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REPORT OF WORKING PARTY ON THE EUROPEAN COAL AND STEEL COMMUNITY TO THE CONTRACTING PARTIES

I. INTRODUCTION

1. In accordance with its terms of reference, the Working Party examined the Second Annual Report (L/240) of the member States of the European Coal and Steel Community "on the measures taken by them towards the full application of the Treaty". This examination was conducted on the basis of the information given by the member States in their report, of additional information submitted by them and the High Authority at the request of the Working Party and which is summarized in the Annex, and of the data contained in the Note by the Executive Secretary (L/247).
2. The Working Party which considered the First Annual Report of the member States of the European Coal and Steel Community noted in its report (G/56) that its discussions had taken the form of a free and frank exchange of views between the representatives of the member States and the observer of the High Authority on the one hand, and the other members of the Working Party on the other, and added: "the friendly exchange of views which has taken place and which in some respects represents a new departure in the work of the CONTRACTING PARTIES, will no doubt contribute to a better understanding of the problems which the Community and the other contracting parties have to face, and facilitate the working out of satisfactory solutions." The Working Party tried this year to conduct its business along the same lines, in the belief that any attempt to narrow in any way the scope of the exchanges of views with the representatives of the European Coal and Steel Community which the examination of their annual report affords to the other contracting parties would impair the usefulness of these periodical contacts. In order, however, to avoid difficulties in the future, the Working Party is of the opinion that, when the Third Annual Report of the member States is considered, the CONTRACTING PARTIES, taking into account the fact that the examination of reports on action taken under a waiver represents a new departure in their work, might consider the desirability of defining in more detail the scope and purpose of the procedures to be adopted by the Working Party in that examination.

3. The Working Party submits to the CONTRACTING PARTIES the results of its examination; Part II contains comments relating to the measures taken by the member States with respect to the waiver embodied in the Decision of 10 November 1952; Part III, comments pertaining to other aspects of the policy of the Community, in so far as they relate to the undertakings set out in the preamble to that Decision; Part IV, observations of an administrative or practical character, and Part V, the conclusions of the Working Party.

II. MEASURES TAKEN PURSUANT TO THE DECISION OF 10 NOVEMBER 1952

4. The Working Party took cognizance of the measures taken by the member States under the Treaty and considered whether those measures were consistent with the term of the waiver.

5. In accordance with paragraph 10 of the Decision of the CONTRACTING PARTIES, the waiver agreed upon at the Seventh Session became applicable to special steels on 1 August 1954. As from that date, the common market applies to all coal and steel products covered by the waiver. In accordance with paragraph 1 of the Decision, all customs duties and other charges were eliminated as regards trade among the member States in special steels, except as regards duties applicable to import of those products into Italy. In accordance with paragraph 3 of the Decision, all import and export restrictions and prohibitions have been removed as regards the trade among member States in the products concerned as soon as the common market was established.

6. As regards Italy, the Decision provided that its tariffs on Treaty products would be reduced by stages. This method has been applied also in the case of special steels for which maxima have been established by agreement with the High Authority. No further action has been taken during the period under review regarding coal and steel products.

7. The Benelux Governments have established the tariff quotas referred to in paragraph 4 of the Decision of the CONTRACTING PARTIES; the amount to be imported under the quotas until 31 July 1955 have been fixed in agreement with the High Authority. The Working Party noted that these quotas were determined on the basis of the actual imports during the last eight months of 1953 and that these quotas might be increased if necessary to take account of the requirements of the domestic markets of the Benelux countries. It also noted that the duties for imports outside the quotas were within the limits fixed in the Decision.

8. The member States continued to have recourse to the provisions of paragraph 6 of the Decision in order to maintain a temporary restriction on exports of scrap; in accordance with the provision of that paragraph, the European territories of the member States were considered as if they constituted the territory of a single contracting party in the application of that restriction.

9. No action has been taken so far under the provisions of paragraphs 2 and 5 of the Decision.

10. The Working Party took note of the measures taken by the member States under the Decision and came to the conclusion that actions taken to date are consistent with the terms of the waiver.

III. OTHER MEASURES TAKEN BY THE MEMBER STATES AND BY THE COMMUNITY IN THE FIELD OF COMMERCIAL POLICY

11. As indicated in paragraph 2 above, the Working Party had had the opportunity of discussing other aspects of the commercial policy of the Community, and, in particular, the extent to which the interests of third countries were taken into account during the period under review in the application of export controls on scrap, in the action taken towards the harmonization of tariffs and other trade regulations, and in the discharge of the Community's undertaking to ensure that equitable prices are charged by its producers in third markets.

12. As regards the restrictions imposed on the exports of scrap to third countries, the Working Party heard a statement by the Swedish representative to the effect that, during the last two years, his Government noticed that the possibilities of their industry to import scrap from the Community, which is their main supplier, has greatly worsened and that, during the last few months, they had the feeling that export licences were forthcoming only to a very limited extent, if at all. The Working Party did not question the right of the Community, under Article XI, paragraph 2(a) of the Agreement, to restrict the export of scrap to third countries in so far as this may be necessary to prevent or relieve critical shortages, or its right, under the waiver, to treat the territories of the member States as if they constituted a single domestic market. Under those circumstances, the privilege granted to the Community producers to pre-empt supplies of scrap did not appear to be inconsistent with the terms of the waiver. Moreover, the Working Party is aware of the fact that, when the waiver was granted, the representatives of the member States made it perfectly clear that they were not prepared to accept, regarding export duties and other barriers to export of coal and steel products "limitations to their freedom of action which would go beyond the obligations which apply to the contracting parties generally."

13. On the other hand, it was beyond dispute that the Community had formally recognized, when the waiver was granted, that it should avoid placing unreasonable barriers upon the exports to third countries and generally to take account of the interests of those countries. The Working Party knows that the organs of the Community are fully aware of those undertakings, and that they are prepared to adapt these controls to changing market conditions. It noted that specific measures were taken by the member States in August 1953 and March 1954 in order to authorize the export of substantial quantities of scrap for blast furnaces and that a special procedure has been adopted to facilitate the export of scrap resulting from the breaking up of old ships. Finally, the Working Party wishes to re-affirm its conviction that the export controls on scrap should be relaxed as soon as practicable.

14. As regards other products, the German and French industries agreed to maintain supplies to individual countries at a certain level in times of shortage. The representatives of those countries gave definite assurances to the Working Party that these commitments would not interfere with the obligations of their governments to apply to other contracting parties a treatment consistent with the provisions of the General Agreement.

15. As regards the tariffs applicable to imports from third countries, the Working Party noted that the governments of the member States (with the exception of Italy) continued to suspend partly or wholly customs duties on some steel products, on a provisional basis. Moreover, the tariff quotas introduced by Germany last year have been extended until 31 August 1955. The opening of the common market for special steels brought about some change in tariffs applied to those products in all member States, with the exception of Italy which kept the rates applied to imports from third countries at the previous levels. France and Germany have agreed to levy duties at a common level generally lower than the legal rates. In addition, Germany has lowered its legal rates to a level which, generally speaking, corresponds to the French legal rates. The Benelux countries introduced tariff quotas under paragraph 15 of the Convention, as they had already done for steel (see 7 above).

16. Some members of the Working Party expressed disappointment that the Italian Government had not seen its way to lower the rates on special steels from third countries when the common market was established for those products, the more so as, under those circumstances, competition on the Italian market with special steels from other member States became extremely difficult. As regards the harmonization measures adopted in France and Germany, it was recognized that they involved at least a provisional reduction in the general incidence of the legal tariff, but, as some representatives pointed out, these changes have, in effect, brought no real advantage to third countries. In France, duties on special steels which were suspended before 1 May were restored after that date, and in Germany the rates actually applied after the opening of the common market were higher than those applied before. In the view of those representatives, a comparison between the incidence of the duties actually applicable at the time of the waiver and that of the duties actually applied at the present time shows clearly that the member States had not taken into account the interests of third countries to the extent which the governments of those countries expected from them when the waiver was granted on the basis of the undertaking contained in paragraph 6 of the Preamble to the Decision.

17. On the other hand, the representatives of the member States pointed out that the establishment of a common market for special steels required the establishment of a more or less uniform level of protection around the common market, which implied a restoration of the suspended French duties, that the terms of the waiver did not contemplate the maintenance of the suspension of the existing duties at the time the waiver was granted, and that paragraph 4 of the waiver clearly indicated that the target for harmonization of tariffs by the end of the transitional period was a level of two points above the Benelux rates. Moreover, they wished to stress that they had taken particular care of the interests of third countries, since the Governments of France and of the Federal Republic of Germany, instead of reverting to the legal rates, decided to apply, on a provisional basis, very low duties on certain types of special steels which are of interest to third countries.

18. As regards future tariff policies, the representatives of the member States and of the High Authority gave to the Working Party specific assurances that the Community had no intention of introducing protective or restrictive policies, that they were determined to harmonize their tariffs on Treaty products at the

end of the transitional period and that the Community was prepared to expedite this process of harmonization and reduction of customs tariffs through negotiations with the other contracting parties concerned.

19. As regards trade controls other than tariffs, the Working Party noted that the French Government had re-imposed quantitative restrictions on the import of special steels from third countries, and that the application, in Belgium and Germany, of import controls on coal from dollar sources of supply had been referred to the CONTRACTING PARTIES in accordance with the complaints procedure.

20. In last year's report, the Working Party expressed the hope that the Community would initiate as soon as possible negotiations with other contracting parties on their economic and trading relations in respect of coal and steel. Some time ago, the Community expressed its readiness to enter into negotiations on special steels with countries concerned. Austria was the only country that accepted that offer and negotiations with that country were initiated, but the negotiations did not achieve any results so far. The Austrian representative does not think it necessary to describe afresh the acute difficulties which the establishment of a European Coal and Steel Community creates for the Austrian steel industry which depends to a large extent on the markets of the Community. The Working Party wishes, however, to stress again the desirability of finding a satisfactory solution to the problems raised last year by the Austrian representative. In this connexion, it is with regret that the Working Party learned of the suspension of negotiations initiated between the Community and Austria and it expresses the hope that such negotiations could be resumed without delay and be carried to a satisfactory result in accordance with the usual procedures for tariff negotiations. The representatives of the member States pointed out in this connection that, according to section 14 of the Convention, on transitional provisions, the Community's negotiations with third countries should extend not only to tariff questions, but generally to economic and commercial relations relating to coal and steel between the Community and such countries.

21. Finally, the Working Party discussed extensively the question of export prices and the influence which price agreements among producers might have on those prices.

22. The general problem of restrictive practices within the Community gave rise to a number of requests for information and the Working Party took cognizance of the valuable information which the observer of the High Authority provided regarding the preparatory work done by the High Authority, the results achieved so far and the future intentions of the Authority.

23. Although agreements among producers may not be affecting directly the interests of third countries when their influence does not extend beyond the common market, it is clear that the waiver was granted on the understanding that the member States would ensure the full achievement of the objectives of the Treaty, and there is no doubt that one of those objectives is to prevent restrictive practices impeding normal competition within the Community so far as they relate to coal and steel products. Moreover, there cannot be any doubt that all contracting parties are most directly concerned in the existence and activities of export cartels and other producers' arrangements which may influence the level of prices charged by Community exporters.

24. In this connexion, the representatives of the member States wished to clarify one point which seemed to have given rise to misunderstandings. The obligations regarding restrictive business practices are laid down in Article 4 of the Treaty, and the same language was used in the second paragraph of the Preamble to the Decision. It is clear from the text of the Treaty and the original French text of the waiver - although the English version is not so specific - that the undertaking to prevent discriminatory or restrictive practices refers only to practices within the Community. There is no mention of export cartels as such and it is the considered opinion of the High Authority that, under Article 65 of the Treaty, it would be entitled to intervene only if export cartels were tended to create a disturbance on the common market.

25. Leaving aside the legal issues involved, some members of the Working Party considered that the very existence of an export cartel covering, in their opinion, a substantial percentage both of the total production of the Community and of the total production of some of its members, poses a clear possibility that it may exert a disturbing influence on conditions of competition in the common market itself, especially when the export cartel introduced a quota system to impose discipline among its members. Even on that count, they feel that the High Authority cannot prima facie disclaim responsibility in this matter.

26. While formulating reservations regarding the validity of the comparisons indicated above and the substantial character of the percentage referred to above, the observer of the High Authority stressed that the organs of the Community were very much aware of that problem and, as indicated in its January report, the High Authority is following the situation very closely. So far, however, the High Authority was not in a position to take any action since it has not found any evidence that the exporters' agreements had had any disturbing effect on competition within the common market.

27. In view of the importance which they attach to the problem of cartels, the third countries wish to refer to paragraph 32 of the report submitted last year and to express again the hope that the High Authority will see its way to make available to contracting parties concerned the results of its examination of producers' agreements, as well as the remedial measures it may decide to take in so far as those results or measures relate to the undertakings of the Community under the Decision of 10 November 1952. They are fully aware of the special difficulties which the High Authority may experience in submitting such information and of the limitations which are imposed on the High Authority by the Treaty regarding this matter. But they believe that, due account being taken of those difficulties and limitations, it should be possible for the High Authority to meet, to a certain extent, the wishes expressed by them. They noted further that some of the studies referred to above have been completed, and that a discussion of the results of these studies will take place in a very near future. They express the hope that it would be possible for this information to be made available to the CONTRACTING PARTIES.

28. Whatever may be the powers of the High Authority vis-à-vis export cartels as such, the High Authority is clearly under an obligation to act if, whether as a result of exporters' arrangements or for other reasons, export prices exceed the equitable limits which are to be maintained under Article 3 of the Treaty, as well as under paragraph 5 of the Preamble to the Decision of the CONTRACTING PARTIES. It is clear also that Article 61 of the Treaty gives the High Authority the necessary powers to give effect to that obligation.

29. The conclusion reached by the Working Party was that the question of export cartels was to be considered, not in isolation, but in relation to the question of prices, which was of major concern to third countries and was the subject of a specific undertaking by the Community. The Working Party then discussed the extent to which export prices had been maintained within equitable limits during the period under review.

30. The High Authority submitted to the Working Party a series of tables containing data on the export prices of representative steel products at various dates, as well as similar data on the export prices charged by other exporters and on prices obtaining on the common market of the Community. This information has been circulated separately to all contracting parties. The price data were submitted to a close scrutiny by members of the Working Party and detailed information was supplied to throw light on their structure and comparability.

31. The Working Party noted that a certain unification of export prices by destinations has taken place, but that differential prices were applied for supplies to the United States and Canada, to Switzerland, and to other destinations. They also noted that the downward trend which was registered after the establishment of the Community has been followed more recently by a general upward trend in export prices on world markets.

32. One member of the Working Party stated that the data submitted, and which did not take into account the increases introduced by Community exporters after 20 October showed a substantial discrepancy between the export and common market prices especially of certain types of sheets and plates. If later prices had been taken into consideration, that discrepancy would have been apparent also for other steel products and become more significant still for certain products. This inequality of terms placed the processing industries in third countries at a serious competitive disadvantage. There was no doubt in his mind that, in assessing whether prices were equitable or not, the comparison should be made with the prices charged on the common market. This was made clear by his Government on many occasions and was clearly the understanding on the basis of which they agreed to the waiver. Furthermore, his Government has concluded from official statements made by the High Authority elsewhere that there was agreement on that point. For these reasons, his Government strongly disagreed with the statement contained in paragraph 11 of the Second Annual Report to the effect that "the export price level charged by producers in the Community on third markets was and still is equitable." In this connection, the observer of the High Authority made the following remarks:

The CONTRACTING PARTIES' examination must logically bear on the period between the dates of submission of the first and second Annual Reports. Consequently there could be no discussion in the Working Party of prices after 20 October, nor any allusion to the situation which might exist subsequent to the period covered by the next report by the member States to the CONTRACTING PARTIES. Furthermore, he declared that the figures communicated to the Working Party did not show any substantial disparity between export prices and prices on the common market. For most of the categories of steel for which prices had been supplied, the export prices tended rather to be lower than internal market prices, and it was only and not especially for certain types of sheets and plates that a certain disparity, not in the least substantial, had been noted between export prices and those prevailing in the internal market.

33. The observer of the High Authority pointed out that the undertaking of the Community was to maintain equitable export prices or, to be more precise, to see that equitable limits were observed in prices charged on external markets. He did not feel that such an undertaking involved the obligation for the Community to see that its exporters maintain any definite set of prices, and, in particular, apply the same prices as on the common market. In his opinion the comparison should be made primarily with the export prices charged by competing exporters, any comparison with the price level in the common market being considered only as a subsidiary test. Any statement made by the High Authority elsewhere has to be interpreted in that way. Under those circumstances, he concluded that the Community export prices were generally lower than or equal to those of other exporters which compete with the Community in the world market. In the opinion of the High Authority, the statement made on the fairness of prices in paragraph 11 of the second report by the member States could not therefore be successfully challenged.

34. The Working Party was not in a position this year to analyze the conditions in which prices were formed on the international markets for steel and did not feel qualified to express any considered view as to whether the export price policy of the Community exporters was adjusted to meet the conditions of the markets or whether concerted action by those exporters was directly responsible for the level of prices prevailing on these markets. It noted, however, that the exports of the Community amounted to about 65 per cent of world exports, that on all steel markets the share of the Community was larger than that of any competing country and that, in the case of the West European steel market, the influence of the Community was predominant. When, as is the case at the present time, the exporters of the Community adopt a common export price policy, their influence on the formation of prices on export markets is bound to be substantial, and it was suggested that the existence of such price agreements should be taken into account when the equitable character or otherwise of prices charged by Community exporters was discussed. The observer of the High Authority made reservations regarding the predominant character which the Community's exporters would have on the formation of world prices and added that there was no evidence that export prices of other producers followed the lead of Community prices. He pointed out in this connection that it was

impossible to neglect the influence exercised on prices by the competition of medium-sized and small traders. Moreover there did exist on the world steel market real and potential competition between the large-scale producers and, lastly, for certain categories of steel the most important sellers on the world market were not within the Community.

35. The Working Party feels that this problem deserves a more detailed consideration than was possible this year. To that effect, more information is required on the price movements of steel products. The Working Party recommends that the Executive Secretary should see whether the section of his Note on prices could be expanded next year. The Working Party also suggests that the Executive Secretary prepare, in consultation with the High Authority, a table containing the price data which would facilitate the consideration of the Third Annual Report. This table would be based on official data, on the understanding that the Executive Secretary might have recourse to other sources of information if necessary.

IV. OTHER QUESTIONS

36. The Working Party wishes to submit to the CONTRACTING PARTIES the following practical suggestions which, in its opinion, would expedite the examination of future reports of the member States. It recommends that the report of the member States and the Note by the Executive Secretary should be circulated at least three weeks before the opening of the Session and that contracting parties wishing to address requests for additional information to the member States or the High Authority send their requests in writing to the Executive Secretary at least one week before the opening of the Session, so that written answers could be made available before the report is referred to a working party.

37. The Working Party is of the opinion that it would be useful to continue the publication of reliable information on changes made in tariffs and other regulations regarding coal and steel products in the International Trade News Bulletin, and hopes that the practical suggestions made by the authorities of the Community will enable this information to be published without undue delay.

38. Finally, the Working Party considered the structure of the Note of the Executive Secretary and recommended that a note along the same lines be prepared next year with particular reference to price data, as suggested in paragraph 34 above.

V. GENERAL REMARKS AND CONCLUSIONS

39. In the opinion of the Working Party, the exchanges of views which took place during the examination of the report of the member States have been most useful. Practical suggestions have been made in the preceding paragraphs in order to make them even more fruitful in the future. Valuable information was furnished, specific points were clarified, definite assurances were given on particular questions. Moreover, a number of points of principle emerged from the discussion, which the Working Party feels it is its duty to bring to the attention of the CONTRACTING PARTIES.

40. It has now been more than two years since the waiver was granted and it might be appropriate, at this juncture, to take stock of what has been achieved so far in connexion with that waiver and what can be expected in the future. When the request for a waiver was discussed in 1952, a number of contracting parties made it abundantly clear that, in their opinion, the setting up of a common market in Europe involved uncertainties and risks for those countries which relied to a large extent on the Community producers for vital supplies of coal and steel, and on the markets of the member States as an important outlet for the exports of some of their coal and steel products. Before agreeing to the surrender of some of their rights under the Agreement, they asked for definite assurances that the Community would follow a liberal policy and that their vital interests would be fully safeguarded.

41. The Working Party which drafted the Decision embodying the waiver stated in a most unequivocal manner that the waiver was granted in consideration of the formal undertaking of the member States to achieve the objectives of the Treaty they had concluded and of the definite assurances given by the High Authority and the member States regarding their intentions to pursue constructive trade policies towards outside countries.

42. The substantial progress made so far towards the achievement of the objectives of the Treaty in general, which latter include the elimination of all trade obstacles, all discriminatory and restrictive practices and all unfair methods of competition within the Community, will surely be welcomed by all contracting parties. Some members of the Working Party feel, however, that, with regard to some specific objectives which are of more direct concern to third countries, such as the integration of Italy in the common market and the harmonization of customs tariffs, especially in the case of the Italian duties, advances were not so rapid as might have been expected. In this connexion the Italian representative recalled that the method of integration of Italy in the common market was regulated by paragraph 30 of the Convention which could have permitted a slower rhythm of integration. As regards harmonization, member States recalled that the Community was still ready to expedite it by means of negotiations.

43. While recognizing that the adjustments required to extend the common market to Italy are of a more fundamental nature than is the case of other member States and that no time-limit was laid down in the waiver for the completion of those processes, the representatives of third countries believe that there is a serious disadvantage in letting preferential arrangements crystallize for any length of time, as they may retard the process of integration and limit the corrective effects of free competition which the Community intends to foster.

44. Apart from the general undertaking to achieve the objectives of the Treaty, the member States and the Community gave definite assurances that they would follow a liberal policy and take account of the interests of third countries both as consumers and as suppliers of coal and steel products. The Working Party has duly noted in Part III of this Report the specific measures taken during the period under review to give effect to these commitments as well as the assurances given in the course of the discussion regarding the future.

45. While there was no disagreement regarding the determination of the member States to live up to their obligations under the Treaty, and while the organs of the Community were clearly alive to their responsibilities in this respect, the discussion showed that the members of the Working Party held diverging views regarding the precise scope and legal effects of the undertakings embodied in paragraphs 2 to 6 of the Preamble to the Decision of 10 November 1952, and some members of the Working Party suggested that the interpretation of the above-mentioned provisions of the Decision should be clarified by the CONTRACTING PARTIES before they consider the Third Annual Report of the member States.

46. In this connexion, some of the members of the Working Party indicated that their governments, when they accepted to surrender some of their rights under the General Agreement, took into consideration, not only the specific assurances given on individual aspects of commercial policy, on the legal interpretation of which opinions seem to differ, but also the broad statements of policy which the member States made formally to justify such an unprecedented departure from the rules of the Agreement. They considered at that time, and they still consider now, that those statements, which were summarized in the first paragraphs of the Decision were an integral part of the waiver and represented commitments of the member States towards the other contracting parties. The representatives of the member States expressed their anxiety at the interpretation which might be given to the commitments deriving from a waiver drafted in 1952 if the tendencies shown in those statements were to be followed; they considered for their part that the waiver which had been granted to them included two sorts of commitments; those taken between member States within the context of the Treaty and the Convention on Transitional Provisions, which were referred to in the waiver itself, and those taken vis-à-vis the contracting parties. They considered, moreover, that a certain number of assurances had been given to the contracting parties including that which required that they should be supplied with information on the Community's activities, on the understanding that such information was not always suitable for discussion by the CONTRACTING PARTIES.

47. Finally, the representatives of the third countries wish to stress that when competition becomes more severe on world markets, as is the case today, governments must pay particular attention to the effects which the exercise of special privileges under a waiver may have on the competitive position of their producers and on the prices asked from their consumers. The terms of the waiver involve a disadvantage for their industries and they would fail in their duty if they did not satisfy themselves that the privileges granted are exercised in the same spirit in which they were offered. There is no doubt in their opinion that the setting up of a Community which is the main source of supplies for two of the most essential materials for industrial production can alter the conditions of competition on world markets and that any agreement regarding export prices between the producers of such a Community, especially if it is buttressed by devices reminiscent of the practices of former cartels, may adversely affect the interests of consumers in third countries and is naturally looked upon with suspicion by those consumers, who may fear that their governments, in surrendering important rights, may not have achieved the expansion of production and trade to the benefit of all which justified their action, but have contributed instead to strengthen the discriminatory and restrictive forces which the setting-up of the Community was expected to restrain.

48. The Working Party knows that those who are responsible for the application of the Coal and Steel Treaty are keenly conscious of the importance of that question. They expressed their determination to intervene if export prices were to exceed what they consider to be equitable limits, a situation which, in their view, would then give foundation to those fears. In the opinion of the Working Party, any action which could be taken to show that misgivings regarding the methods of competition of Community exporters are unjustified would facilitate the relations of the Community with other countries and strengthen the hopes entertained when the waiver was granted.

49. The Working Party recognized that the views expressed in paragraphs 38 to 47 do not modify the conclusion embodied in paragraph 10 of this report, namely, that the measures described in the paragraphs 4 to 8 are in conformity with the term of the waiver.

ANNEX

Additional Information submitted by the Representatives
of the Member States and the Observer of the High
Authority in response to Requests made
in the Working Party

I. Tariffs

QUESTION (a) Has any progress been made in the harmonization of the steel tariff rates contemplated in the preamble of the Waiver?

QUESTION (b) Can the Member States indicate when they will achieve a complete harmonization of their customs tariffs? Will the harmonization of customs tariffs include all tariff rates mentioned on the Common Nomenclature (document L/262), whether or not they refer to items included in the Common Market?

ANSWERS: Questions (a) and (b)

The final harmonization of the customs rates of Member countries of the Community will be carried out at the close of the transitional period, should the negotiations undertaken within the framework of paragraph 14 of the Convention relative to Transitional Provisions not have permitted their harmonization at an earlier date. Harmonization of customs duties of the Community applies to the products of the Common Market. The Common Nomenclature transmitted to the CONTRACTING PARTIES in document L/262 was drawn up to distinguish the products of the Community from the others.

QUESTION (c) Can the Italian representative indicate the reasons why the steps necessary for such harmonization have not yet been taken?

QUESTION (d) What are the intentions regarding the harmonization of the Italian rates applied to imports from third countries?

ANSWERS: Questions (c) and (d)

The possibility of harmonization before the close of the transitional period is also open for Italy, to the extent that that country, even before the close of the transitional period, may no longer require the protection which it is permitted by the High Authority to apply within the framework of paragraph 30 of the Convention relative to Transitional Provisions, to products of the other Member countries.

II. Benelux Tariff Quotas

QUESTION (a) Have any changes been made since the Eighth Session in the quotas introduced in 1953?

QUESTION (b) What has been the level of imports into Benelux?

ANSWERS: Questions (a) and (b)

The replies to these questions are contained in Table I.* In addition, Table II* gives the new quotas established for the year 1954-55 and the state of exhaustion of quotas for the period between 1 May 1954 - 30 September 1954 (cf. Annex I).

QUESTION (c) Are the quotas adequate?

ANSWER: Yes, with the modifications made within the framework of the system of tariff quotas, as provided for in paragraph 15 of the Convention relative to Transitional Provisions.

QUESTION (d) On what basis have the figures outlined in Annex IX of the Report been established?

ANSWER: The figures in Annex IX of the Report were established on the basis of the statistics of the last eight months of 1953 as applied to a one-year average.

They do not apply to so-called "electric sheets" having a watt-loss not exceeding 0.75 watts, the temporary exemption from import duties having been permitted for members of the Community.

QUESTION (e) Do the quotas introduced in 1954 appear now to be adequate?

ANSWER: For the time being, it would seem that the quotas established at the beginning of the year from 1 August 1954 to 31 July 1955 are adequate to cover the requirements of the Benelux countries.

III. Tariffs applied to Special Steel Products

QUESTION (a) What were the customs duties actually applied by the Member countries on those imports

(i) during the period leading up to the creation of the Common Market for this type of steel on 1 August 1954

(ii) after that date?

* These tables have been circulated to the members of the Working Party and can be consulted at the secretariat.

Tariffs applied to Special Steel Products (cont'd)

QUESTION (b) In particular a comparison between the new German rates and the previous nominal and effective rates would be of assistance.

ANSWERS: Questions (a) and (b)

The information requested will be found in Tables* attached.

QUESTION (c) What has been the effect of the changes in tariffs on imports of special steel from third countries on the volume of such imports in the Community?

ANSWER: The modifications made in import tariffs of special steel products from third countries are to be found in the comparative tables already supplied. As to the possible effects of these modifications, no evaluation of these can yet be made, on account of the very short period which has elapsed since the opening of the Common Market for special steel products.

IV. Scrap Trade with Third Countries

QUESTION (a) In view of the fact that the Authorities of the Community have set up a system for subsidization of scrap imports into the Community, it is desirable to obtain information as to how this system operates, whether it results in pooled purchases and what measures are taken to ensure that the import system does not result in discriminatory purchasing.

ANSWER: The system of compensation which has been set up for scrap imports from third countries is not a subsidization. It is a compensation borne by the product itself.

Certain countries of the Community are organically importers of scrap. With the establishment of the Common Market and the elimination of quantitative restrictions within the Community, demand by these countries which, for geographical reasons, would naturally go to Member countries, would have caused a fresh demand for considerable quantities and would have led throughout the whole Community to an excessive increase in prices.

To avoid these consequences and to enable the countries which are organical importers of scrap to continue their purchases in third countries, and, further, to avoid discrimination amongst the users in the Community, a compensation fund was established. For imported scrap, it refunds the difference between the purchase price and the Common Market price. The compensation fund is financed by a levy on each ton of scrap "bought" and consumed in the Community. Thus it is the aggregate amount of scrap which bears the cost of the compensation for scrap imported.

* This table has been circulated to the members of the Working Party and can be consulted at the secretariat.

Scrap Trade with Third Countries (cont'd)

- QUESTION (b)
- (i) What are the reasons motivating the maintenance at the present time of restrictions on exports of scrap from the Community to third countries?
 - (ii) On what criteria is based the application of such restrictions?
 - (iii) What are the responsibilities exercised by the Brussels Scrap Office in respect of the export of scrap and to the delivery of export licences?

ANSWER:

The balance-sheet of resources and requirements of the Community continues to show a deficit, even for the lower qualities of scrap. This situation existed before the Community was established, as did export restrictions.

If, in the view of the Community, the quantities available within the Common Market permit, export licences approved are granted by the governments of the Member countries, taking into account their international obligations.

However, in the particular case of scrap from the breaking up of old ships, exports to third countries are authorized if such scrap is not purchased within the Community at a price comparable to that which might be obtained in third countries.

The Brussels Scrap Office has no competence in respect of issuing export licences.

V. Cartels and Price Agreements

REMARK: The representative of the Member States made the following statement as regards cartels and price agreements:

"Some delegations raised questions as to the agreements which have been concluded between private undertakings located within the Community.

"It should be noted that the Treaty embodying the Coal and Steel Community which is the economic charter of the Community, and which establishes, notably, the legal boundaries of the activity of the bodies of the Community and that of the Member States in the matter of agreements, prohibits agreements on the Common Market under certain circumstances. The Treaty confines action by the High Authority on export agreements to intervention only when such agreements would result in creating disturbances on the Common Market. Under these circumstances, the Working Party is hereby notified that the Member States have no means of intervening against agreements, and that the High Authority has noted that the activity carried on hitherto by exporters in fixing their export prices has not created disturbances on the Common Market.

Cartels and Price Agreements (cont'd)

"It should further be noted that the General Agreement at present in force includes no provision covering the activity of agreements. Since the General Agreement is being reviewed, and that after that review, it may contain provisions and rules relating to the activity of agreements, the Member States and the High Authority have agreed that verbal information will be supplied exceptionally this year to the GATT on measures taken by the High Authority in the matter of agreements. By so doing, the Coal and Steel Community wishes to prove it is prepared to make further progress in the matter of control of agreements, in the hope that its example may be followed."

The following answers were given orally by the High Authority:

QUESTION (a) If the High Authority and the representatives of the Member States agree that the cartels directly or indirectly influence normal competition within the Community's market, how do they then reconcile this fact with the undertakings mentioned in the Waiver, to prevent any restrictive or discriminatory practices impeding normal competition so far as they relate to coal and steel products?

ANSWER: One of the main objectives of the Community, as shown clearly in the Treaty, is to prohibit, in conditions laid down by the Treaty, restrictive or discriminatory practices hampering healthy competition on the common market for coal and steel.

As to obstacles to competition on the Community market resulting from agreements and concessions, the High Authority, far from reconciling them with the aims of the Treaty, has already taken a number of measures which are worthy of consideration.

For example, in its Second General Report, the High Authority brought the following matters to the notice of the Common Assembly of the Community on 11 April 1954:

"In the month of May 1953, the High Authority decided that organizations in charge of the distribution of scrap or the equalization of prices in the different national markets should be wound up, and that national rules and regulations interfering with free trade in that material should be cancelled from the same date.

"In July 1953, the High Authority published its decision bringing into effect the prohibitions provided for in Article 65 of the Treaty. It thereby required enterprises to notify existing agreements and to apply eventually for authorization as required by Article 65, paragraph 2 (specialization agreements, joint buying or selling agreements), under pain of complete prohibition. At the present moment, the High Authority is completing its study of some sixty odd applications received from organizations as a result of the measures it has taken.

"Furthermore, the High Authority has undertaken a series of comprehensive enquiries and studies into the activities of organizations engaged in buying and selling coal, steel and iron-ore in the various Member countries of the Community, and into the question of export agreements. A certain number of these enquiries have been completed, and the High Authority is engaged in defining the various activities which will justify the abolition or the transformation of these organizations. Even as it is, a number of organizations have anticipated action by the High Authority either by changing their activities of their own free will so as to bring them into line with the provisions of the Treaty, or by winding up their operations.

"Some of these organizations have been in existence for a long time, and their operations are of a complex nature. By liquidating them on the spur of the moment, there would always be a risk of upsetting supply arrangements and conditions of employment on the Common Market. That is why paragraph 12 of the Convention requires the High Authority to fix reasonable time-limits for the cessation of activities incompatible with the Treaty's provisions. The High Authority must make a thorough study of the measures to be taken, and this study is now in hand.

"As to concentrations, the High Authority has adopted a realistic policy which permits a re-grouping of enterprises designed further to rationalize production, whenever the new concentrations do not risk having effects contrary to the provisions of the Treaty.

"Three draft series of regulations, as provided for in Article 65 of the Treaty, were submitted to the Council of Ministers in December 1953.

"The first of these regulations defines the controlling elements of an undertaking. The object of the second regulation is to define the reasons for exemption from making prior application for authorization, and thus to make it unnecessary for undertakings to apply for authorization for small-scale concentrations or for transactions which obviously cannot upset free competition on the Common Market. The third regulation determines in what way persons or enterprises outside the jurisdiction of the High Authority may be required to provide the latter with information for the purposes of Article 65 of the Treaty."

The three regulations have been adopted, and were published in the Journal Officiel of the Community of 11 May 1954.

Since then, a number of measures have been taken in connexion with agreements and concentrations, and the High Authority has to report on them to the Common Assembly of the Community on 29 November.

Cartels and Price Agreements (cont'd)

QUESTION (b) It would be helpful if the Member States could describe the specific measures they have taken or are currently envisaging with regard to practices impeding normal competition.

ANSWER: In addition to measures taken in connexion with cartels, the High Authority has continued to direct its attention to practices hampering healthy competition in other ways.

For example, there is the problem of the abolition of administrative regulations or bureaucratic formalities in trade between Member States, as well as the question of the suppression of discrimination in transport matters and other forms of discrimination, such as subsidies artificially favouring certain producers and consumers.

For all questions of transport, the Governments of the Member States are entitled to take decisions. A committee of experts appointed by the Governments has been authorized by the High Authority to study the measures required, for transport purposes, by the establishment of the Common Market, and to make suggestions to the Governments on the measures to be taken. The committee of experts has made recommendations on all cases of discrimination established up to April 1954, and, as a result, the High Authority has obtained an agreement of principle from the Governments concerned, followed by adequate administrative measures for the suppression of such practices. In this way an end has been put to thirty-two cases of discrimination.

In connexion with subsidies, attention may be called to the abolition of the special prices for coal which were operative in Germany for the railways, sea fisheries and domestic consumption. In France, other classes of subsidies have been limited to a considerable extent, while in the Netherlands a system of price equalization for coal has been limited to coal nuts (boulets).

QUESTION (c) Information is specially desired on the scope and status of the steel export price agreement, its effects on prices and availability of European Coal and Steel Community steel to third countries.

QUESTION (d) What measures have been taken by the authorities of the Community regarding that price agreement?

ANSWERS: Questions (c) and (d)

From a legal angle, the effects of an agreement on export prices would entail intervention by the High Authority if they were to result in the application of inequitable prices for the Community's steel exports to third countries. In this connexion, it is recalled that Article 61 of the Treaty states that the High Authority, after consultation with the Consultative Committee, the Special Council of

Cartels and Price Agreements (cont'd)

Ministers and the enterprises concerned, may establish minimum or maximum export prices, if such action seems necessary to ensure in international economic relations, the objectives defined in Article 3 of the Treaty, namely, to further the development of international trade and see that equitable limits are observed in prices charged on external markets.

So far as concerns prices, the replies to question No. VII of Questionnaire W.9/4 show that up till now the High Authority considers that they have been kept within equitable limits.

It can, consequently, be assumed that the prices of the Community's steel exports have not had any undue influence on export possibilities towards third countries.

In the circumstances, the High Authority has not had to resort to the measures provided for in Article 61 of the Treaty.

QUESTION (e) What is the basic position of the High Authority on the problem resulting from the existence of export price agreements? Does the High Authority consider that the existence of that agreement is consistent with Article 65 of the Treaty in view of the fact that steel exports of France, Belgium and Luxemburg represent about 35 to 50 per cent of the total steel production of these countries?

ANSWER: Under the Treaty, the High Authority is authorized to take action when an agreement has a disturbing influence on normal free competition within the Common Market.

The inquiries conducted so far have not shown in this connexion that the prices under the steel agreement have in any way upset normal competition on the internal market.

QUESTION (f) The Member States are requested to give information as regards the studies which have been undertaken on the activities of the various European coal cartels, especially as to the influence of these cartels on the coal prices inside and outside the Community.

ANSWER: As indicated in the reply to question (a), the High Authority is at present engaged in defining the activities of the cartels. As regards European coal cartels the study stage has been completed and the work has now entered into the pre-decision phase.

QUESTION (g) According to various information, the German exporters were not inclined to accept the export quota system introduced by the export cartel during March-June of this year. They are said, however, to have accepted the quotas after having been threatened with severe competition from the French and Belgian producers on the internal steel market. Has the High Authority received confirmative information on this subject?

ANSWER:

The High Authority has not received from the German producers any sort of complaint or any particulars confirming the information to which the Danish delegation alludes.

It may be recalled that under Article 60 of the Treaty, unfair competitive practices are forbidden, while Article 65 also prohibits concerted practices tending to restrict or impede the normal operation of competition within the Common Market.

Furthermore, it must be stressed that any threat of unfair competition, such as that described by the Danish delegation, would have no practical effect because of the rules and regulations operating within the Common Market.

VI. Export Prices

QUESTION (a) On the basis of which criteria does the High Authority decide whether the export prices are equitable or not?

QUESTION (b) In making such determination, does the High Authority take into account the rebates which, according to the press reports, are granted to German shipyards (special rebate of 50 DM per ton of steel used for the construction of ships to be exported) or, in France, on wire rod for indirect export (rebate of 7.5 per cent)?

QUESTION (c) Could the High Authority give detailed information concerning:

(i) the export prices as well as the prices applied on the Common Market for wire rod, merchant bars, ship plate, black plate (2,5-3 mm.) and galvanized plate (Thomas quality), compared with the corresponding prices applied within the Community countries, also, when eventually existing rebates are taken into account.

(ii) and in particular the export prices for steel exports to India on merchant bars and thin sheets on the following dates:

1952: July, December
1952: April, August, October
1954: April

ANSWERS: Questions (a), (b) and (c)

The best method to reply to the questions raised with respect to export prices will be to give first of all figures.

The export prices for steel from the Community to third countries were on 20 October those which are reproduced on Table No. I * for the principal categories of steel.

* This Table was sent to all contracting parties.

Export Prices (cont'd)

To supply data permitting the CONTRACTING PARTIES to gain an opinion with respect to these prices and their level in relation to prices on the world market, the export prices of the Community have been compared to export prices applied for the same categories of steel by the two great world producers: the United Kingdom and the United States.

The figures contained in this Table are, in our view, fundamental data proving that the export prices applied by the Community are situated within equitable limits.

As additional information, Table II* compares the export prices applied, with the prices applied on the internal market of the Community. The latter are the prices normally applied on the market, without taking into account rebates resulting from certain customary trade practices.

Table III* shows the prices applied on exports of steel shipped to India in the form of merchant bars and thin sheets at various periods during the years 1953 and 1954. It includes likewise figures relating to the volume of exports of steel products from the Community to India in 1951, 1952, 1953 and 1954.

VII. Particular Questions

QUESTION (a) Can the Member States reassure the CONTRACTING PARTIES to the effect that, in fulfilling commitments now being undertaken by them with third countries to furnish supplies, in times of shortage, they will comply with their obligations under the GATT (see paragraph 6 of document L/247)?

ANSWER: The Governments of the German Federal Republic and France are aware of their obligation in case of shortage to apply to other contracting parties a treatment consistent with the provisions of the General Agreement.

QUESTION (b) Could information be supplied by the Italian Government on their subsidies on ship plates for their shipyards?

ANSWER: In Italy, shipyards are considered as being outside the customs territory. Therefore, semi-finished products and finishing products (including semi-finished and finished steel products) used for shipbuilding:

Are duty-free if they are imported from abroad;

Are considered as exports if they are manufactured in Italy.

* This Table was sent to all contracting parties.

Particular Questions (cont'd)

The finished or semi-finished products of Italian manufacture benefit by a rebate with a view to ensuring parity in prices between foreign products imported duty-free and domestic products. Furthermore, it should be pointed out that Italian legislation in respect of shipbuilding has long been established (even before the war) and has always provided for facilities of this kind.

QUESTION (c) What was India's share in the total exports from the Community during

(i) 1952, and

(ii) 1953?

ANSWER:

The percentage of exports to India as compared with total exports of the European Coal and Steel Community for the year 1952 was 0.2 per cent and 1.6 per cent for 1953.