working days from the date on which the Commission was informed, the latter has not raised any objection, whether at the request of a Member State or on its own initiative, the complaint shall be rejected forthwith by the Member State to whom it was sent, or by the Commission if the complaint was submitted to the Commission under Article 6 (2) (b); in all other cases Article 10 (1) shall apply.

#### Article 10

1. On receipt of information sent pursuant to paragraph 1 or to paragraph 2 of Article 8, or as soon as an objection has been raised to the rejection of a complaint pursuant to Article 9, the Commission, acting in accordance with the provisions of this Article and in co-operation with the Member States, shall immediately commence examination of the matter at Community level. Such examination shall cover both dumping and injury.

2. Where the information received by the Commission shows that protective measures against dumping may be necessary, the Commission, without prejudice to the continued examination of the matter, shall officially, advise the representatives of the exporting country and the exporters and importers known to be concerned. The Commission shall at the same time publish a notice in the *Official Journal of the European Communities* indicating the product in question and the country of origin or of export, as the case may be. The notice shall also state that all relevant information is to be communicated to the Commission and shall set the period within which interested parties may apply to be heard by the Commission in accordance with the provisions of paragraph 6.

3. (a) In carrying out its duties under paragraph 1, the Commission is authorised to obtain all necessary information from importers, exporters, traders and producers, and from trade associations and organisations.

(b) When the Commission makes a request for such information, it shall at the same time send a copy of the request to the Member State in whose territory the recipient of the request is carrying on his activities.

4. The Commission shall provide opportunities for the complainant and the importers and exporters known to be concerned, and the representatives of the exporting country, to see all information that is relevant to the defence of their interests and not confidential within the meaning of Article 11, and that it is used by the Commission in the anti-dumping investigation.

5. (a) For the purposes of determining correctly the margin of dumping and the injury caused, the Commission shall request Member States:

- to supply information;
- to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers;
- to carry out investigations in countries which are not members of the Community; where the purpose of such investigations is to verify information provided or to obtain further details from within the undertaking concerned, they may be carried out only if the undertakings concerned give their consent and the government of the country in question has been officially notified and raises no objection.

(b) Member States shall take whatever steps are necessary in order to give effect to requests from the Commission. They shall send to the Commission the information requested together with the results of all inspections, checks or investigations carried out.

(c) The Commission shall forward this information to the other Member States forthwith.

(d) Officials of the Commission shall be authorised, if the Commission or a Member State so requests, to assist the officials of Member States in carrying out their duties.

6. (a) The Commission may hear the interested parties. It shall so hear them if they have, within the period prescribed in the notice published in the *Official Journal of the European Communities*, made a written request for a hearing showing that they may be directly affected by the result of the examination of the matter. In such case, the Commission shall give the parties an opportunity to make known their views in writing within a period which it shall set. The Commission shall, furthermore, give the parties directly interested who have so requested in writing and can show a sufficient interest an opportunity to express their views orally.

(b) Furthermore, the Commission shall, on request, give the parties directly concerned an opportunity to meet, so that opposing views may be presented and any rebuttal argument put forward. In providing this opportunity the Commission shall take account of the need to preserve confidentiality and of the convenience of the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

7. (a) The provisions of this Article shall not preclude either the Council or the Commission from reaching preliminary determinations, or from taking an expedited decision applying provisional measures under Article 15.

(b) In cases in which any interested party withholds the necessary information or where the government of a country which is not a member of the Community objects to an investigation within the meaning of paragraph 5 (a) being held in its territory, a final finding may be made on the basis of the facts available.

#### Article 11

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

2. Neither the Council, nor the Commission, nor Member States, nor the officials of any of these, shall reveal any information of a confidential nature received in pursuance of this Regulation, or any information provided on a confidential basis by a party to an anti-dumping investigation, without specific permission from the party submitting such information.

3. However, if it appears that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the information in question may be disregarded, unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.

#### Article 12

1. Consultations may take place at any time. They shall be held immediately on request by a Member State or on the initiative of the Commission.

2. Consultation shall take place within an advisory committee (hereinafter called the 'Committee'), which shall consist of representatives of each Member State, with a representative of the Commission as Chairman.

3. The Committee shall meet when convened by its Chairman. He shall provide the Member States, as promptly as possible, with all relevant information.

#### Article 13

Consultation shall in particular cover:

- (a) the existence and margin of dumping;
- (b) the existence and extent of injury;

(c) the measures which, having regard to all the circumstances, are appropriate to remedy the effects of dumping, and the ways and means for putting such measures into effect.

#### Article 14

1. (a) If it becomes apparent from consultation as provided for in Article 13 that protective measures are unnecessary, then where no objection is raised within the Committee the proceeding shall stand terminated. In all other cases the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal that the proceeding be terminated. If the Council, acting by a qualified majority, approves the proposal from the Commission, the proceeding shall stand terminated. It shall likewise stand terminated if within one month the Council has taken no decision or made no request by a qualified majority to the Commission asking it to resume its examination of the matter.

(b) The Commission shall inform the representatives of the exporting country and the directly interested parties of the termination of the proceeding; it shall inform them of the reasons for termination and of the criteria applied. Where a notice was published in the *Official Journal of the European Communities* under Article 10 (2), then, unless there are special reasons against so doing, the Commission shall immediately announce the termination in that same Journal.

2. (a) The provisions of the foregoing paragraph shall also apply where, during examination of the matter, the exporters give a voluntary undertaking to revise their prices so that the margin of dumping is eliminated or to cease to export the product in question to the Community, provided that the Commission, after hearing the opinions expressed within the Committee, considers this acceptable.

(b) Where the Commission, acting in accordance with the provisions of the foregoing subparagraph, accepts the undertaking referred to therein, the investigation of injury shall nevertheless be completed if the exporters so desire or if, after hearing the opinions expressed within the Committee, the Commission so decides. If the Commission, after hearing the opinions expressed within the Committee, makes a determination of no injury, the undertaking given by the exporters shall automatically lapse unless the exporters state that it is not so to lapse.

(c) The fact that exporters do not offer to give such undertakings, or do not accept an

invitation made by the Commission to do so, shall in no way be prejudicial to the consideration of the case. However, the Commission shall be free to determine that a threat of injury is more likely to be realised if the dumped imports continue.

#### Article 15

1. (a) Where preliminary examination of the matter shows that there is dumping and there is sufficient evidence of injury and the interests of the Community call for immediate intervention, the Commission, acting at the request of a Member State or on its own initiative, shall:
  - having due regard to the provisions of Article 19 (3), fix an amount to be secured by way of provisional anti-dumping duty, collection of which shall be determined by the subsequent decision of the Council under Article 17;
  - indicate, using the description required under Article 20, the products covered by this measure;
  - stipulate that entry of such products for Community consumption shall be conditional upon the provision of security for the aforementioned amount.
- (b) The Commission shall take such provisional action after hearing the opinions expressed in the Committee or, in cases of extreme urgency, after informing the Member States. In this latter case, consultations shall take place within the Committee ten days at the latest after notification to the Member States of the action taken by the Commission.
- (c) Where a Member State requests immediate intervention by the Commission, the Commission shall, within a maximum of five working days of receipt of the request, decide whether a provisional anti-dumping duty should be imposed. If the Commission decides not to accede to such a request from a Member State, it shall forthwith communicate its decision to the Council, which may, acting by a qualified majority, decide differently. A decision by the Commission not to impose a provisional duty shall not preclude the imposition of such duty at a later date, either at the request of a Member State, if new factors arise, or on the initiative of the Commission.
2. (a) Without prejudice to the provisions of Articles 16 and 18, provisional measures shall continue to operate until the entry into force of a decision taken by the Council under Article

17, subject, however, to a maximum of three months.

- (b) After the period of validity of such measures has expired, the security shall be released, to the extent of the amount secured that the Council has not decided to collect definitively under Article 17. Where the provisional duty is retroactively cancelled or reduced under Article 16 or under Article 18, the security unduly obtained shall be released as promptly as possible.

#### Article 16

1. The Commission shall communicate to the Council forthwith its decision to introduce provisional measures. The Council, acting by a qualified majority, may either confirm these measures or decide that different action be taken. The period of validity of the Council's decision shall not exceed three months, reckoned from the date of the entry into force of the provisional measures taken by the Commission.
2. Not less than one month before expiry of the period of three months laid down in Article 15 (2) (a), the Commission shall, without prejudice to the provisions of Article 18, submit a proposal to the Council, either for Community action under Article 17 or, if so requested by the exporters and by the importers, and if examination of the matter has not yet been completed, for the extension of the provisional measures for a period not exceeding three months. In the latter case the Council shall act by a qualified majority.

#### Article 17

1. Where the facts as finally established show that there is dumping and injury, and the interests of the Community call for Community intervention, the Commission shall, after hearing the opinions expressed within the Committee, submit a proposal to the Council. Such proposal shall also cover the matters set out in paragraph 2.
2. (a) The Council shall act by a qualified majority. Where Article 15 (1) has been applied, the Council shall decide, subject to the provisions of Article 15 (2), what proportion of the amounts secured by way of provisional duty is to be definitively collected.
- (b) The definitive collection of such amount shall not be decided upon unless the facts as finally established show that there is material injury (and not merely threat of material injury or of material retardation of the establishment of a Community industry) or that such injury would have been caused if provisional action had not been taken.

*Article 18*

1. (a) While the measures referred to in Article 15, 16 and 17 are in operation, consultations shall be held within the Committee, either at the request of a Member State or on the initiative of the Commission. The purpose of such consultations shall be:

— to examine the effects of those measures; and

— to ascertain whether the conditions for their application are satisfied.

(b) Requests for such consultations to be held, accompanied by supporting evidence, may be made by exporters or by importers of the product in question, either to a Member State or to the Commission. A Member State receiving any such request shall inform the Commission, which shall notify the other Member States. Where the Commission receives the request, it shall inform the other Member States thereof.

2. If, after hearing the opinions expressed in the Committee, the Commission decides that the measures in question should be amended, or revoked either with or without retroactive effect, then:

(a) where the Council has taken no action under Article 16 or under Article 17, the Commission shall itself forthwith amend, or revoke with or without retroactive effect, measures in force under Article 15 and shall immediately report on this to the Council; the latter may, acting by a qualified majority, decide that different action be taken;

(b) in all other cases, it shall propose to the Council either that measures in force under Article 15 or under Article 16 be amended, or revoked with or without retroactive effect, or that measures in force under article 17 be amended or revoked. The Council shall decide on such proposals by a qualified majority.

*Article 19*

1. Anti-dumping duties, whether provisional or definitive, shall be imposed by Regulation.

2. (a) Without prejudice to the provisions of Article 17 (2), such duties shall be neither imposed nor increased with retroactive effect.

(b) Such duties shall apply to all the products specified in the Council or the Commission measure which, after entry into force of such measure, are entered for Community consumption. For this purpose, the date of acceptance by the customs authorities of the

declarant's statement of his intention to enter the goods for consumption shall be determinant.

(c) Where a product is imported into the Community from more than one country, duty shall be levied at an appropriate amount on a non-discriminatory basis on all imports of such product found to be dumped and causing injury.

3. The amount of an anti-dumping duty, whether definitive or provisional, shall not exceed the margin of dumping established, or, in the case of a provisional duty, the margin of dumping provisionally determined; it should be less than the margin if such lesser duty would be adequate to remove the injury.

4. (a) Where an importer can show that the products which he has entered for Community consumption were not dumped, or where the margin of dumping is lower than that on which the Council or Commission measure was based, the anti-dumping duties collected on those products shall be returned to him in whole or in part; where provisional measures were taken, the same shall apply in respect of the release of securities.

(b) For this purpose, the importer may, within three months of the date on which the products were entered for consumption, submit an application to the Member State in whose territory they were so entered. That Member State shall forward the application to the Commission as soon as possible, together with an opinion as to its merits. The Commission shall inform the other Member States forthwith. If within one month of receipt of this communication the Commission has not, on its own initiative or at the request of another Member State, raised any objection, the Member State in question shall decide upon the matter in accordance with the opinion which it communicated to the Commission. In all other cases, the Commission shall, after hearing the opinions expressed within the Committee, decide whether and to what extent the Member State should grant the application.

5. Where the second indent of Article 4 (5) has been applied, the Commission shall, after hearing the opinions expressed within the Committee, give exporters an opportunity to cease dumping on the competitive market concerned. In such cases, if an adequate undertaking is promptly given, the Commission shall not take provisional measures and shall not submit a proposal of the kind provided for in Article 17. However, if such an undertaking is not given promptly or is not fulfilled, the Commission



may, in respect of the Community as a whole, impose a provisional duty or propose the imposition of a definitive duty.

6. Anti-dumping proceedings shall not constitute a bar to customs clearance of the product concerned.

#### *Article 20*

1. The description of any product covered by a measure provided for in the foregoing Articles shall include:

- (a) tariff description;
- (b) commercial description;
- (c) country of origin or export;
- (d) name of supplier.

2. If several suppliers from the same country are involved, and it is impracticable to name them all, the product may be described by the particulars referred to in (a), (b) and (c) of the foregoing paragraph. If several suppliers from more than one country are involved, it shall be sufficient to give, in addition to the particulars set out in (a) and (b), details either of all the suppliers involved, or, if this is impracticable, of all the supplying countries involved.

3. In the absence of any special provisions to the contrary adopted when a definitive or provisional anti-dumping duty was imposed, the rules on the common definition of the concept of origin and the relevant common implementing provisions shall apply.

#### *Article 21*

Anti-dumping duties shall be collected by Member States in the form, at the rate and according to the other criteria laid down when the duties were imposed, and independently of the customs duties, taxes and other charges normally imposed on imports.

### TITLE II

#### **Bounties, subsidies and countervailing duties**

#### *Article 22*

Countervailing duties may be imposed on products in respect of which bounties or subsidies are granted in their countries of origin or export if their introduction into Community commerce causes or threatens material injury to an established Community industry or materially retards the establishment of such an industry. The provisions of Article 3 (5) shall apply correspondingly.

#### *Article 23*

The amount of any countervailing duty, whether definitive or provisional, shall not exceed an amount equal to the estimated, or, in the case of a provisional duty, the provisionally estimated, bounty or subsidy granted directly or indirectly in the country of origin or export on the manufacture, production or export of the product concerned, including any special subsidy to the transportation of the product.

#### *Article 24*

No product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from the granting of any bounty or subsidy.

#### *Article 25*

The provisions of Article 6 to 21 shall apply correspondingly to this Title.

### TITLE III

#### **Provisions applicable during the transitional period**

#### *Article 26*

During the transitional period the following rules shall apply:

1. Where the interests of a Community industry are involved or where a product is covered by common organisation of agricultural markets or by Regulation No 160/66/EEC, 189/66/EEC or 170/67/EEC, the provisions of Titles I and II shall apply.

2. In all other cases, each Member State may take whatever measures it judges appropriate to protect a domestic industry. The provisions of Article 1 (1) and (2), Articles 2 to 5 and Article 22 shall apply correspondingly. In addition, the procedure laid down in paragraphs 3 to 12 of this Article shall apply.

3. A complaint may be lodged on behalf of any domestic industry which considers itself injured or threatened by dumping. The provisions of the last sentence in Article 6 (1) and of Article 7 shall apply.

4. Where the complaint contains the particulars required under Article 7 or where, in the absence of any complaint, a Member State possesses evidence both of dumping and of injury resulting therefrom for a domestic industry, that Member State shall examine the matter at national level. The rules laid down in paragraphs 2, 4, 6 and 7 of Article 10 and in Article 11 shall apply correspondingly.

5. (a) Examination of the matter at national level shall be terminated promptly as soon as the Member State is satisfied that there is not sufficient evidence of dumping or of injury to justify proceeding with the case. There should be immediate termination in cases where the margin of dumping or the volume of dumped imports, actual or potential, or the injury is negligible. Where a notice was published pursuant to paragraph 4, termination shall be made public.
- (b) The provisions of the foregoing subparagraph shall also apply where the exporters give a voluntary undertaking to revise their prices so that the margin of dumping is eliminated or to cease to export the product in question to the Member State concerned, provided that the latter considers this acceptable.
- (c) Where the Member State accepts the undertaking provided for in the foregoing subparagraph, the investigation of injury shall nevertheless be completed if the exporters so desire or if the Member State so decides. If a determination of no injury is made, the undertaking given by the exporters shall automatically lapse unless the exporters state that it is not so to lapse. The provisions of Article 14 (2) (c) shall apply correspondingly.
6. (a) Where preliminary examination of the matter shows that there is dumping and there is sufficient evidence of injury and national interests call for immediate intervention, the Member State may:
- having due regard to the provisions of Article 19 (3), fix an amount to be secured by way of provisional anti-dumping duty, collection of which shall be determined by a subsequent decision under paragraph 7 (b);
  - indicate, using the description required under Article 20, the products covered by this measure;
  - stipulate that entry of such products for consumption be conditional on provision of the aforementioned security.
- (b) Without prejudice to the provisions of paragraph 12, provisional duties imposed pursuant to this paragraph shall remain applicable until the entry into force of a decision taken under paragraph 7, subject however to a maximum of three months or, if the Member State so decides upon request by the exporters and importers, six months.
- (c) After the period of application of the provisional duties has expired, the security shall be released, unless the Member State has decided, under the following paragraph, that the amount secured is to be definitively collected. Where the provisional duty is retroactively cancelled or reduced, the security unduly obtained shall be released as promptly as possible.
7. (a) Where the facts as finally established show that there is dumping and injury to a domestic industry, and national interests call for protective measures, the Member State shall be entitled to take a decision imposing an anti-dumping duty.
- (b) Where paragraph 6 has been applied, the Member State shall, in its decision referred to in the foregoing subparagraph, determine what proportion of the amount secured by way of provisional duty is to be definitively collected.
- The provisions of Article 17 (2) (b) shall apply correspondingly.
8. (a) The Member State shall inform the representatives of the exporting country and the directly interested parties of measures taken under paragraphs 6 and 7; it shall inform them of its reasons and of the criteria applied; it shall, unless there are special reasons against doing so, make public such measures.
- (b) Without prejudice to the provisions of paragraph 7 (b), such measures shall be neither introduced nor strengthened with retroactive effect.
- (c) The provisions of Article 19, paragraphs (2), (b) and (c), (3), (4), (a) and the first sentence of (b), (5) and (6), and those of Articles 20 and 21, shall apply correspondingly.
9. Where the introduction of a national protective measure is envisaged, the Member State in question shall, prior to the adoption of such measure, notify the Commission and shall inform the Commission of the results of the examination of the matter which it has carried out. The Commission shall forward this information to the other Member States forthwith.
10. Prior consultations shall be held immediately on request by a Member State or on the initiative of the Commission. If a Member State finds it necessary to introduce national measures under an emergency procedure, consultations may take place after the event. Article 12 (2) and (3) shall apply correspondingly.
11. The main purpose of the consultations shall be:
- (a) to allow the other Member States and the Commission to express their opinions on the matters specified in Article 13;

(b) to ensure that the national measures cause the least possible disturbance to the functioning of the common market;

(c) to allow the other Member States to take corresponding measures and, where the interests of a Community industry are involved, to allow the Commissions to initiate a proceeding under Titles I and II.

12. During the period of validity of national measures taken in accordance with the provisions of this Article, consultations as provided for in Article 18 (1) shall be held within the Committee.

13. For the purposes of protection against bounties or subsidies the provisions of Articles 23 and 24 shall apply, as shall, correspondingly, those of paragraphs 3 to 12 of this Article.

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

Done at Luxembourg, 5 April 1968.

#### TITLE IV

##### Final provisions

###### Article 27

Member States shall, by 1 July 1968 at the latest, adopt all the measures necessary to implement this Regulation. They shall immediately inform the Commission thereof. The latter shall forward such information to the other Member States forthwith.

###### Article 28

The provisions of this Regulation shall apply in the French overseas departments.

###### Article 29

This Regulation shall apply with effect from 1 July 1968, with the exception of Article 27, which shall apply with effect from the entry into force of this Regulation.

*For the Council*

*The President*

M. COUVE de MURVILLE

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#### ANNEX

##### DECLARATION OF THE COUNCIL

concerning the Regulation on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community

1. Where a product imported into the Community is dumped or has been the object of bounties or subsidies and this causes or threatens material injury to an established industry of a country which is not a member of the Community and which exports the product in question to the Community, the Commission may, at the request of that country and after examination of the matter at Community level, hold the consultations provided for in the aforementioned Regulation and may propose to the Council that an anti-dumping or countervailing duty be imposed for the Community under that Regulation, but subject to the obligations arising under

the General Agreement on Tariffs and Trade and under the Agreement on Implementation of Article VI of that Agreement.

2. Where a product imported into a country which is not a member of the Community is dumped or has been the object of bounties or subsidies and this causes or threatens material injury to a Community industry which exports the product in question to that importing country, the consultations referred to above may be held, with a view to examining how such situation may be remedied and to enabling the Commission to submit a proposal to the Council.

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