

GENERAL AGREEMENT ON TARIFFS AND TRADE

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AGREEMENT ON IMPLEMENTATION OF ARTICLE VI

ECC Regulation on Protection Against Dumping, Bounties or Subsidies

The following communication, dated 14 June 1968, has been received from the Commission of the Communities.

I have the honour to forward to you herewith, in accordance with Article 15 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, a copy of the Official Journal of the European Communities dated 17 April 1968 which reproduces, on pages 1 to 12, Regulation 459/68 (EEC) on protection against dumping, bounties or subsidies practised by countries which are not members of the European Economic Community.

I should be grateful if you would inform the contracting parties of the contents of this text adopted by the European Economic Community in compliance with the provisions of Article 14 of the above-mentioned Agreement.

The text of the Regulation is reproduced hereinafter.

THE EUROPEAN ECONOMIC COMMUNITY
REGULATION (EEC) No. 459/68 OF THE COUNCIL
of 5 April 1968

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAVING REGARD to the Treaty setting up the European Economic Community, and
in particular Articles 111, 113 and 227 thereof;

HAVING REGARD to Regulations Nos. 160/66/EEC¹, 189/66/EEC² and 170/67/EEC³,
together with the Regulations on the common organization of the markets in
agriculture and, in particular, the provisions of those Regulations which allow
for derogation from the general principle of replacing all frontier protection
measures simply by agricultural levies or by the taxes provided for in
Regulations Nos. 160/66/EEC and 170/67/EEC;

HAVING REGARD to the proposal of the Commission;

WHEREAS, after the end of the transitional period, the common commercial
policy must be based on uniform principles and whereas the putting into effect
of that policy presupposes its progressive establishment during the transitional
period; whereas, by its decision of 25 September 1962⁴ the Council established
a programme of action in the matter;

WHEREAS protective measures against dumping, bounties or subsidies practised
by non-member countries of the EEC represent an important element in common
commercial policy;

¹OJ No. 195 of 28.10.66, p. 3361/66.

²OJ No. 218 of 28.11.66, p. 3713/66.

³OJ No. 130 of 28.6.67, p. 2596/67.

⁴OJ No. 90 of 5.10.62, p. 2353/62.

WHEREAS the law of member States in this field varies considerably and the Community, as such, does not as yet have the necessary legal machinery for the adoption of efficient protective measures;

WHEREAS it is nevertheless indispensable to harmonious development of the Community's external trade, that uniform protective measures should be established in order to remedy the difficulties raised by dumping, bounties or subsidies efficiently and without delay, the mere existence of such measures being likely to constitute a restraining influence in trading relations between EEC and non-member countries;

WHEREAS, consequently, it will be necessary from now on to make common provisions in this matter;

WHEREAS, taking into account the international undertakings of the Community and its member States, the present Regulation must be made in the light of the rules laid down in Article VI of the General Agreement on Tariffs and Trade and in the Agreement on implementation of that Article;

WHEREAS, in their respective spheres of action, the Community and its member States must in the meantime maintain the freedom which they have at present to adopt special measures when this does not run counter to their contractual obligations under the GATT code;

WHEREAS dumping, bounties and subsidies are practices which may also concern agricultural products and products derived therefrom and it is therefore necessary, in addition to the import system generally applicable to such products, to provide for the possibility of recourse to protective measures against those practices;

WHEREAS anyone acting in the name of a Community producing industry which feels itself adversely affected or threatened by dumping, bounties or subsidies, must be able to make a formal complaint; whereas such complaint must comply with certain conditions including, in particular, some outline of evidence tending to prove the practice of dumping, bounties or subsidies and the prejudice resulting therefrom;

WHEREAS, in the Community interest, it is important that member States and the Commission should keep each other as fully informed as possible regarding formal complaints and also regarding the steps taken by the competent authorities against the practices in question;

WHEREAS examination of the facts at Community level must be effected through close and constant co-operation between member States and the Commission;

WHEREAS any such proceedings must be publicized, inter alia by a notice in the Official Journal of the European Communities, in order to warn foreign exporters and Community importers of the possible adoption of protective measures and in order to expedite examination of the facts;

WHEREAS, on the basis of information exchanged, it is essential to proceed to the consideration at Community level and with the guidance of an Advisory Committee, of appropriate protective measures and whereas it is for the Commission to submit the necessary proposals to the Council;

WHEREAS experience has shown that the practice of dumping, bounties or subsidies may in certain cases call for urgent protective measures and, consequently, the Community must be able to provide appropriate protection during the relatively long delay which may be necessary before the fact-finding is completed;

WHEREAS, consequently, as a precaution, a speedier procedure than normal should be provided in order to deal with unforeseen practices and whereas the need for speed and efficiency justifies the Commission's being enabled exceptionally, and without prejudice to the final decision of the Council, to institute urgently provisional anti-dumping or countervailing duties on its own initiative or at the request of a member State;

WHEREAS, where a member State requests immediate action and where the conditions for the application of a provisional duty are fulfilled, the period within which the Commission by means of the urgent procedure must establish such duty, must be limited to five working days from the time of receipt of that request;

WHEREAS it is indispensable to fix common rules for the application of anti-dumping or countervailing duties, in order to ensure precise and uniform collection thereof, and whereas the said rules, having regard to the nature of those duties, may differ from the rules for collection of normal import duty;

WHEREAS during the transitional period member States must be enabled, subject to certain conditions, to take appropriate measures to protect the interests of their national producing industries;

HAS ADOPTED THIS REGULATION:

Article 1

1. The provisions of this Regulation shall apply for protection against dumping, bounties or subsidies on the part of countries which are not members of the Community, without prejudice to the special rules laid down in the agreements concluded between the Community and such countries.

2. Except where this is at variance with the obligations contracted under the GATT code, 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 not preclude either the application of Community Regulations in the agricultural field or the application of Regulations Nos. 160/66/EEC, 189/66/EEC and No. 170/67/EEC. The provisions of this Regulation may be applied in addition to those of the said Regulations and by way of derogation from any provisions of those Regulations which tend to preclude the application of anti-dumping or countervailing duties.

TITLE I

Dumping and Anti-Dumping Duties

Article 2

1. An anti-dumping duty may be levied on any dumped product where its introduction into the Community market causes or threatens to cause material injury to an established Community industry, or material retardation to the establishment of a Community industry envisaged for the near future.

2. When in this Regulation the term "injury" is used without any other indication, it shall be interpreted as covering the three eventualities mentioned above.

Article 3

1. (a) A product introduced into the Community market shall be considered as being dumped if its price on export to the Community is less than the comparable price, in the ordinary course of trade, for the like product, within the meaning of Article 5, when destined for consumption in the country of origin from which the product was exported.
- (b) In the case where a product is not imported directly from the country of origin but is exported to the Community from an intermediate country, the comparison of prices for the purpose of determining whether there has been dumping within the meaning of this paragraph shall, as a general rule, be made between the price of the product on export to the Community and the comparable price of a like product in the domestic market of the exporting country. However, comparison may be made with the same price in the country of origin if, for example, the product is trans-shipped through the country of export, or the product is 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 as being dumped where its price on export to the Community is less:

- than the comparable price of the like product when exported to a third country, which may be the highest such export price but should be a representative price,
- or than the cost of production in the country of origin plus a reasonable amount for administrative, selling or any other costs and for profits; as a general rule, the addition for profit may not exceed the profit normally realized 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 an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may, for the purpose of application of paragraphs 1 or 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 as imported, on any reasonable basis.

4. (a) The comparison between, on the one hand, the export price and, on the other hand, the domestic price in the country of origin or in the exporting country or, if applicable, the price upon export to a third country or the costs of production referred to in paragraph 2, shall relate to prices at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible 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 and for profits accruing between importation and resale should also be made.

5. A product may not be considered as being dumped by reason of the fact that it is exempted 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 a country which has a complete or substantially complete monopoly of its trade and where domestic prices are fixed by the State, account may be taken of the possibility that a strict comparison between the price of a product upon export to the Community and domestic prices in that country may not always be appropriate, because in such cases special difficulties may exist in determining price comparability.

7. The margin of dumping is 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 thereof. For such determination of injury, the effects found to have resulted from the dumping shall be weighed against all other factors taken together which may be adversely affecting the Community's industry.

(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 the dumping would cause injury must be clearly foreseen and imminent.

2. The valuation of injury shall be based on examination of all factors having a bearing on the state of the industry in question, such as: development 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 for the like product in the course of normal commercial transactions in the Community), export performance, employment, volume of dumped and other imports, utilization 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, inter alia: 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 in terms of such criteria as: the production process, producers' returns, profits. When the Community production of the like product cannot be identified separately by 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 provided.

5. (a) In the implementation 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 except that:
- when producers are also importers of the allegedly dumped product the Community industry may be interpreted as referring only to the rest of the producers;
 - in exceptional circumstances the Community may, for the production in question, be divided into several 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 of 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 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" ("produit similaire"), 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 a product, another product which has characteristics closely resembling those of the product under consideration.

Article 6

1. All natural or legal persons and all associations which do not have legal personality, acting in the name of a Community industry which considers itself adversely affected or threatened by dumping, may make a formal complaint in accordance with the conditions described hereinafter. Any such complaint shall be submitted in writing.
2. (a) The complaint shall be addressed to each of the member States in which there is a Community industry of the product in question, regardless of which member State is affected by the dumping complained of. A copy of the complaint shall be addressed to the Commission by the member State receiving it.
- (b) If the Commission receives a formal complaint it shall forward it without delay to the member States.

Article 7

The complaint shall contain:

- (a) a description of the allegedly dumped product;
- (b) an indication of the exporting country;
- (c) as far as possible, an indication of the country of origin and of the producer and exporter of the product under consideration;
- (d) an outline of the evidence tending to prove both the dumping and the injury resulting or threatening to result therefrom for the industry.

Article 8

1. When a member State finds that a complaint contains the particulars referred to in Article 7, it shall at once inform the Commission of this fact and shall forward to the Commission any other information which it may consider necessary to the examination of the facts at Community level.
2. When, in the absence of a complaint, a member State is in possession of sufficient evidence in respect both of dumping and of resultant injury to a Community industry, it shall immediately forward such evidence to the Commission.
3. The Commission shall forthwith send the information referred to above to the other member States.

Article 9

When a member State finds that the complaint does not contain the particulars referred to in Article 7 or when the dumping margin, the volume of dumped imports, whether real or potential, or the injury is negligible, it shall inform the Commission thereof. 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 expressed any objections, either at the request of a member State or on its own initiative, the complaint shall be dismissed without delay by the member State to whom it was sent, or by the Commission if the latter has received a request in accordance with paragraph 2(b) of Article 6; in other cases, paragraph 1 of Article 10 shall apply.

Article 10

1. On receipt of the information referred to in Article 8 (1) or (2), or as soon as objections have been expressed to the dismissal of a complaint by virtue of Article 9, the Commission, in collaboration with member States, shall immediately undertake an examination into the facts at Community level, in accordance with the provisions of this Article. The examination shall deal both with dumping and with injury.

2. Once the information received by the Commission shows that anti-dumping measures might be necessary, the Commission, notwithstanding the continuation of the investigation, shall officially notify the representatives of the exporting country and the exporters and importers known to be concerned. At the same time, the Commission shall publish a notice in the Official Journal of the European Communities, describing the product in question and the country of origin or the exporting country, as the case may be. The notice shall also state that all information relevant to the matter may be communicated to the Commission and should fix the period within which the parties concerned may express a wish to be heard by the Commission under the terms of paragraph 6.
3. (a) In the performance of the duty assigned to it by virtue of paragraph 1, the Commission may obtain all necessary information from importers, exporters, traders, producers, groups and trade organizations.
- (b) When the Commission submits such a request for information, it shall at the same time address a copy of that request to the member State on whose territory the activity which is the cause of the complaint is being pursued.
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 that is not confidential as defined in Article 11 and that is being used in the anti-dumping investigation.
5. (a) For the purposes of the proper determination of the margin of dumping and injury, the Commission may request member States:
- to supply information,
 - to proceed with all necessary verification and scrutiny, in particular with regard to Community importers, traders or producers,
 - to carry out investigations in countries which are not members of the Community, in order to check information provided or to obtain further details; they must have the prior agreement of the firm concerned and no opposition from the government of the country in question after official notification.
- (b) Member States shall make the necessary provisions to give effect to the Commission's requests. They shall forward to the latter the information requested together with the results of any checks and scrutiny or investigation carried out.

- (c) The Commission shall forthwith send this information to the other member States.
 - (d) The Commission's agent may, at its request or at the request of a member State, assist the agents of member States in the exercise of their functions.
6. (a) The Commission may hear the interested parties. The latter must be heard when they have made a request in writing for a hearing within the period fixed in the notice published in the Official Journal of the European Communities and have shown that they may be directly interested in the result of the examination of the facts. In such a case, the Commission shall afford them an opportunity of making known in writing their point of view within the time-limit which it shall fix. Furthermore, it shall give to the parties directly interested who have so requested in writing, an opportunity to express their point of view orally, if they have made out a sufficient interest in this respect.
- (b) Furthermore, the Commission shall, on request, provide opportunities for all directly interested parties to meet in order to present views and possible rebuttal arguments. Provisions of such opportunities must take into account the need to preserve confidentiality and 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 determination, or from applying provisional measures expeditiously, by virtue of Article 15.
- (b) In cases in which any interested party withholds necessary information, or when the government of a country which is not a member of the Community objects to the carrying out of an investigation as defined in paragraph 5(a), on 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 may be used only for the purpose for which it has been requested.
2. The Council, the Commission and the member States and their agents shall not, without specific permission of the party submitting such information, reveal any information they shall have received in accordance with this Regulation, which is by nature confidential or provided on a confidential basis by a party to an anti-dumping investigation.

3. However, if it is found that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its being made public in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

4. The provisions of paragraphs 1 to 3 shall not preclude the publication of general information pursuant to Article 10 (2), and of the reasons for measures taken in pursuance of this Regulation. Such publication must take into account the legitimate interest of the interested parties that their commercial secrets should not be divulged.

Article 12

1. Discussions may take place at any time. They shall be embarked on forthwith, either at the request of a member State, or on the initiative of the Commission.

2. Discussions shall be held within an Advisory Committee, hereinafter called the "Committee", composed of representatives of each member State and presided over by a representative of the Commission.

3. The Committee shall meet when convened by its Chairman. The latter shall communicate all necessary information to member States as promptly as possible.

Article 13

The scope of the discussions shall in particular be:

- (a) the existence and the margin of dumping;
- (b) the reality and extent of injury;
- (c) appropriate measures, having regard to all the circumstances, to remedy the effects of dumping, and the methods for putting such measures into effect.

Article 14

1. (a) When, as a result of the discussions referred to in Article 13, protective measures prove to be unnecessary and if no objection has been expressed in this respect within the Committee, the proceedings shall be closed. In other cases the Commission shall submit to the Council a report on the result of the discussions forthwith and a proposal that the proceedings be closed. When the Council, by a qualified majority, approves the proposal of the Commission, the proceedings shall be closed. The same shall apply where the Council does not make a decision within a period of one month or does not, by a qualified majority, invite the Commission to make a further examination into the facts.

- (b) The Commission shall inform the representatives of the exporting country and the parties directly interested of the closure of proceedings; it shall notify them of the reasons for this and the criteria adopted. Save in special circumstances it shall immediately publish the closure in the Official Journal of the European Communities if notice has been published therein in pursuance of Article 10 (2).
2. (a) The provisions of the preceding paragraph also apply when the exporters voluntarily undertake to revise their prices so that the margin of dumping is eliminated, or to cease to export the product in question to the Community, on condition that the Commission, after hearing the views of the Committee, considers this practicable.
- (b) If the Commission, in conformity with the provisions of the preceding paragraph, accepts the undertakings therein, the investigation of injury shall nevertheless be completed if the exporters so desire, or if the Commission so decides after hearing the views of the Committee. If, after hearing the views of the Committee, the Commission makes a determination of no injury, the undertaking given by the exporters shall automatically lapse unless the exporters state that it shall not lapse.
- (c) The fact that exporters do not offer to give such undertakings, or do not accept an indication made by the Commission to do so, shall in no way be prejudicial to the consideration of the case. However, the Commission is free to determine that a threat of injury is more likely to occur if imports of the dumped product continue.

Article 15

1. (a) When preliminary examination of the facts shows that dumping exists, and where there is sufficient evidence of injury and the interests of the Community call for immediate action, the Commission shall, at the request of a member State or at its own initiative:
- determine, having regard to the provisions of Article 19 (3) the amount of the guarantee by way of provisional anti-dumping duty, collection of which will be effected in application of the subsequent decision of the Council made pursuant to Article 17;
 - indicate the products covered by such a measure according to the specifications required by Article 20;
 - declare that the making available for consumption in the Community of such products shall be conditional upon the furnishing of a guarantee of the above-mentioned amount.

- (b) The Commission shall take such a provisional measure after hearing the opinions expressed in the Committee or, in case of extreme urgency, after informing member States. In this latter case consultations shall take place within the Committee not more than ten days after notification of the Commission's decision to member States.
 - (c) In cases where immediate action by the Commission has been requested by a member State, the former shall decide, within a maximum of five working days from receipt of the request, whether a provisional anti-dumping duty should be imposed. If the Commission does not give effect to such a request from a member State, it shall communicate its decision to the Council without delay, which may make a different decision by a qualified majority. The decision of the Commission not to impose a provisional duty shall not preclude the imposition of such a 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, the provisional measures shall continue to apply until the coming into force of a Council decision made pursuant to Article 17 and in any case for a maximum of three months.
- (b) After the period of validity of these measures has expired, the guarantee shall be released in so far as the Council does not decide, in accordance with Article 17, on final collection of the amount guaranteed. When, by virtue of Articles 16 or 18, the provisional duty is disallowed or reduced with retroactivity, the guarantee which has been improperly obtained shall be released as quickly as possible.

Article 16

1. The Commission shall forthwith communicate to the Council its decision to institute provisional measures. The Council shall confirm such measures by a qualified majority or come to a different decision. The duration of application of the Council's decision may not exceed three months from the time when the provisional measures adopted by the Commission come into force.
2. Not more than one month before the expiration of the period of three months referred to in Article 15 (2)(a), the Commission, without prejudice to the provisions of Article 18, shall submit a proposal to the Council, either for Community action within the meaning of Article 17 or, if the exporters and the importers so request and if examination of the facts has not yet been completed, for the extension of the provisional measures for not more than three months. In the latter case, the Council must give its decision by a qualified majority.

Article 17

1. Where examination of the facts leads to the conclusion that there is dumping and injury, and where Community interests call for Community action, the Commission shall, after hearing the opinions expressed within the Committee, submit a proposal to the Council. Any such proposal shall also deal with the questions referred to in paragraph 2.
2. (a) The Council shall act by qualified majority. When Article 15(1) has been applied, the Council shall determine, subject to the provisions of Article 15(2), to what extent the amount of the guarantee by way of provisional duty shall be finally collected.

(b) Final collection of that amount may not be decided upon unless examination of the facts leads to the conclusion that there is material injury and not merely the threat of a material injury or considerable delay in the setting up of a domestic industry, or that such injury would have been caused if the provisional measures had not been applied.

Article 18

1. (a) During the period while the measures referred to in Articles 15, 16 and 17 are in force, on the application of a member State or on the initiative of the Commission, discussions shall be held within the Committee for the purpose of:
 - examining the effects of the above-mentioned measures, and
 - confirming that the conditions for their application are fulfilled.
(b) For this purpose, suppliers or importers of the product in question may submit an application, together with supporting information, to a member State or to the Commission. A member State receiving any such application shall communicate it to the Commission, which shall inform the other member States. If the Commission receives an application, it shall inform the other member States thereof.
2. Where, after hearing opinions expressed in the Committee, the Commission decides that such measures should be revoked, altered or annulled:
 - (a) so long as the Council has taken no steps in pursuance of Articles 16 or 17, it shall itself amend, revoke or annul the measures being applied by virtue of Article 15 forthwith and shall immediately report this to the Council; the latter may, by a qualified majority, come to a different decision;

- (b) in other cases, it shall propose to the Council either that the measures in force by virtue of Articles 15 or 16 be amended, revoked or annulled, or that the measures in force by virtue of Article 17 be amended or revoked. The Council shall decide thereon by a qualified majority.

Article 19

1. Anti-dumping duties, whether provisional or final, shall be made by Regulations.
2.
 - (a) Without prejudice to the provisions of Article 17(2), these duties may neither be applied nor increased retroactively.
 - (b) They shall apply to all the products specified in the decision of the Council or Commission, which after the implementation of the decision, are declared to be available for Community consumption. For that purpose, the crucial date shall be that on which the customs authorities accept the document showing the intention of the declarant to make the said products available for consumption.
 - (c) When a product is imported into the Community from several countries, the duty shall be levied, at the appropriate amount in each case, on a non-discriminatory basis, on imports of such products from all sources found to be dumped and causing injury.
3. The amount of the provisional or final duty must not exceed the established margin of dumping, or in the case of a provisional duty, the provisional margin of dumping. It should be less than the actual margin of dumping if it is found that a lower duty would be sufficient to eliminate the injury.
4.
 - (a) Where an importer can prove that the products which he has put onto the Community market were not dumped and where the operative dumping margin is lower than that on which the decision of the Council or the Commission was based, the anti-dumping duties collected on the products shall be returned to him in whole or in part; in the case of provisional measures, the guarantees shall be released under the same conditions.
 - (b) For this purpose, before the expiration of a period of three months from the date on which such products were made available for consumption, the importer may submit an application to the member State on whose territory the products have been made available for consumption. The member State shall send the application to the Commission as soon as possible, together with an opinion on its merits. The Commission shall immediately inform the other member States. If, within one month after receipt of this information, the Commission has not expressed any objection on its own initiative or on the application of another member State, the member State in question may decide the matter in accordance

with the opinion which it has communicated to the Commission. In other cases, after hearing opinions expressed in the Committee the Commission shall decide whether and to what extent the member State should give effect to the application.

5. Where the second indent of Article 4(5)(a) applies, after hearing opinions expressed in the Committee, the Commission shall offer exporters the opportunity of ceasing dumping in the competitive market under consideration. Where in such cases a satisfactory assurance is given without delay, the Commission shall not take provisional measures and shall not submit a proposal of the kind provided for in Article 17. Where, on the other hand, such an assurance is not given quickly or is not honoured, the Commission may impose a provisional duty or propose the imposition of a final duty for the whole of the Community.

6. Anti-dumping procedure shall not preclude the customs clearance of the product concerned.

Article 20

1. The description of products covered by the measures laid down in the foregoing Articles shall include the following information:

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

2. If several suppliers from the same country are involved and it is impracticable to name them all, the product may be named according to the specifications given in (a), (b) and (c) of the foregoing paragraph. If several suppliers from more than one country are involved, the product may be described, apart from the specification given in (a) and (b), by reference to all the suppliers involved, or if that is not practicable, to all the supplying countries involved.

3. In the absence of special provisions made at the time of imposition of any final or provisional anti-dumping duty, the rules regarding the common definition of origin and the relevant common provisions for application shall apply.

Article 21

Anti-dumping duties shall be collected by member States in the form, at the rate and according to the other factors fixed at the time of their imposition, independently of customs duties, taxes and other duties which may normally apply to imports.

TITLE II

Bounties, Subsidies and Countervailing Duties

Article 22

Products benefiting from a bounty or subsidy in the country of origin or export may be subject to countervailing duty, if their introduction on to the Community market causes or threatens to cause material injury to an established Community industry or material retardation of the establishment of such an industry. The provision of Article 3, paragraph 5, shall apply, mutatis mutandis.

Article 23

The amount of final or provisional countervailing duty shall not be in excess of an amount equal to the estimated bounty or subsidy - provisionally in the case of a provisional countervailing duty - granted directly or indirectly on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of such product.

Article 24

No product shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

Article 25

The provisions of Articles 6 to 21 shall apply mutatis mutandis to this title.

TITLE III

Provisions Applicable During the Transitional Period

Article 26

The following rules shall apply during the transitional period.

1. Where the interests of a Community industry are concerned or where the product is subject to the common organization of the market in agriculture or to Regulations Nos. 160/66/EEC, 189/66/EEC and 170/67/EEC, the provisions of Titles I and II shall apply.

2. In all other cases, each member State may take such measures as it judges appropriate to protect a national industry. The provisions of Article 1, (1) and (2), Articles 2 to 5 and Article 22 shall apply mutatis mutandis. Furthermore the procedure laid down in paragraphs 3 to 12 shall be applied.

3. A complaint may be submitted by any domestic industry which considers itself adversely affected or threatened by dumping. The provisions of the last sentence of Article 6(1), and Article 7 shall apply.
4. Where the complaint contains the particulars referred to in Article 7, or where, in the absence of a complaint, a member State is in possession of evidence of both dumping and of the resultant material injury to a domestic industry, that member State shall proceed to examine the facts at a national level. The rules laid down in paragraphs 2, 4, 5 and 7 of Article 10 and in Article 11 shall apply mutatis mutandis.
5. (a) Examination of the facts at national level shall be brought to a close without delay, as soon as the member State is convinced that the evidence relating either to dumping or to material injury is not sufficient to justify continuation of the procedure. Examination of the facts shall be closed immediately if the dumping margin, the volume of real or potential imports for dumping or the material injury are negligible. Such closure shall be made public where an opinion has been published in pursuance of paragraph 4.
- (b) The provisions of the preceding paragraph also apply when the exporters voluntarily undertake 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, on condition that the latter considers this practicable.
- (c) If the member State, in conformity with the provisions of the preceding paragraph, accepts the undertaking therein, 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 shall not lapse. The provisions of Article 14(2)(c) shall apply mutatis mutandis.
6. (a) When preliminary examination of the facts shows that dumping exists, and where there is sufficient evidence of injury and the interests of the member State call for immediate action, the member State may:
- determine, having regard to the provisions of Article 19(3), and as a provisional anti-dumping duty, the amount of the guarantee, collection of which will be effected in application of the subsequent decision taken pursuant to paragraph 7(b),
 - indicate the products covered by such a measure according to the specifications required by Article 20,
 - declare that the making available for consumption in the Community of such products shall be conditional upon the furnishing of a guarantee of the above-mentioned amount.

- (b) Without prejudice to the provisions of paragraph 12, the provisional duties established in application of this paragraph shall continue to apply until the coming into force of a Council decision made pursuant to paragraph 7, and in any case for a maximum of three months or, if the member State so decides at the request of the exporters and importers, for six months.
 - (c) After the period of validity of the provisional duties has expired, the guarantee shall be released in so far as the member State does not decide, in accordance with the following paragraph, on final collection of the amount guaranteed. When the provisional duty is disallowed or reduced with retroactivity, the guarantee which has been improperly obtained shall be released as quickly as possible.
7. (a) Where examination of the facts leads to the conclusion that there is dumping and material injury for a domestic industry and where national interests call for defensive measures, the member State may decide to establish an anti-dumping duty.
- (b) When the provisions of paragraph 6 have been applied, the member State determines to what extent the amount of the guarantee by way of provisional duty shall be finally collected, pursuant to its decision envisaged in the foregoing paragraph.
- The provisions of Article 17(2)(b) shall apply mutatis mutandis.
8. (a) The member State shall inform the representatives of the exporting countries and the parties directly concerned in the measures being applied by virtue of paragraphs 6 and 7; it shall inform them of its reasons and the criteria adopted; unless there is special reason to the contrary, such measures shall be made public.
- (b) Without prejudice to the provisions of paragraph 7(b), any such measures may not be adopted or extended with retroactivity.
- (c) The provisions of Article 19(2)(b) and (c), 3 and 4 (a) and (b) first sentence, 5 and 6 and the provisions of Articles 20 and 21, shall apply mutatis mutandis.
9. Where a protective measure at national level is envisaged, prior to its adoption the member State shall inform the Commission and shall notify it of the results of the examination of facts which it has carried out. The Commission shall send this information without delay to the other member States.

10. Prior discussion shall immediately be held either at the request of a member State or on the initiative of the Commission. If a member State finds it necessary to take emergency action on the national level, discussions may take place a posteriori. Article 12(2) and (3) shall apply mutatis mutandis.

11. The purpose of the discussions shall be in particular:

- (a) to allow the other member States and the Commission to give their opinions on the points referred to in Article 13;
- (b) to see that 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 to allow the Commission to enter on the procedure laid down in Titles I and II where the interests of a Community industry are concerned.

12. During the period of application of national measures taken in accordance with the provisions of this Article, discussions shall be held in the Committee within the meaning of Article 18(1).

13. The provisions of Articles 23 and 24 shall be applicable mutatis mutandis, as well as those of paragraphs 3 to 12 of this Article, for the purpose of protection against bounties and subsidies.

TITLE IV

Final Provisions

Article 27

Member States shall take all necessary measures for the application of this Regulation not later than by 1 July 1968. They shall immediately inform the Commission thereof. The latter shall forward such information without delay to the other member States.

Article 28

The provisions of this Regulation shall be applicable in the French overseas "départements".

Article 29

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

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

Done at Luxemburg, 5 April 1968.

By the Council

The President

M. COUVE DE MURVILLE

ANNEX

DECLARATION OF THE COUNCIL

regarding the Regulation on protection against dumping,
bounties or subsidies practised by countries which are
not members of the European Economic Community

1. Where a product imported into the Community is dumped or the subject of bounties or subsidies and where this causes or threatens to cause material injury to an industry established in a non-member country of the Community which exports the product in question to the Community, the Commission may, at the request of that country and after examination of the facts at Community level, open the discussion provided for in the Regulation referred to above, and may propose to the Council that an anti-dumping or countervailing duty at Community level be instituted in the terms of that Regulation, subject to the obligations arising from the General Agreement on Tariffs and Trade and the agreement on the putting into effect of Article VI of that Agreement.
 2. Where a product imported into a non-member country of the Community is dumped or the subject of bounties or subsidies and where this causes or threatens to cause material injury to a Community industry which exports the product in question to the territory of the said importing country, the discussions referred to above may be opened in order to examine the manner in which this situation should be remedied and to allow the Commission to submit a proposal to the Council.
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