

COMMISSION DIRECTIVE

of 22 December 1969

based on the provisions of Article 33 (7), on the abolition of measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty

(70/50/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the provisions of the Treaty establishing the European Economic Community, and in particular Article 33 (7) thereof;

Whereas for the purpose of Article 30 *et seq.* 'measures' means laws, regulations, administrative provisions, administrative practices, and all instruments issuing from a public authority, including recommendations;

Whereas for the purposes of this Directive 'administrative practices' means any standard and regularly followed procedure of a public authority; whereas 'recommendations' means any instruments issuing from a public authority which, while not legally binding on the addressees thereof, cause them to pursue a certain conduct;

Whereas the formalities to which imports are subject do not as a general rule have an effect equivalent to that of quantitative restrictions and, consequently, are not covered by this Directive;

Whereas certain measures adopted by Member States, other than those applicable equally to domestic and imported products, which were operative at the date of entry into force of the Treaty and are not covered by other provisions adopted in pursuance of the Treaty, either preclude importation or make it more difficult or costly than the disposal of domestic production;

Whereas such measures must be considered to include those which make access of imported products to the domestic market, at any marketing stage, subject to a condition which is not laid down for domestic products or to a condition differing from that laid down for domestic products, and more

difficult to satisfy, so that a burden is thus placed on imported products only;

Whereas such measures must also be considered to include those which, at any marketing stage, grant to domestic products a preference, other than an aid, to which conditions may or may not be attached, and where such measures totally or partially preclude the disposal of imported products;

Whereas such measures hinder imports which could otherwise take place, and thus have an effect equivalent to quantitative restrictions on imports;

Whereas effects on the free movement of goods of measures which relate to the marketing of products and which apply equally to domestic and imported products are not as a general rule equivalent to those of quantitative restrictions, since such effects are normally inherent in the disparities between rules applied by Member States in this respect;

Whereas, however, such measures may have a restrictive effect on the free movement of goods over and above that which is intrinsic to such rules;

Whereas such is the case where imports are either precluded or made more difficult or costly than the disposal of domestic production and where such effect is not necessary for the attainment of an objective within the scope of the powers for the regulation of trade left to Member States by the Treaty; whereas such is in particular the case where the said objective can be attained just as effectively by other means which are less of a hindrance to trade; whereas such is also the case where the restrictive effect of these provisions on the free movement of goods is out of proportion to their purpose;

Whereas these measures accordingly have an effect equivalent to that of quantitative restrictions on imports;

Whereas the customs union cannot be achieved without the abolition of such measures having an equivalent effect to quantitative restrictions on imports;

Whereas Member States must abolish all measures having equivalent effect by the end of the transitional period at the latest, even if no Commission Directive expressly requires them to do so;

Whereas the provisions concerning the abolition of quantitative restrictions and measures having equivalent effect between Member States apply both to products originating in and exported by Member States and to products originating in third countries and put into free circulation in the other Member States;

Whereas Article 33 (7) does not apply to measures of the kind referred to which fall under other provisions of the Treaty, and in particular those which fall under Articles 37 (1) and 44 of the Treaty or form an integral part of a national organisation of an agricultural market;

Whereas Article 33 (7) does not apply to the charges and taxation referred to in Article 12 *et seq.* and Article 95 *et seq.* or to the aids mentioned in Article 92;

Whereas the provisions of Article 33 (7) do not prevent the application, in particular, of Articles 36 and 223;

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to abolish the measures referred to in Articles 2 and 3, which were operative at the date of entry into force of the EEC Treaty.

Article 2

1. This Directive covers measures, other than those applicable equally to domestic or imported products, which hinder imports which could otherwise take place, including measures which make importation more difficult or costly than the disposal of domestic production.

2. In particular, it covers measures which make imports or the disposal, at any marketing stage, of imported products subject to a condition—other than a formality—which is required in respect of imported products only, or a condition differing from that required for domestic products and more difficult to satisfy. Equally, it covers, in particular, measures

which favour domestic products or grant them a preference, other than an aid, to which conditions may or may not be attached.

3. The measures referred to must be taken to include those measures which:

- (a) lay down, for imported products only, minimum or maximum prices below or above which imports are prohibited, reduced or made subject to conditions liable to hinder importation;
- (b) lay down less favourable prices for imported products than for domestic products;
- (c) fix profit margins or any other price components for imported products only or fix these differently for domestic products and for imported products, to the detriment of the latter;
- (d) preclude any increase in the price of the imported product corresponding to the supplementary costs and charges inherent in importation;
- (e) fix the prices of products solely on the basis of the cost price or the quality of domestic products at such a level as to create a hindrance to importation;
- (f) lower the value of an imported product, in particular by causing a reduction in its intrinsic value, or increase its costs;
- (g) make access of imported products to the domestic market conditional upon having an agent or representative in the territory of the importing Member State;
- (h) lay down conditions of payment in respect of imported products only, or subject imported products to conditions which are different from those laid down for domestic products and more difficult to satisfy;
- (i) require, for imports only, the giving of guarantees or making of payments on account;
- (j) subject imported products only to conditions, in respect, in particular of shape, size, weight, composition, presentation, identification or putting up, or subject imported products to conditions which are different from those for domestic products and more difficult to satisfy;
- (k) hinder the purchase by private individuals of imported products only, or encourage, require or give preference to the purchase of domestic products only;
- (l) totally or partially preclude the use of national facilities or equipment in respect of imported products only, or totally or partially confine the use of such facilities or equipment to domestic products only;
- (m) prohibit or limit publicity in respect of imported products only, or totally or partially confine publicity to domestic products only;

- (n) prohibit, limit or require stocking in respect of imported products only; totally or partially confine the use of stocking facilities to domestic products only, or make the stocking of imported products subject to conditions which are different from those required for domestic products and more difficult to satisfy;
- (o) make importation subject to the granting of reciprocity by one or more Member States;
- (p) prescribe that imported products are to conform, totally or partially, to rules other than those of the importing country;
- (q) specify time limits for imported products which are insufficient or excessive in relation to the normal course of the various transactions to which these time limits apply;
- (r) subject imported products to controls or, other than those inherent in the customs clearance procedure, to which domestic products are not subject or which are stricter in respect of imported products than they are in respect of domestic products, without this being necessary in order to ensure equivalent protection;
- (s) confine names which are not indicative of origin or source to domestic products only.

Article 3

This Directive also covers measures governing the marketing of products which deal, in particular, with shape, size, weight, composition, presentation, identification or putting up and which are equally applicable to domestic and imported products, where the restrictive effect of such measures on the free movement of goods exceeds the effects intrinsic to trade rules.

This is the case, in particular, where:

- the restrictive effects on the free movement of goods are out of proportion to their purpose;
- the same objective can be attained by other means which are less of a hindrance to trade.

Article 4

1. Member States shall take all necessary steps in respect of products which must be allowed to enjoy free movement pursuant to Articles 9 and 10 of the Treaty to abolish measures having an effect equivalent to quantitative restrictions on imports and covered by this Directive.
2. Member States shall inform the Commission of measures taken pursuant to this Directive.

Article 5

1. This Directive does not apply to measures:
 - (a) which fall under Article 37 (1) of the EEC Treaty;
 - (b) which are referred to in Article 44 of the EEC Treaty or form an integral part of a national organisation of an agricultural market not yet replaced by a common organisation.
2. This Directive shall apply without prejudice to the application, in particular, of Articles 36 and 223 of the EEC Treaty.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 22 December 1969.

For the Commission

The President

Jean REY