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COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 3 October 1973

COMMUNICATION ON PROBLEMS ARISING FROM COOPERATION AGREEMENTS

AND

PROPOSAL FOR A
COUNCIL DECISION

ESTABLISHING A CONSULTATION PROCEDURE FOR COOPERATION
AGREEMENTS BETWEEN MEMBER STATES AND THIRD COUNTRIES

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

Part I: THE PROBLEM

In its Communication to the Council on negotiated and autonomous commercial policy with regard to State-trading countries (Doc. SEC(70) 4500 final, 20 December 1972), the Commission has already brought to the Council's attention the problems arising from the extension of cooperation agreements concluded between Member States and East European countries. When answering written and oral parliamentary questions on the implications of these agreements for the implementation of a common trade policy, the Commission has expressed its approval of the aims of the agreements but has also said that their consequences should be examined and that thought needed to be given to how the instruments of the common commercial policy should be adapted to the new forms and purposes of economic relations between East and West.

I. BACKGROUND

East-West trade has entered a new phase. In the first stage, until about the mid-fifties, trade was carried on under annual agreements, mainly for simple buying and selling (usually barter) operations. The second stage was the period of five-year agreements with quota lists, usually for credit sales of plant and equipment to East European countries. The third period, starting in the mid-sixties, has seen the proliferation of contracts, then agreements, for "cooperation".. These exist alongside the trade agreements, some of which contain provisions concerning industrial cooperation.

This trend in the forms and scale of East-West trade has been primarily due to the deliberate policy of East European governments, who through their planning and foreign trade monopoly system were able to use trade with the

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West for a particular (and limited) function in their economic programmes.

However, the trend has also of course been affected by changes in political relations and by the new motivations behind the trade policies of the western countries.

Cooperation agreements are coming into being at a juncture in East-West relations when the West's defensive attitude to trade is being replaced by a concern to promote trade. This new approach results from the new political climate, the existence of an appropriate trade defence armoury and certain changes in the trading practices of the East European countries. Study of the cooperation agreements shows that they are an effective instrument for promoting exports to the state-trading countries. Since Eastern European governments intervene in all sectors of the economy and this has a direct or indirect effect on external trade, the "intergovernmental" or "joint" committees set up under the cooperation agreements fulfil an important function for trade. These bodies, which often meet at ministerial level, have general powers; they supervise the whole range of economic relations, and their discussions are at a level where decisions of principle can be taken directly. Further, by providing for an exchange of information on trends and investments planned in given sectors, these agreements make possible a sectoral approach to trade expansion. Stronger contacts by sector, lists showing where cooperation is regarded as worthwhile and where enterprises' own efforts could usefully be encouraged - these are methods of market prospecting which are admirably suited to trade with countries with centrally planned economies.

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Alongside the Community's new emphasis on export problems, the East European countries are changing their attitudes as regards both the purposes of trade itself and its form and content.

Until recently, the East European countries did not regard exporting as a factor of economic development per se, but only as a means of payment. As a result, the scale of East-West trade was limited financially by the volume of goods made available for export, which was governed by production possibilities and the economic policies of the central authorities. A primary aim of the trade policy of the East European countries was balance of payments equilibrium. Imports were intended to make up for shortages in certain vital sectors of the economy, to solve crises resulting from planning errors and to prevent production shutdowns, or as a means of obtaining goods which could not be produced in the Comecon countries. Profitability and comparative cost considerations were not determining criteria.

Taking advantage of the political détente (and to a degree welcoming it as an opportunity to attain their economic goals), the East European countries now hope to bridge the technological gap between them and the West by stepping up their imports of producer goods and Western know-how. They also hope no doubt to gain greater advantage from a more equitable distribution of resources and means of production and to avoid a level of economic waste which is not tolerable in the long run. With improved political relations, they can plan for assistance from abroad for long-term projects¹, whereas previously trade with the West, regarded as uncertain, was restricted to arrangements which were short-term and therefore of limited scope. At present, however, the contribution from abroad is regarded as decisive in certain sectors. In view of the scale of certain cooperation projects,

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¹The latest cooperation agreements have been concluded for ten-year periods.

the contribution from abroad will have repercussions beyond the project itself, affecting even the economic infrastructure. The forms and aims of these cooperation agreements will be different in the USSR from those in the people's democracies. In the Soviet Union there are no mixed undertakings and the emphasis is on primary products at a time when the industrialized countries are seeking new sources of supply. The people's democracies, on the other hand, are trying by means of certain types of joint undertaking to industrialize, to create new activities and to integrate their economies more fully into world trade. However, foreign plant and expertise cannot be paid for by their present exports, except at the cost of other imports. This new importing policy therefore means that the East European countries must, in conjunction with their western partners, at the same time find a solution to the payments problem. Cooperation in its most diverse forms is the means of achieving this dual aim, for payment will be made in whole or in part by a proportion of the goods produced by means of imported plant, and these goods will usually be marketed by western companies.

The East European countries thus hope to increase the volume and especially the structure of their exports, both essential if they are to achieve a healthy balance of payments, whose state at present is an obstacle to the harmonious and vigorous expansion of trade.

Furthermore, the East European countries are now far less interested in five-year trade agreements. The basic features of these agreements were most-favoured-nation treatment, quota lists and a joint committee. The accession to GATT of four East European countries has to some extent removed the attraction of bilateral most-favoured-nation provisions. The intergovernmental committees set up under the cooperation agreements more than adequately replace the consultation machinery of the trade agreements, and growing trade liberalization reduces the significance of the quotas. Finally, the new economic policy calls for projects of more than five years' duration.

II. COOPERATION AND THE COMMON COMMERCIAL POLICY

Both for Member States and for the East European countries, then, the various types of cooperation are set in a climate of intensifying economic relations. Even though some aspects of cooperation, such as the exchange of scientific information or joint research, do not directly affect trade relations, cooperation in economic affairs takes the form of transfers of goods and services. More generally, even though it is cast in the longer term and has manifold implications, the basic aim of cooperation chimes with the fundamental purposes of international trade.

To achieve certain economic aims Member States make great use of the methods of export policy (prospecting, promotion, credit policy); many aspects of import policy are also affected where the terms on which goods are imported are specified in the cooperation agreements. Consequently, cooperation agreements substantively affect the common commercial policy as defined in Article 113. However, there has been no systematic prior consultation on these agreements.

This situation arises both from the very general character of these agreements, which also cover non-trade fields and may contain no precise reference to trade policy. Moreover, certain Member States considered that cooperation in general is not part of the Community's competence.

Some Member States, however, have submitted draft agreements to Commission departments under consultation procedures; in other cases, the Commission was simply informed after the agreement had been signed.

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It is a fact that the East European countries try to get round the establishment of the common commercial policy by concluding cooperation agreements with the individual Member States. This explains their repeated efforts when negotiating with Member States to insert trade-agreement clauses in ten-year cooperation agreements, and thus to create a legal basis for pursuing bilateral negotiations at national level; in their view, Community agreements would then be unnecessary.

The east European countries maintain that cooperation is a quite specific form of relationship and they seek arrangements for goods produced under cooperation agreements, that is tariff exemption and especially the elimination of quantitative restrictions. It is interesting to note an article in the official Soviet foreign trade review No 11/72 in which V. Vetrov and V. Kazakevich consider that "industrial cooperation has proved its worth as a means of lowering some of the barriers put up by the capitalist countries which artificially restrict trade with East Europe", and they specifically refer to quantitative restrictions.

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III. CONCLUSION

These cooperation agreements, then, are proliferating at a particular juncture in the construction of Europe. The most recent have been concluded for ten-year periods, and they are being negotiated at a time when the power to negotiate trade agreements is being transferred to Community institutions but the exercise of the Community's competence in the field of cooperation has not been systematically organized. The East European countries are taking advantage of this situation.

Furthermore, cooperation will call for much more far-reaching intervention by the political authorities than that required by straightforward buying and selling operations, in that the nature and complexity of the problems are quite different. While in barter operations the role of the political authorities was minor, to become more important in credit sales of plant and equipment, it can be decisive when complete installations or even whole new industries are being set up. Cooperation will have repercussions not only on the production capacities of the exporters and on competition resulting from the arrival on our markets of products manufactures and sold under cooperation agreements, but also on raw materials supply policy, the development of certain sectors of our infrastructure and the possible transfer to Eastern Europe of certain types of production, with all the social consequences, both positive and negative, of such an occurrence.

At the same time there will be the problem of the competitive capacity of Member States which continue to allow the East European countries to play them off against each other, and which must face powerful new competitors, the United States and Japan. As a result either of their power and structure or of government support, the enterprises concerned in these two countries seem to be particularly well organized to cope with all the stages and conditions of major cooperation projects, which are beyond the capabilities of the Member States, taken separately.

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Competition with the United States and Japan in the East European market will inevitably have effects on other markets where these enterprises are competing. Further, the question arises whether Europe may not soon lose its position as leading supplier to East European markets and become basically the market for products manufactured through cooperation between those countries and the United States and Japan. Then Europe would be supplying to the East European countries the foreign currency needed to pay for plant and equipment purchased outside Europe.

The time has therefore come for the Community to consider the cooperation agreements with the East European countries, and particularly their implementation, in a Community perspective, within the context of common commercial policy, in order to evaluate how they can best serve the greatest interests of the Community as a whole. Should the latest developments be eventually reflected in the establishment of links between the Community and Comecon, the arrangements envisaged in this communication would be entirely without prejudice to such action in fields of mutual interest as might emerge between Comecon and EEC.

Part II: MEASURES TO BE ENVISAGED

I. INTRODUCTION

At present the attitude adopted by the East European countries towards the Community makes it difficult to work towards adequate solutions to the problems of cooperation. In the first place, as Member States can no longer open trade negotiations, they cannot accede to requests from non-member countries and therefore cannot ask for return concessions. At the same time, by refusing to negotiate with the Community, the East European countries prevent the conclusion of Community agreements which would supplement the bilateral agreements and thus institute a new legal framework which would give cooperation a new dimension whereby political resolve could be translated into economic reality.

Community agreements would establish the best possible conditions, in the light of Community legislation and international rules, for trade under cooperation agreements and at the same time would consolidate the common commercial policy. The continuation and a fortiori the permanent acceptance of cooperation based solely on bilateral relations between Member States and East European countries, on the other hand, holds very serious drawbacks both for the Community as a whole and for each of its Member States. Such a situation would inevitably induce the East European countries to step up their outbidding policy by playing off Member States against each other and especially against other competitors. This vertical separation prevents transactors in the Community from exploiting the possibilities inherent in the Community; in fact, by multiplying individual arrangements it is liable to hamper the free movement of goods and lead to the adoption of safeguard measures. A trade policy which was circumvented, fragmented or prevented from playing its role in an expanding sector would increasingly lose its *raison d'être* if it no longer provided Community undertakings with the means of action which they expect from it.

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Cooperation with the East European countries, especially that foreshadowed for the period after 1975, will cover projects on a scale which will call for cooperation among several European firms, industrial as well as financial or commercial. A very small number of firms will no doubt still be able to provide the goods, capital and services called for by these projects.

Only Community action based on uniform principles progressively drawn from current national rules in the financial sectors of credit insurance and for processing systems will enable Community enterprises to measure up to changed circumstances and to stand up to the competition.

However, the fact that it is not yet possible to find a solution by agreement which would both meet the requirements of the Community and contribute to expanded East-West cooperation does not justify acquiescence, still less total inaction. What the Community has already achieved must first be safeguarded; then the foundations must be laid for future action; and finally it must be determined what conditions and instruments are required for action based both on the financial and industrial potential offered by existence of a Community and on the trade flows and contacts already established on bilateral bases.

As a first step, therefore, the Commission proposes measures in the form of a draft decision, in the field of autonomous policy and suggests guidelines for medium-term action.

II. DRAFT DECISION

The Commission proposal provides for:

- (a) the establishment of a consultation procedure,
- (b) the compulsory inclusion of a "review" clause in new cooperation agreements.

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A. Consultation procedure

In proposing consultation, the Commission considers that three major aims could be achieved:

- (a) to facilitate mutual information and exchanges of views;
- (b) to verify that the agreements and the measures proposed by the intergovernmental committees are consistent with the provisions of the common commercial policy;
- (c) to harmonize measures proposed regarding imports of goods produced by cooperation activities;
- (d) to harmonize the terms and duration of export credits.

The experience gained from the application of the Decision of 9 October 1961 on prior consultation has been quite conclusive: it has made it possible to attain similar objectives in the context of the old trade agreements at a time when the common commercial policy was less advanced than it is now.

Aa. By launching a system of mutual information and exchanges of views between delegations, the procedure under the Decision of 9 October 1961 enabled Member States to stand firm against a continuing process of concessions and outbidding. Each Member State has been able to benefit from the experience of the others and, turning the tables on the East European countries, to ask in turn for the concessions which these countries had made to another Member State. In this way the agreements have gradually been harmonized, and as they align their positions the Member States have individually gained in negotiating strength.

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In a field as new and complex as that of cooperation, standing arrangements for mutual information are not only advisable but would appear to be indispensable for success. The necessity is further confirmed by the emergence of new and very dynamic competitors who in some respects have powerful means at their disposal compared with those available to exporters in the Member States.

- Ab. It seems obvious that agreements must be scrutinized to ensure that they contain no clauses incompatible with Community provisions and that they will not constitute obstacles to the achievement of integration. That this is incontrovertible (and it was the reason behind the Decision of 9 October 1961) is further confirmed by the attempts made by the countries of Eastern Europe to use cooperation agreements as a means of getting round the provisions of the common commercial policy.

However, this scrutiny cannot be confined only to cooperation agreements to be negotiated after such a procedure has been put into effect. To do so would be to ignore the features peculiar to cooperation agreements and to underestimate the importance and potentialities of the intergovernmental or joint committee, for it is this committee, with its oversight of the whole range of economic relations, which gives substance to the general provisions of the agreement. In particular, the committee defines the sectors in which cooperation is to take place and approves the operations which subsequently may benefit from various measures of encouragement. Thus the intergovernmental committee can directly influence the trend and structure of trade and thereby indirectly affect the situation in certain sectors of the Community. In so far as, by definition, cooperation with Eastern Europe implies not only exports of plant and equipment to these countries but also imports into the Community of raw materials

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(as will no doubt be the case with the USSR) and semi-manufactures (from the people's democracies), then it is obvious that such operations should not escape Community scrutiny.

Consultation should therefore likewise cover the activities of the intergovernmental committee to the extent that they will have an impact on the development of economic relations.

Ac. The decision of 19 December 1972 sets up a procedure for consultation and coordination which is mandatory for all changes to the import system.

Yet at the same time, in most trade and/or cooperation agreements, the East European countries have obtained clauses whereby imports of goods produced by approved cooperation activities are not subject to the agreed quotas. Germany, France and Italy have usually agreed to such a clause, the Benelux countries and the United Kingdom occasionally. Clearly, many difficulties may arise from this discrepancy between the Member States and from the different treatment given to the same product according to the legal instrument under which it is imported. These difficulties will be the greater in that there is no recognized definition of cooperation; it can take a variety of forms and at present its distinguishing feature is still the will of the parties. Further, under the cover of cooperation, bartering, which was thought to be disappearing, is becoming current again, and on a larger scale than before. And it was precisely bartering which was usually at the root of disturbances or potential disturbances to the market in the period when this type of trade was predominant.

Community scrutiny therefore seems essential before products are almost entirely freed from quota restrictions through cooperation and so become liable, if they are sensitive goods, to injure certain economic sectors of a Member State not party to the agreement

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and affect the functioning of the common market. In the absence of such scrutiny, increasing use will be made of derogations and exceptions as trade defence measures, to the detriment of the free movement of goods, which by opening up broader markets for East European goods increases those countries' revenues and thus their purchasing power.

The idea of Community scrutiny was accepted by the Permanent Representatives Committee as early as 6 May 1970¹, when it was agreed that there should be a case-by-case study of products imported under the system set up by the agreement between the Federal Republic of Germany and Hungary for goods produced under cooperation arrangements.

The procedure advocated by that Committee, however, has never been resorted to, because so far no Member State has announced its intention on cooperation grounds of importing without limits a product subject to a quota.

If Member States which have granted this concession have approved cooperation arrangements only for products which are already free of restrictions or which are to be imported within the agreed quotas, then the absence of information from the Member States is self-explanatory. The systematic application of a community procedure would, however, make a more liberal policy possible for many products and could thus help to expand trade while contributing to a common commercial policy.

Ad. At a time when credit is playing a growing role in exports to the East European countries, particularly for large-scale projects such as those planned under cooperation, the competitive bidding seen in the Community is of benefit to nobody except the East European countries.

By providing for mutual information, consultation is a first step towards adopting a more common attitude towards demands from East Europe.

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¹See S/392/70 (Comer 113)

B. Review clause

There is no need to describe why from the early days of the Community the Council asked Member States to include the EEC clause in their agreements with non-member countries, and later more specifically a review clause in trade agreements with state-trading countries.

In view of the length (ten years) of the cooperation agreements now being concluded with East European countries, and their expanding scope at a time when Community powers and its range of action are growing, the Commission proposes that a clause of this nature be included in cooperation agreements. The case for doing so is strengthened as a result of the recent negotiations between Germany and the USSR, at which Germany secured the inclusion of a review clause (Article 9 of the Agreement, signed in May 1973) referring expressly to the multilateral commitments undertaken by the Contracting Parties. The Soviet delegation, duly informed of the reasons for and scope of the clause, accepted it and required that any review should not compromise the basic purposes of the agreement. Such a reservation had already been made in many trade agreements which contained a review clause of this kind. The Soviet Union's acceptance is a welcome precedent for other negotiations.

Its inclusion in other agreements will make it possible to avoid incompatibilities which could give rise to disputes with non-member countries or difficulties within the Community.

Member States whose agreements lack this clause will reach agreement on appropriate provisions with the other Contracting Party; this could be done, for instance, at the next meeting of the intergovernmental committee.

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III. FUTURE WORK

Work to be undertaken covers the following fields:

A. CREDIT INSURANCE

1. As regards credit insurance, the Commission reminds the Council of its proposals for limiting the duration of credit and observing a minimum interest rate¹. The adoption of these measures would place all firms in Member States on a similar competitive footing and would also facilitate discussions with the other industrialized countries.
2. The direct participation of Community enterprises in joint ventures will be facilitated by adoption of the Commission's proposal on investment guarantees in non-member countries². This proposal could be adapted to meet the conditions peculiar to centrally planned economies.

B. CUSTOMS ARRANGEMENTS

In the national agreements now in force, the article on cooperation usually states "the Parties agree to grant each other the most favourable treatment". It is clear that because of the Community's developing customs system, and since customs duties are Community revenue, the Member States no longer have autonomous and discretionary power to grant the most favourable tariff and customs treatment to their East European trading partners if such treatment oversteps the limits set by Community law.

This is already so for inward processing arrangements, including industrial warehouse processing, and will soon apply also to outward processing.

Since a large proportion of current cooperation arrangements fall within these two customs systems, it is obvious that only under a derogation agreed to at Community level will it be possible to include most-favourable-treatment clauses in cooperation agreements.

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¹See Doc. COM(72) 1526 final of 6 December 1972.

²See Doc. COM(72) 1461 final of 20 December 1972.

Even then, such treatment cannot relate to tariffs without being universally extended.

For the moment it would be possible to adopt at Community level the principle that imports or re-imports, made under the inward and/or outward processing arrangements of industrial cooperation contracts and approved at Community level by consultation procedures, are to be regarded as satisfying the economic requirements of those arrangements. Directive No 69/73/EEC on inward processing arrangements provides a system whereby the Council can be asked to adopt implementing rules for economic supervision.

In the longer term, the introduction of Community rules for international industrial cooperation forms part of continuing harmonization work in the sector of economic customs systems.

These rules should offer a complete range of customs facilities specifically tailored to the needs of Community policy for the promotion of international industrial cooperation.

As industrial cooperation is expanding, work in this field should be speeded up. Without such unification and a greater degree of coordination, distortions of competition will soon occur.

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The particular system which might be adopted for approved cooperation arrangements should apply only to operations either in the Community or in the East European country or countries concerned.

C. CREATION OF A SPECIAL STUDY GROUP

Besides the points referred to in the previous section, the factors which determine or which may in the future determine the trend of trade between the Community and the East European countries are so complex that the Commission feels it should consult a group of high-level independent experts from public administrations, financial institutions and industry. This group, meeting under a distinguished chairman, would include representatives from various geographical areas so that various types of experience could be drawn on.

Having set up this special study group, the Commission would ask it to present, by next spring at the latest, an overall report on the ways and means by which the Community can henceforth, in accordance with its economic potential and bearing in mind its traditional links with East European countries, participate to the full in the projects which will be proposed by those countries or by Community enterprises.

DRAFT

Proposal for a Council Decision establishing a
consultation procedure for cooperation agreements
between Member States and third countries

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Whereas the negotiation and implementation of "cooperation" agreements between
Member States and third countries may affect trade relations with those
countries;

Whereas the negotiation and implementation of such agreements should therefore
be subject to a prior consultation procedure without prejudice to particular
Community procedures for certain categories of national commercial policy
measures;

Whereas such a consultation procedure should make it possible to establish
whether the negotiation and implementation of such agreements are consistent
with the requirements of the common commercial policy and do not prejudice
the interests of the Community or of any of its Member States; whereas it
may also facilitate the exchange of information and thus coordination among
Member States as regards the third countries concerned;

Whereas such agreements should also include a clause safeguarding the
respect of Community obligations in the implementation of the agreements and
enabling these agreements to be reviewed in the light of the development
of the Community's common policies,

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HAS ADOPTED THIS DECISION:

Article 1

The Member States shall inform the Commission, which shall in turn inform the other Member States,

- of agreements relating to economic, industrial or scientific cooperation (hereinafter called "cooperation agreements") which they propose to negotiate with third countries;
- of measures which they propose to take in implementing cooperation agreements, where applicable before they are studied in the intergovernmental or joint committees set up by these agreements.

Article 2

1. There shall be prior consultation with the other Member States and the the Commission on the agreements and measures referred to in Article 1; this consultation shall take place within three weeks of the Commission and the other Member States being informed.

2. Where the matter is urgent, consultation shall take place as soon as the Commission and the other Member States have been informed.

3. The purposes of the consultation shall be inter alia:

- (a) to establish whether the negotiations and other measures proposed are consistent with the requirements of the common commercial policy and do not prejudice the interests of the Community or of any of its Member States;
- (b) to coordinate measures proposed which relate to the importation or exportation of products or services arising from cooperation operations;
- (c) to facilitate the exchange of information and views in order, where applicable, to enable the Member States to coordinate their action with regard to the third countries concerned.

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4. The Member States shall transmit to the Commission the texts of cooperation agreements concluded with third countries and of implementation measures pertaining to these agreements adopted after consultation as referred to in the preceding paragraphs.

Article 3

Consultation on the application of a cooperation agreement may be instituted at any time, either at the request of a Member State or upon the initiative of the Commission.

Article 4

The consultations provided for in Articles 2 and 3 shall take place within the committee of limited size referred to in the Council decision of 9 October 1961¹ concerning a consultation procedure in respect of the negotiation of agreements concerning commercial relations between Member States and third countries and in respect of changes in the state of liberalization in relation to third countries.

Article 5

The provisions of Articles 1, 2 and 3 shall be without prejudice to the particular Community procedures laid down for certain categories of commercial policy measures taken by Member States.

Article 6

In cooperation agreements which they have concluded or which they propose to conclude with third countries, Member States shall include provisions to the effect that nothing therein shall affect their obligations as Member States of the European Communities and that the parties will review the agreement when the need arises in order to take account of the progressive development of the Community's common policies and of the resulting obligations for all Member States.

Article 7

This decision is addressed to the Member States.

¹OJ No 71, 4 November 1961, p. 1273/61