COMMISSION OF THE EUROPEAN COMMUNITIES

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URUGUAY ROUND

IMPLEMENTING

LEGISLATION

(presented by the Commission)

Part 1

Central Implementation Act

EXPLANATORY MEMORANDUM

I Political aspects

1. Background

The European Community is one of the participating parties in the negotiations making up the eighth round of multilateral trade negotiations held under the auspices of the General Agreement on Tariffs and Trade (GATT). The Uruguay Round negotiations, as they were known, were concluded by the Trade Negotiations Committee in Geneva on 15 December 1993. The Final Act embodying the results of the Uruguay Round multilateral trade negotiations (hereinafter the Final Act) was formally signed on behalf of the Community by the President of the Council, Mr Pangalos, and Sir Leon Brittan, Member of the Commission, in Marrakesh on 15 April.

The Commission has officially presented the Council with a proposal for a decision on the conclusion of the results of the Uruguay Round Trade Negotiations.[1] The Council has yet to act on this point.

Like its principal trading partners, the Community gave its official approval for the establishment of the World Trade Organization and the other results of the Uruguay Round to take effect at multilateral level at the earliest possible opportunity, i.e. 1 January 1995.

An implementation conference will be held in Geneva early in December to this end.

The Commission is convinced that any further delay in fulfilling its international obligations would be severely prejudicial to the Community's international prestige and credibility.

2. Grounds for the proposed approach

The Commission considers it appropriate, as matters now stand, to implement forthwith all the additions and amendments to Community legislation required by the Final Act.

Aside from the Community's formal adoption of the results of the Uruguay Round and, consequently, from its accession to the World Trade Organization as a founder member, the prompt adoption of this decision by the Council would also allow the Community to honour its commitments to its international trading partners.

Pending lodging of the Community's official instruments of acceptance with the World Trade Organization, the current state of affairs in GATT would thus continue.

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[1] COM(94) 143 final, 15.4.1994.

Irrespective of the fulfilment of commitments made under its auspices, the General Agreement has not been submitted for ratification by the parties.

II Legislative aspects

Examination of the Final Act shows that several measures it contains are already adequately covered by existing Community legislation.

However, other measures do require the Community either to adopt new legislative acts or to amend existing Community law.

This memorandum sets out the reasons for the entry into force of all the acts required to implement the results of the Uruguay Round and summarizes the main grounds justifying the acts listed in the annex to the proposed implementing decision.

In addition, each of the acts listed in the annex is preceded by its own explanatory memorandum giving detailed observations on the act concerned.

1. Simultaneous entry into force

Mainly at the Community's insistence, the Punta Del Este Declaration, which launched the Uruguay Round trade negotiations, established the principle of globality as one of the "guiding principles of the negotiations".

From the point of view of the Community's objectives it was thought appropriate that "the launching, the conduct and the implementation of the outcome of the negotiations shall be treated as parts of a single undertaking".[2]

The Council was regularly informed of progress and consistently underlined the point that the result of the Uruguay Round should be a "comprehensive and balanced outcome".

The Commission also believes that only a global assessment will allow the Uruguay Round's contribution to the Community to be fairly judged.

Most of the Community's partners in the negotiations have adopted procedures aimed at guaranteeing the "globality" of the outcome.

On the multilateral front, accession to the World Trade Organization is subject to acceptance in full of the Final Act (see Agreement establishing the WTO, Articles XI and XII).

Consideration of these factors led the Commission to propose at the Council meeting of 15 April 1994 that the implementing legislation be presented as a whole in the form of a single legislative act.

However, in order to facilitate discussion in the various Council committees, the Commission decided on the approach outlined here in which the political unity of the

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[2] GATT document, MIN. DEC of 20.9.1986, p. 2 and 3.

outcome is embodied in legal form by the attached decision on simultaneous entry into force.

This decision lays down that all the acts required for the implementation of the results of the Uruguay Round, which are listed in full in its annex, will come into force legally in the Community simultaneously on 1 January 1995. The entry into force of each act is therefore subject to the adoption of this decision simultaneously implementing all the other acts.

2. Commitments on customs duties for products not covered by the agriculture offer

The negotiations on customs duties in the Uruguay Round resulted in the deposit by the Community of a new schedule of tariff concessions.

The commitments entered into represent in total an average 30% reduction in the rate of customs duties applicable to imports from other GATT contracting parties.

The participating parties in the Uruguay Round agreed to implement the first stage of reductions with effect from 1 January 1995.

Pursuant to Council Regulation (EEC) No 2658/87 of 25 July 1987 the tariff to be applied as from 1 January of the following year must be published by 31 October at the latest. It seems unlikely that procedural delays would allow adoption of the tariff resulting from the Uruguay Round by that date, but publication of the pre-Uruguay Round tariff on the prescribed date would probably cause some confusion amongst businesses and lead to doubts inside and outside Europe as to the Community's determination to honour its commitments under the Uruguay Round.

To avoid giving the wrong impression and damaging the Community's prestige internationally, the Commission considers it appropriate to waive the obligation to publish and, instead, to publish the tariff fixed in the Uruguay Round by way of information in the C series of the Official Journal on the prescribed date.

The decision on tariffs is a key element and integral part of the overall outcome of the Uruguay Round. It is important, therefore, that it should be given due consideration along with the other results. Likewise, the tariff concessions granted by the Community in the Uruguay Round should take effect on the same date as the other commitments entered into during the negotiations.

3. Non-tariff commitments

The results of the Uruguay Round multilateral trade negotiations also include important non-tariff provisions.

(a) Customs valuation

Leaving aside a small number of essentially technical amendments, the Agreement on Implementation of Article VII of the General Agreement (Rules on Customs Valuation) was further clarified in two Decisions on customs valuation formally adopted at the

ministerial meeting in Marrakesh on 15 April 1994 and incorporated into the Final Act embodying the results of the Uruguay Round.

The Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionnaires is mainly addressed to developing countries and requires no action on the Community's part.

The Decision Regarding Cases where Customs Administrations Have Reason to Doubt the Truth or Accuracy of the Declared Value, on the other hand, provides added protection for importers by stipulating that customs administrations must give reasons in writing for doubting the declared value, and giving importers a right of reply.

These safeguards do not exist in Community law as it stands. As a result, Commission Regulation No 2454/93 of 2 July 1993, laying down provisions for the implementation of the Community Customs Code, needs to be amended.

Since this is, however, a matter for the Commission, no amendments need be tabled for adoption by the Council, so none are included in the Annexes to the Decision.

(b) Preshipment Inspection

A number of developing countries lacking adequate customs facilities have given private-sector companies the task of verifying the price, quality and quantity of goods sent to them. This practice, with private firms exercising public authority, is known as preshipment inspection'.

Preshipment inspection was included in discussions on non-tariff matters at the Community's suggestion.

The Agreement incorporated into the Final Act applies basic GATT tenets such as non-discrimination and transparency to the practices of preshipment inspection companies. It spells out in detail a set of obligations governing all aspects of preshipment inspection, paying special attention to price verification. It also introduces a two-tier dispute settlement system for private parties and Governments who are signatories to the GATT.

Disputes between the inspection bodies and exporters will be settled by binding arbitration. Governments, however, will be fully liable, under the GATT dispute settlement procedure, for seeing that the Agreement on Preshipment Inspection is complied with.

Community law has no rules on preshipment inspection, although it does exist in some of the Member States' national legislation.

In view of the nature of the commitments made under the Agreement on Preshipment Inspection in the Uruguay Round, the various national authorities should implement the provisions, with a Council Directive to guide them.

(c) Rules of Origin

The Community entered negotiations with no specific demands of its own. It did, however, successfully push for the principle of a single set of rules of origin at

international level, along with the notion that the last substantial transformation should determine origin. The criteria listed in Annex II of the Agreement on Rules of Origin correspond to current Community practice and do not affect the Community's preferential rules of origin.

Part IV of the Agreement on Rules of Origin sets out a work programme for harmonization entailing further negotiations under the GATT. Work will be started as soon as the World Trade Organization is set up and is planned to last three years at this stage.

The major changes to Community legislation will therefore not have to be introduced until 1998 at the earliest. In the meantime, there are the procedural changes relating to information on origin, which come under implementing arrangements for the Community Customs Code.

The implementing regulation is Commission legislation and is being amended in line with the results of the Uruguay Round. It could be brought into force whenever appropriate, and does not need to be included among the proposals presented for adoption by the Council.

(d) Import licences

The Agreement on Import Licensing Procedures reached in the Tokyo Round has been revised, though the changes are mainly technical.

On the substantive side, the nature of trade-restricting effects is now spelled out. The transparency clauses and the non-automatic licensing procedures have also been markedly improved.

Upon examination, however, these changes do not appear to entail any amendments to Community legislation as it currently stands.

4. Textiles and clothing

The negotiations on bringing textiles and clothing under the GATT, subject to strengthened rules and disciplines, was one of the major issues of the Uruguay Round.

The Agreement finally reached and incorporated into the Final Act meets the Community's objectives in this area via a twin process of liberalization and integration spread over three distinct phases.

Some amendments to Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries will be necessary to implement the Agreement. The details and the logic behind the amendments are discussed in the specific Explanatory Memorandum on textiles which is annexed to the attached Decision.

5. Agriculture

The hopes and fears of the Uruguay Round, from start to finish, were largely bound up with one issue - agriculture.

The talks resulted in a string of provisions on agriculture which are largely, though not exclusively, contained in the Agreement on Agriculture set out in the Final Act.

The Community's commitments in this sector will require a number of amendments to Community legislation and certain transitional measures.

The changes, and the reasons for them, are detailed in a specific Explanatory Memorandum annexed to the Decision.

6. Rules and disciplines

(a) Technical barriers to trade

The new Agreement constitutes a major revision of the Code that emerged from the Tokyo Round. It generally has a clearer structure, stronger disciplines, and wider coverage in respect of those involved in standardization, drafting technical regulations, and evaluating products' conformity with the standards in question.

More specifically, the new Agreement contains a Code of Practice setting out rules to be observed in establishing voluntary standards, which apply to both public and private bodies. It also takes an important step towards striking a better balance between rights and obligations by applying GATT disciplines to large local authorities. The introduction of the principle of proportionality is another major innovation, as is the inclusion of production processes and methods in the scope of the agreement.

The changes made to the Agreement on Technical Barriers to Trade during the Uruguay Round negotiations broadly reflect the Community approach to standardization as it has emerged from work on the Single Market. No changes will therefore need to be made to the Community legislation currently in force to ensure compliance with the Agreement.

(b) Trade-related investment measures

The Uruguay Round Agreement on Trade-Related Investment Measures (TRIMs) clarifies the GATT provisions in this area, in that the contracting parties undertake not to apply any measures that are incompatible with Articles III(4) and XI(1) of the GATT. There is an illustrative, i.e. non-exhaustive, list of definitions of the measures covered by the agreement.

The section in Article III on breaches of national treatment obligations defines local content and limited manufacturing requirements, while the section in Article XI on breaches of the obligation to abolish quantitative restrictions lists domestic sales, product mandating and trade balancing requirements.

Article 5 of the TRIMs Agreement allows the industrialized countries a transitional period of two years to dismantle measures covered by the Agreement. However, this period of grace will be granted only for measures of which GATT is notified within 90 days of the creation of the WTO.

Community legislation is unaffected by the TRIMs Agreement, although the Member States are advised to take note of the terms of the agreement.

(c) **Fair-trade provisions**

The negotiations on dumping and subsidies produced far-reaching changes to the Codes that emerged from the Tokyo Round. In order to comply with its commitments in this area, the Community will have to adopt new legislation and amend Regulation (EEC) No 2423/88 and Regulations (EC) Nos 521/94 and 522/94.

The reasons for the proposed changes are set out in detail in the sections on dumping and subsidies in the annex to this decision.

The Uruguay Round negotiations also produced a new agreement specifically on safeguards. In order to comply with its commitments in this field, the Community will have to adopt a new regulation and repeal Council Regulation (EC) No 518/94 on common rules for imports. The grounds for this conclusion are set out in the annex.

The new GATT codes and the changes designed to streamline and rationalize the Community's decision-making procedures should further strengthen our hand against illicit commercial practices and resulting damage to trade. The procedures laid down in Council Regulation (EEC) No 2641/84, as recently amended by Council Regulation (EC) No 522/94, accordingly need to be tightened up.

7. Services

The Uruguay Round produced two new developments in the field of international trade in services.

The first is the General Agreement on Trade in Services (GATS), which establishes a binding framework regulating all measures covered by the agreement. Underpinning the rules in question are the GATT principles of non-discrimination and transparency.

The GATS contains sectoral annexes on the movement of natural persons, air transport, telecommunications, financial services and maritime transport, which adapt the GATS provisions to the specific features of the sectors concerned.

The schedule of initial liberalization commitments, which spells out the contracting parties' commitments as regards national treatment and/or market access in all services sectors, forms an integral part of the obligations imposed by the GATS.

The Community approach in this area of negotiations was a function of progress in the creation of the Single Market, and consisted of translating its internal achievements in this field to the multilateral stage. The commitments into which it has entered do not exceed the obligations already imposed by the creation of the Single Market, and consequently do not entail any changes to current Community legislation.

8. Intellectual property

The Community's other main priority for the Uruguay Round was the creation of an efficient instrument to ensure that those intellectual property rights with implications for trade are genuinely enforced.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) fully satisfies this requirement, in that it contains provisions on the protection of intellectual property rights that together make up a body of multilateral rules designed to promote international trade in products bearing such rights and to prevent the trade distortions and frictions that arise from the lack of adequate and effective protection.

In addition to the general provisions and basic principles governing the protection of intellectual property rights, the TRIPs Agreement contains binding rules guaranteeing the existence, scope and protection of copyright and associated rights, trade marks, geographical indications, industrial models and designs, patents, and semi-conductor lay-out designs, plus rules for the protection of business secrets and the control of anti-competitive licensing practices.

There are also detailed provisions on implementation of the TRIPs Agreement by national authorities. These provisions cover border procedures, which must meet certain specific requirements, the acquisition and retention of rights, and the procedures by which the holders of such rights can ensure that they are enforced.

The obligations imposed by the TRIPs Agreement must be enforced by the contracting parties within one year of the creation of the WTO.

In order to honour its commitments, the Community will have to amend its current legislation in this area along the lines detailed in the annex, though compliance with some of the obligations will be the responsibility of the Member States.

9. Plurilateral agreements

The Final Act of the Uruguay Round also contains the plurilateral agreements concluded under GATT auspices.

(a) Sectoral agriculture agreements

The International Dairy Agreement and the International Bovine Meat Agreement were not covered by the Uruguay Round negotiations. They appear in the Final Act unchanged from their Tokyo Round formats of 1979.

The incorporation of plurilateral agreements into the WTO system, including its dispute settlement procedures, is binding for members who are party to the agreements concerned.

(b) Civil aircraft

When the Uruguay Round proper was concluded, it was decided to prolong the negotiations on the revision of the Agreement on Trade in Civil Aircraft by another year. Pending the expiry of that deadline in May 1995, the 1979 Agreement produced by the Tokyo Round will remain in force.

Needless to say, no changes in legislation are necessary at this stage.

(c) Public procurement

A new Agreement on Government Procurement was successfully concluded.

The main outcome of the negotiations was to extend the scope of the Agreement to embrace procurement of supplies, works and services by national and local government agencies, and by public undertakings operating in the utility sectors (ports, airports, water, electricity and urban transport).

Here too, the Community approach was conditioned by the progress achieved in the creation of the Single Market. Consequently, the revision of the Agreement on Public Procurement does not entail any major changes to current Community legislation.

However, the Community is engaged in a series of bilateral negotiations on entities to be subject to the disciplines. The results of these negotiations will be submitted to the Council for adoption on a case-by-case basis, as the talks are concluded.

It is possible that some of these bilateral agreements will entail making some minor changes to the legislation. Given that parties to the new Agreement on Public Procurement will not be required to enforce its provisions until 1 January 1996, and that the bilateral agreements will enter into force on the same date or even later, the Commission reserves the right if necessary to return to the implementation of the public procurement aspects of the Uruguay Round at a later date.

10. Other agreements

Negotiations for the Multilateral Agreement for Steel are still continuing so no text is included in the Final Act and no amendments to the legislation are therefore necessary for the time being.

III. Procedural aspects

The Commission proposal to the Council for a Decision concluding the Uruguay Round agreements recommends referral to Parliament under the assent procedure, since the Final Act, by virtue of the Agreement establishing the WTO, provides for a "specific institutional framework" within the meaning of the second subparagraph of Article 228(3) of the Union Treaty.

In any case, the Uruguay Round agreements undeniably constitute international agreements of significant importance for the Community within the terms of the Stuttgart Solemn Declaration.

In the interests of political and legislative consistency, therefore, it would also be sensible to submit to Parliament for its opinion the acts implementing the agreements.

Since those acts are based on Article 113, however, that move is optional.

When the package of legislation is sent to Parliament the attention of the House should be drawn to the importance of enabling the Community to honour its international commitments as from 1 January next year.

COUNCIL DECISION
of ... 1994

94/ 0225(ACC)

bringing into force simultaneously the acts implementing the results of the Uruguay Round of multilateral trade negotiations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European 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 several acts giving effect to the results of the Uruguay Round should come into force at the same time;

Whereas the said results should enter into force in the Community on the same day that the Agreement establishing the World Trade Organization and its annexes enters into force at multilateral level;

Whereas it was decided at the conference on implementation in Geneva in [December 1994] that the said results should take effect on [1 January 1995],

HAS DECIDED AS FOLLOWS:

Article 1

The acts giving effect to the results of the Uruguay Round multilateral trade negotiations listed in the annex to this Decision shall enter into force on [1 January 1995], except for acts relating to agreements which specifically provide for a later date.

Article 2

This Decision shall be published in the Official Journal of the European Communities. It shall take effect on the date of its publication.

Done at Brussels,

For the Council

The President

ANNEX

Council Decision amending the Combined Nomenclature and the Common Customs Tariff in the light of the results of the Uruguay Round.

Council Directive on Pre-Shipment Inspections for Exports from the Community.

Council Regulation amending Council Regulation No 3030/93 on common rules for imports of certain textile products from third countries.

Council Regulation on the adjustments and transitional arrangements required in the agricultural sector in order to implement the agreements concluded during the Uruguay Round of Multilateral Trade Negotiations.

Parliament and Council Regulation amending Council Regulation (EEC) No 1576/89 laying down general rules on the definition, description and presentation of spirit drinks and Council Regulation (EEC) No 1601/91 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails following the Uruguay Round of the multilateral trade negotiations.

Council Regulation on protection against dumped imports from countries not members of the European Community.

Council Regulation on protection against subsidized imports from countries not members of the European Community.

Council Regulation on common rules for imports, repealing Regulation (EC) No 518/94.

Council Regulation on the strengthening of the common commercial policy, in particular with regard to protection against illicit commercial practices and adverse trade effects suffered by Community enterprises, and to the exercise of the Community's rights under international trade rules

Council Regulation concerning certain measures to be taken to implement the Agreement on Trade-Related Aspects of Intellectual Property Rights in relation to certain modifications of Council Regulation (EC) No 40/94 on the Community trade mark.

Council Decision concerning certain measures on the extension of the legal protection of topographies of semiconductor products to persons from a country of the World Trade Organisation.

Part 2

Customs Tariff

Part 3

Preshipment Inspection

COUNCIL DIRECTIVE 94/ 0226(ACC)

on pre-shipment inspections for exports from the Community

The Council of the European Union

Having regard to the Treaty establishing the European 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 a number of developing countries have recourse to so-called pre-shipment inspection programmes in order to ensure a proper distribution of limited foreign currency resources to importers and in order to combat such practices as over-invoicing and fraud; whereas these developing countries have charged private companies with this task, which includes a check on quality, as well as price of the goods intended for export to the territory of these countries;

Whereas the Community recognises the right of the developing countries to have recourse to pre-shipment inspection; whereas, however, pre-shipment inspections can give rise to abusive interferences in the price freely agreed between parties to a contract and to other practices which form unnecessary obstacles to trade;

Whereas the Uruguay Round final act, signed on 15 April 1994 in Marrakech (Morocco), establishes an agreement on pre-shipment inspection between members of the World Trade Organisation (WTO); whereas this agreement needs to be put into effect for the Community;

Whereas, in view of the maintenance of a common commercial policy of the Community it is necessary that the Member States regulate the activities of pre-shipment inspection entities along uniform lines;

Whereas, to this end the Member States need to provide for a notification of pre-shipment inspection activities

Whereas there is good reason to simplify procedures as much as possible, in particular with respect to the review of prices; whereas exemptions, however, are not foreseen by the agreement on pre-shipment inspection of the WTO and such exemptions can thus only be applied with the agreement of the by pre-shipment inspection entities;

Whereas the Member State should institute a quick and effective procedure for the settlement of disputes between exporters and pre-shipment inspection entities; whereas such a procedure is foreseen by the agreement on pre-shipment inspection of the WTO;

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Whereas the non-compliance with conditions or non-observance with procedures by pre-shipment inspection entities should be settled with the third countries making use of such entities;

Whereas Article 3 paragraph 3 of the agreement on pre-shipment inspection of the WTO provides for technical assistance to third countries;

HAS ADOPTED THIS DIRECTIVE:

Article 1

This directive applies to activities, carried out on the customs territory of the European Community, by pre-shipment inspection entity which, for the account of governments or public entities of third countries, carry out controls on the quality, quantity or price of goods destined for exports to the territory of these third countries (pre-shipment inspection programmes).

Article 2

1. Member States shall make the activities of pre-shipment inspection entities as defined in Article 1 subject to a procedure for prior notification under the conditions set out in this directive. Modifications in the way pre-shipment inspection entities carry out these activities shall also be notified prior to their implementation

2. This procedure shall be applied in a non-discriminatory manner

Article 3

The notification of activities mentioned in Article 2 shall cover the following activities:

a. physical inspection of the merchandise before it is exported in order to verify the conformity of the dispatch (quality, quantity) with the specifications of the contract and the respect of rules and standards foreseen by the importing country or recognised at the international level;

b. verification of the price, and where applicable, of currency exchange rate, on the basis of the contract between the exporter and the importer, the pro forma invoice and, where applicable, the application for import authorisation.

Article 4

With a view to facilitating the implementation of the agreement on pre-shipment inspection of the WTO, Member States shall verify whether the notified activities meet at least the following conditions:

a. when they notify their activities, the pre-shipment entities shall communicate to the authorities of the Member State(s) the dispositions, with the exception of the remuneration, of the contract agreed with the governments or public entities of third countries for the account of which the pre-shipment inspection programmes have been put in place. They shall subsequently communicate all modifications regarding the conditions for control to these same authorities. The competent authorities of the Member States shall verify that the dispositions of the contract are not contrary to the conditions of this directive.

b. Prior to any control, the pre-shipment inspection entity informs the exporter of the modalities of the inspection and the criteria that will be applied.

The pre-shipment inspection entity shall carry out the appropriate controls in a time span that avoids unreasonable delays. They shall also, following receipt of the final documents and completion of the inspection, within five working days, either issue a Clean Report of Findings or provide a detailed written explanation specifying the reasons for non-issuance. In the latter case exporters shall be given the opportunity to present their views in writing and, if exporters so request, arrange for re-inspection at the earliest mutually convenient date.

Pre-shipment inspection entities shall also undertake, whenever so requested by the exporter, prior to the date of physical inspection, a preliminary verification of price and, where applicable, of currency exchange rate, on the basis of the contract between exporter and importer, the pro forma invoice and, where applicable, the application for import authorisation. They shall, after a preliminary verification has taken place, immediately inform exporters in writing either of their acceptance or of their detailed reasons for non-acceptance of the price and/or currency exchange rate.

In order to avoid delays in payment, pre-shipment inspection entities shall send to exporters or to designated representatives of the exporters a Clean Report of Findings as expeditiously as possible. They shall also, in the event of a clerical error in the Clean Report of Findings, correct the error and forward the corrected information to the appropriate parties as expeditiously as possible.

c. The pre-shipment inspections shall be carried out in a non-discriminatory manner, and the procedures and criteria employed in the conduct of these activities shall be objective and applied on an equal basis to all exporters affected by such activities.

d. Pre-shipment inspection entities shall not request exporters to provide information regarding manufacturing data related to patented, licensed or undisclosed processes, or to processes for which a patent is pending; unpublished technical data other than data necessary to demonstrate compliance with technical regulations or standards; internal pricing, including manufacturing costs; profit levels; the terms of contracts between exporters and their suppliers unless it is not otherwise possible for the entity to conduct the inspection in question. (In such cases, the entity shall only request the information necessary for this purpose).

In general, pre-shipment inspection entities shall treat all information provided by exporters as business confidential, to the extent that such information is not already published, generally available to third parties, or otherwise in the public domain. Such business confidential information shall be shared with the governments contracting or mandating the entity only to the extent that such information is customarily required for letters of credit or other forms or payment or for customs, import licensing or exchange control purposes.

e. Pre-shipment inspection entities shall establish procedures to receive, consider and render decisions concerning grievances raised by the exporters. These procedures shall be developed and maintained in accordance with the following guidelines:

i. pre-shipment inspection entities shall designate one or more officials who shall be available during normal business hours in each city or port in which they maintain a pre-shipment inspection an administrative office to receive, consider and render decisions on exporters' appeals or grievances;

ii. exporters shall provide in writing to the designated official(s) the facts concerning the specific transaction in question, the nature of the grievance and a suggested solution;

iii. the designated official(s) shall afford sympathetic consideration to exporters' grievances and shall render a decision as soon as possible after receipt of the documentation referred to in sub-paragraph (ii).

Article 5

In order to prevent over- and under-invoicing and fraud in the importing third country, Member States shall verify that pre-shipment inspection entities conduct price verification[1] according to the following conditions.

a. pre-shipment inspection entities shall only reject a contract price agreed between an exporter and an importer if they can demonstrate that their findings of an unsatisfactory price are based on a verification process which is in conformity with the criteria set out in sub-paragraphs (b) through (e);

b. the pre-shipment inspection entity shall base its price comparison for the verification of the export price on the price(s) of identical or similar goods offered for export from the same country of exportation at or about the same time, under competitive and comparable conditions of sale, in conformity with customary commercial practices and net of any applicable standard discounts. Such comparison shall be based on the following:

   i. only prices providing a valid basis of comparison shall be used, taking into account the relevant economic factors pertaining to the country of importation and a country or countries used for price comparison;

   ii. the pre-shipment inspection entity shall not rely upon the price of goods offered for export to different countries of importation to arbitrarily impose the lowest price upon the shipment;

   iii. the pre-shipment inspection entity shall take into account the specific elements listed in sub-paragraph (c);

   iv. at any stage in the process described above, the pre-shipment inspection entity shall provide the exporter with an opportunity to explain the price;

c. when conducting price verification, pre-shipment inspection entities shall make appropriate allowances for the terms of the sales contract and generally applicable adjusting factors pertaining to the transaction; these factors shall include but not be limited to the commercial level and quantity of the sale, delivery periods and conditions, price escalation clauses, quality specifications, special design features, special shipping or packing specifications, order size, spot sales, seasonal influences, licence or other intellectual property fees, and services rendered as part of the contract if these are not customarily invoiced separately; they shall also include certain elements relating to the exporter's price, such as the contractual relationship between the exporter and importer;

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[1] It should be remembered that the obligations of user Members with respect to the services of pre-shipment entities in connection with customs valuation shall be the obligation which they have accepted in GATT 1994 and the other Multilateral Trade Agreements included in Annex 1A of the WTO Agreement (footnote 4 of the agreement on pre-shipment inspection of the WTO).

d. the verification of transportation charges shall relate only to the agreed price of the mode of transport in the country of exportation as indicated in the sales contract;

e. the following shall not be used for price verification purposes:

i. the selling price in the country of importation of goods produced in such country;

ii. the price off goods for export from a country other than the country of exportation;

iii. the cost of production;

iv. arbitrary or fictitious prices or values.

Article 6

In order to avoid unnecessary delays for exporters, Member States shall incite pre-shipment inspection entities to use simplified verification procedures, where appropriate, in particular to exclude the review of prices in certain cases. In establishing these simplified procedures, however, account shall be taken of the obligation by Member States and pre-shipment inspection entities to carry out the activity in a non-discriminatory manner.

Article 7

If the pre-shipment inspection entity does not observe the conditions set out in Articles 4 and 5 of this Directive, or if the entity does not comply with the procedures set out in Article 9, the authorities of a Member State shall notify the Commission and the other Member States of such non-observance or non-compliance and may have recourse to the procedure foreseen by Article 4 of Council Regulation 2641/84 (EC)[2].

Article 8

Member States shall provide third countries, if requested, technical assistance directed towards the achievement of the objectives of the agreement on pre-shipment inspection in the WTO mutually agreed terms, or how to do without them.

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[2] OJ L 252 of 20.9.1984 p. 1

Article 9

Member States shall encourage pre-shipment inspection entities and exporters mutually to resolve their disputes. However, two working days after submission of the grievance in accordance with the provisions of paragraph e of Article 4, either party may refer the dispute to independent review entity as foreseen by Article 4 of the agreement on pre-shipment inspection of the World Trade Organisation (WTO). The procedure shall be as follows:

a. an exporter or pre-shipment inspection entity wishing to raise a dispute shall contact the independent entity referred to above and request the formation of a panel. The independent entity shall be responsible for establishing a panel. This panel shall consist of three members. The members of the panel shall be chosen so as to avoid unnecessary costs and delays. The first member shall be chosen from section (i) of the list foreseen in the WTO agreement on pre-shipment inspection by the pre-shipment inspection entity concerned, provided that this member is not affiliated to that entity. The second member shall be chosen from section (ii) of the list foreseen in the WTO agreement on pre-shipment inspection by the exporter concerned, provided that this member is not affiliated to that exporter. The third member shall be chosen from section (iii) of the list foreseen in the WTO agreement on pre-shipment inspection by the independent entity referred to above. No objections shall be made to any independent trade expert drawn from section (iii) of the list foreseen in the WTO agreement on pre-shipment inspection;

b. the independent trade expert drawn from section (iii) of the list foreseen in the WTO agreement on pre-shipment inspection shall serve as the chairman of the panel. The independent trade expert shall take the necessary decisions to ensure an expeditious settlement of the dispute by the panel, for instance, whether the facts of the case require the panellists to meet and, if so, where such a meeting shall take place, taking into account the site of the inspection in question;

c. if the parties of the dispute so agree, one independent trade expert could be selected from section (iii) of the list foreseen in the WTO agreement on pre-shipment inspection by the independent entity referred to in sub-paragraph (a) to review the dispute in question. This expert shall take the necessary decisions to ensure an expeditious settlement of the dispute, for instance taking into account the site of the inspection in question;

d. the object of the review shall be to establish whether, in the course of the inspection in dispute, the parties to the dispute have complied with the provisions of this directive. The procedures shall be expeditious and provide the opportunity for both parties to present their views in person or in writing;

e. decisions by a three-member panel shall be taken by majority vote. The decision on the dispute shall be rendered within eight working days of the request for independent review and be communicated to the parties of the dispute. This time-limit could be extended upon agreement by the parties to the dispute. The panel or independent trade expert shall apportion the costs, based on the merits of the case;

f. the decision of the panel shall be binding upon the pre-shipment inspection entity and the exporter which are parties to the dispute.

Article 10

This directive shall enter into force on the date determined by the decision on the entry into force of the acts implementing the Results of the Uruguay Round

They will inform the Commission of these measures or any modifications thereof. Separately they will submit copies of these measures to the Secretariat of the WTO.

The measures or modifications thereof shall not be enforced before they have been published.

Article 11

This directive is addressed to Member States.

Part 4

Textiles & clothing

25

Proposal for a Council Regulation amending

COUNCIL REGULATION (EEC) No 3030/93 of 12 October 1993

on common rules for imports of certain textile products from third countries

Explanatory Memorandum

1. The present proposal amending Regulation 3030/93 on common rules for imports of textiles is designed to ensure effective implementation of the Agreement on Textiles and Clothing of the World Trade Organization.

2. The WTO Agreement on Textiles and Clothing necessitates three types of changes to Regulation 3030/93:

(i) the safeguard provisions (Article 10) have to be brought into line with those of the new WTO Agreement on Textiles and Clothing (Article 6);

(ii) the Community quantitative limits contained in Annex V affecting imports from members of the WTO will have to be adjusted at the beginning of each of the 3 phases of the WTO Agreement on Textiles and Clothing to reflect the higher annual quota growth rates foreseen; similarly at such time as the European Union integrates products subject to quantitative limits such products should be deleted from Annex V;

(iii) as and when certain of the third countries listed in Annex VIII (flexibility provisions) become members of the WTO, the respective "cap" on cumulative use of flexibility provisions indicated in column 8 of the table will have to be deleted since Article 2 paragraph 16 of the WTO Agreement on Textiles and Clothing stipulates that there shall be no limit to the "combined use of swing, carry over and carry forward".

Since it is not clear at this stage whether and when all the third countries listed in the Annexes will become members of the WTO and thereby benefit from the Agreement on Textiles and Clothing, the Commission will adopt the necessary technical amendments to the Annexes to Regulation 3030/93 referred to in points (ii) and (iii) above via the Textiles Committee procedure laid down in Article 17 of the Regulation.

To this end and for reasons of clarity it is proposed to delete the reference to the quota years 1993-1995 in Article 2 paragraph 1 of the Regulation since for WTO Members the quota increases will be automatic for the next 10 years.

3. With regard to the safeguard clause, it is proposed to maintain the existing language on the basket exit mechanism contained in the present paragraphs 1 and 2 of Article 10 of the Regulation and to add clauses corresponding to the new provisions of the WTO Agreement on Textiles and Clothing. The reason for this is that of the countries listed in Annex IX which are currently subject to the basket exit mechanism a number of important suppliers (eg China, Taïwan, Vietnam, ex USSR) will probably not be members of the WTO upon the date of its entry into force but join in the near future. Therefore, it will be necessary to maintain the current safeguard mechanism to cover the interim period. The Commission proposes two parallel safeguard provisions in the Regulation and as and when each of the third countries listed in Annex IX benefits from the WTO Agreement on Textiles and Clothing, that country will be deleted from Annex IX via the Textiles Committee procedure (Article 17 of the Regulation).

Proposal for a Council Regulation amending 94/ 0227(ACC)

COUNCIL REGULATION (EEC) No 3030/93 of 12 October 1993

on common rules for imports of certain textile products from third countries

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European 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 Community has signed the Final act of the Uruguay Round of GATT negotiations setting up a World Trade Organization, (hereinafter referred to as the WTO);

Whereas it is necessary to amend the safeguard provisions laid down in Regulation (EEC) No 3030/93 of 12 October 1993[1] on common rules for imports of certain textile products from third countries, as last amended by Commission Regulation (EC) No. 195/94 of 12 January 1994[2], in order to bring them into line with the new safeguard provisions contained in the WTO Agreement on Textiles and Clothing with regard to imports from WTO Members;

Whereas the WTO Agreement on Textiles and Clothing also stipulates the annual growth rates which will be applied automatically to remaining Community quantitative limits on imports from WTO Members for a period of 10 years following entry into force of the WTO; whereas it is therefore appropriate that the Community quantitative limits foreseen in Annex V of Regulation (EEC) No 3030/93 on imports from WTO Members should be amended at each stage of the WTO Agreement on Textiles and Clothing via the procedure foreseen in Article 17 of the Regulation and paragraph 1 of Article 2 of the Regulation should be amended to that effect.

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[1] OJ No L 275, 8.11.1993, p.1
[2] OJ No L 29, 2.2.1994, p. 1

HAS ADOPTED THIS REGULATION

Article 1

Article 10 of Council Regulation (EEC) No 3030/93 is replaced by the following:

"Article 10
Safeguard measures

1. Should imports into the Community of products falling within any given category, not subject to the quantitative limits set out in Annex V and originating in one of the countries listed in Annex IX exceed, in relation to the preceding calendar year's total imports into the Community of products in the same category, the percentages indicated in the Table appearing in Annex IX, such imports may be made subject to quantitative limits under the conditions laid down in this Article.

2. Paragraph 1 shall not apply where the percentages specified therein have been reached as a result of a fall in total imports into the Community, and not as a result of an increase in exports of products originating in the supplier country concerned.

3. Where the Commission, upon its own initiative or at the request of a Member State, considers that the conditions set out in paragraph 1 are fulfilled and that a given category of products should be made subject to a quantitative limit:

(a) it shall open consultations with the supplier country concerned in accordance with the procedure specified in Article 16 with a view to reaching an arrangement or joint conclusions on a suitable level of restriction for the category or products in question;

(b) pending a mutually satisfactory solution, the Commission shall, as a general rule, request the supplier country concerned to limit exports of the products in the category concerned to the Community, for a provisional period of three months from the date on which the request for consultations is made. Such provisional limit shall be established at 25% of the level of imports during the previous calender year, or 25% of the level resulting from the application of the formula set out in paragraph 1, whichever is the higher;

(c) it may, pending the outcome of the requested consultations, apply to the imports of the category of products in question quantitative limits identical to those requested of the supplier country pursuant to point (b). These measures shall be without prejudice to the definitive arrangements to be made by the Community, taking into account the results of the consultations.

4. (a) Should imports into the Community of textile products not subject to the quantitative limits set out in Annex V and originating in Bulgaria, the Czech Republic, Hungary, Poland, Romania or the Slovak Republic take place in such increased quantities, or under such conditions, so as to cause serious damage or actual threat thereof, to the Community's production of like or directly competitive products, such imports may be made subject to quantitative limits under the conditions laid down in the Additional Protocols with these countries.

(b) The provisions of paragraph 3, shall also apply in such cases except that the provisional limit referrred to in paragraph 3 (b) shall be established at 25%, at least, of the level of imports during the twelve-month period terminating two months, or where data is not available three months, preceding the month in which the request for consultations is made.

5. (a) With regard to products not subject to the quantitative limits set out in Annex V and originating in countries which are Members of the World Trade Organization, safeguard action may be taken where it is demonstrated that a particular product is being imported into the Comunity in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products. Serious damage or actual threat thereof must demonstrably be caused by such increased quantities in total imports of that product and not by such other factors as technological changes or changes in consumer preference.

(b) In making a determination of serious damage, or actual threat thereof, as referrred to in paragraph (a) the effect of those imports on the state of the particular industry shall be examined, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment.

(c) The third country or countries, Member(s) of the World Trade Organization to whom serious damage, or actual threat thereof, as referred to in paragraph (a) is attributed, shall be determined on the basis of a sharp and substantial increase in imports, actual or imminent and on the level of imports as compared with imports from other sources, market share and import and domestic prices at a comparable stage of commercial transaction.

6. Where the Commission, upon its own initiative or at the request of a Member State, considers that the conditions set out in paragraph 5 are fulfilled and that the products in question should be made subject to a quantitative limit:

(a) it shall open consultations with the supplier country concerned in accordance with the procedure specified in Article 16 with a view to reaching an arrangement or joint conclusions on a suitable level of restriction for the products in question;

(b) it may, pending the outcome of the consultations and in highly unusual and critical circumstances where delay would cause damage which could be difficult to repair, impose a provisional quantitative limit on the products in question. Such provisional limit shall not be lower than the actual level of imports from the supplier country during the twelve-month period terminating two months proceding the month in which the request for consultations was made.

7. (a) Measures taken pursuant to paragraphs 3, 4 and 6 shall be the subject of a Commission communication published without delay in the Official Journal of the European Communities.

(b) The Commission shall refer urgent cases to the Committee provided for in Article 17 either at its own initiative or within five working days of receipt of a request from a Member State or States setting out the reasons for the urgency and shall take a decision within five working days of the end of the Committee's deliberation.

8. The consultations with the supplier country concerned which are provided for in paragraphs 3, 4 and 6 may lead to an arrangement between that country and the Community, on the introduction and the level of quantitative limits. Such arrangements shall stipulate that the quantitative limits agreed be administered in accordance with a double-checking system.

9. Should the parties be unable to reach a satisfactory solution within 60 days following notification of the request for consultations, the Community shall have the right to introduce a definitive quantitative limit at an annual level not lower than:

(a) in the case of supplier countries listed in Annex IX, the level resulting from the application of the formula set out in paragraph 1 or 106% of the level of imports reached during the calendar year preceding that in which imports exceeded the level resulting from the application of the formula set out in paragraph 1 and gave rise to the request for consultations, whichever is the higher.

(b) in the case of Bulgaria, the Czech Republic, Hungary, Poland, Romania or the Slovak Republic, 110% of the imports for the twelve-month period terminating two months, or where data is not available three months, preceding the month in which the request for consultations is made.

(c) in the case of supplier countries, members of the WTO, the actual level of imports from the supplier country concerned during the twelve-month period terminating two months preceding the month in which the request for consultations was made.

10. The annual level of the quantitative limits established in accordance with paragraphs 3 to 6 or 9 may not be less than the level of imports into the Community in 1985 for Argentina, Brazil, Hong Kong, Pakistan, Peru, Sri Lanka and Uruguay, and in 1986 for Bangladesh, India, Indonesia, Malaysia, Macao, Philippines, Singapore, South Korea and Thailand, of products of the same category and originating in the same supplier country.

11. The quantitative limits established under this Article shall not apply to products which have already been dispatched to the Community provided that they were shipped from the supplier country in which they originate for export to the Community before the date of notification of the request for consultations.

12. Measures taken in acordance with the provisions of paragraph 5 may remain in place:

(a) for up to three years without extension, or

(b) until the product is integrated into GATT 1994, whichever comes first.

13. The measures provided for in paragraphs 3, 4, 6 and 9 and the arrangements referred to in paragraph 9 shall be adopted and implemented in accordance with the procedure laid down in Article 17."

Article 2

Article 2 paragraph 1 of Council Regulation (EEC) No. 3030/94 is replaced by the following:

"The importation in the Community of the textile products listed in Annex V originating in one of the supplier countries listed in that Annex shall be subject to the annual quantitative limits laid down in that Annex".

Article 3

This Regulation shall enter into force on date determined by the decision of entry into force of the acts implementing the results of the Uruguay Round.

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

Done at Brussels, For the Council

Part 5

Agriculture

EXPLANATORY MEMORANDUM

I. INTRODUCTION

Several of the agreements which the Community has negotiated under the Uruguay Round (hereinafter referred to as the "GATT Agreements")[1] involve adapting some of the legislation implementing the common agricultural policy. These are in particular:

- the Agreement on Agriculture (hereinafter referred to as the "Agreement"),
- the Agreement on the Application of Sanitary and Phytosanitary Measures,
- the Agreement on Safeguards, and
- the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "TRIPS Agreement").

As regards agriculture, these Agreements cover the following aspects:

- the internal support arrangements,
- the arrangements on trade with third countries,
- a system for the protection of designations of origin (part of the TRIPS Agreement),
- arrangements concerning veterinary and plant health measures affecting international trade.

The attached proposals for Regulations[2] contain the provisions necessary for incorporating into Community law the rules referred to in the last three indents above. As regards the arrangements for internal support, the Commission considers that specific provisions should not be introduced into the market organizations. The relevant rules in the Agreement should be taken into account when prices are fixed and aid measures are adopted for future marketing years.

In order to safeguard the possibility of the necessary measures being taken in trade relations with third countries vis-à-vis which the Commission has no obligations under the GATT Agreements, the "GATT" proposal provides a suitable legal basis.

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(1) See proposal for a Council Decision con the conclusion of the results of the Uruguay Round of the multilateral trade negotiations (1986-94), COM(94) 143 final of 15 May 1994.

(2) there are two draft Regulations: one covering all the amendments based on Article 43 of the EC Treaty (referred to as the "GATT" proposal) and one based on Articles 43 and 100a of the Treaty.

These proposals do not cover the following:

- issues arising from the GATT Agreements and affecting the preferential agreements concluded with third countries (e.g. Lomé Convention) and the enlargement of the Community, which are still to be dealt with;

- the agri-monetary arrangements for the new system; these will be dealt with in the report on the agri-monetary system which the Commission is to present to the Council before the end of 1994.

II. TRADE ARRANGEMENTS

A. General

The GATT Agreements centre the trade arrangements on the following main points:

- tarification,
- access to the Community market,
- safeguard provisions,
- the export subsidy system.

The "GATT" proposal is based on the following principles:

- careful compliance with obligations under the GATT Agreements,
- maximum flexibility for management,
- full use of possibilities offered by the GATT Agreements,
- as little change as possible to the organization of the markets in the various agricultural products.

However, it has proved inevitable to make amendments to almost all the provisions in the basic Regulations relating to trade with third countries. The abolition of variable levies not only entails abolishing the rules for their calculation but also calls for the articles relating thereto to be adapted. This also holds true for export refunds, which can only be granted subject to the quantitative and financial limits laid down in the Agreement.

Nevertheless, this proposal largely confines itself to incorporating in the basic Regulations the main principles on the implementation of the GATT Agreements and entrusting the Commission with the task of implementing them in line with the needs of the various sectors. This approach, which is based in particular on the need to preserve sufficient flexibility for day-to-day management, takes account in particular of the fact that most obligations to be met are defined precisely in the Agreements.

When making these amendments, the Commission has also held to the principle recognized at the time of the consolidation of the Regulation on the market organization for cereals (Regulation (EEC) No 1766/92) under the reform of the CAP and applied on several occasions since then, to the effect that competence for legislation should be shared between the Council and the Commission so as to result in two levels only: on the one hand the provisions adopted by the Council in accordance with the procedure laid down in Article 43(2) of the EC Treaty and, on the other, the detailed rules of application adopted by the Commission in accordance with the Management Committee procedure.

As regards the implementation of the GATT Agreements in legislation, the Commission has opted for an approach by product group which preserves the traditional structure of the market organizations, as set out in particular in the basic Regulations, and at the same time ensures the transparency of the solutions chosen. The "GATT" proposal accordingly consists in concise substantive provisions covering all product groups and comprising in particular a legal basis for the adoption of the necessary transitional rules, the annexes to which contain the adjustments to be made for the various sectors. It also provides for the repeal of the regulations laying down general rules.

B. Import arrangements

1. Import charges (tarification)

The fundamental change introduced by the new import arrangements is the replacement of variable charges (levies, compensatory amounts, etc.) and other types of non-tariff import restrictions (quantitative restrictions, voluntary restraint agreements, etc.) by stable, degressive tariffs. The introduction of such tariffs will be effected, in legal terms, by means of a suitable amendment to the Common Customs Tariff, the relevant figures being set out in the final schedules presented by the Community to the Director-General of GATT and forming a legal part of the Agreement. In the basic Regulations, it will accordingly be sufficient to refer to the duties entered in the CCT.

The replacement of variable charges by the CCT duties implies the repeal of all the rules which refer to their calculation, i.e. in particular all provisions on the fixing of threshold prices, reference prices, etc. and the rules laid down for the calculation of variable charges applying to derived products.

Certain special points should be mentioned:

(a) The "special safeguard provisions"

These provisions allow a minimum level of protection to be maintained against the adverse effects on the market of the conversion of the former import restrictions into customs duties ("tarification"). They therefore only apply to products specifically identified in the final schedules. They must not be confused with the safeguard provisions traditionally appearing in all the basic Regulations; in fact, they involve a system which is additional to the import duty and allow the latter to be increased if certain conditions specified in the Agreement are met. Accordingly, a specific article has been introduced, providing a suitable legal basis for making use, at the right time, of the possibilities afforded by this system. The extent to which the system will be used depends on the market conditions applying for the various products.

(b) Standard safeguard provisions

The standard safeguard provisions appearing hitherto in the basic Regulations are maintained. However, the Agreement on Safeguards contains reinforced all-sector arrangements specifying the conditions under which they may be applied. A reference to these rules has accordingly been included in the articles in question, which have also been adapted to take account of the division of competence mentioned in A.

(c) Specific arrangements for raw sugar for refining and molasses

Tarification as provided for in the Agreement could result in raw sugar for refining and molasses being subject to an import charge which could jeopardize supplies of such products to processing industries in the Community. Accordingly, a special mechanism has been introduced to permit the application of the duty entered in the CCT to be suspended where the price recorded on the world market exceeds a certain level.

(d) Special arrangements on prices applying

For certain products (e.g. some cereals and rice), the Agreement involves a level of protection, lower than that provided by the CCT, which is dependent on import prices. Similarly, for certain fruit and vegetables, must and grape juice, the import charge depends on the entry price. In this respect, certain special rules or necessary derogations from the CCT have been laid down, implementation and details being left to the detailed rules of application, which will have to deal in particular with the thorny problem of controls. The present system of minimum import prices remains in force for dried grapes and processed cherries until 1 January 2000.

(e) Management measures for beef and veal

The Agreement's ban on quantitative import restrictions requires the repeal of Council Regulation (EEC) No 1157/92 of 28 April 1992, which at present serves as a legal basis for the erga omnes limitation on imports of young bovine animals. As that measure is of special importance for maintaining balance on the market for beef and veal in the Community, the Commission will deal with the matter during the renegotiation of the Europe Agreements with certain East European countries.

2. Access to the Community market

In this context, the term "market access" covers all the conditions under which imports may take place at reduced or zero duty. A distinction should be made in principle between agreements concluded with certain third countries containing preferential conditions granted by the Community, current access within the meaning of the Agreement (which includes part of the abovementioned agreements) and minimum access.

In view of the high number of quotas in question and in order to ensure their implementation as effectively as possible, a uniform approach has been adopted for all cases, whatever their history. For the sake of simplification and efficiency, this approach provides that, on the basis of the international agreements concluded by the Council or of autonomous acts of the latter and in accordance with the conditions stipulated therein, the opening and administration of tariff quotas are to be carried out by the Commission in accordance with the Management Committee procedure. A similar approach was adopted for the administration of the quotas opened recently as a result of the Soya Panel (Regulation (EC) No 774/94). Naturally, this uniform procedural approach does not imply that the detailed rules will be the same for all product groups.

As regards the market organization for bananas, the "GATT" proposal involves taking over the framework agreement with certain countries in Latin America. In accordance with the general approach in Regulation (EEC) No 404/93, certain aspects of the allocation of tariff quotas are incorporated in the Regulation.

C. Export arrangements

1. General

The export arrangements resulting from the Agreement provide for a reduction in forthcoming years in the subsidies which may be granted on agricultural products exported from the Community as such or after processing. The reduction is to be made in accordance with rules concerning the sums granted for all such exports and the quantities of products exported as such(3). The arrangements must be applied in such a way as to permit verification of compliance with those limits for a period of 12 months, to commence in principle on 1 July 1995 and, in the case of other products (rice, wine, olive oil and sugar) at later dates.

The Commission considers that compliance with limits on the value of refunds may be monitored:

- when refunds are fixed,
- on the basis of advance fixing authorized by the Commission or of tenders accepted in response to invitations to tender,
- on the basis of information provided by the Member States on licences issued, refunds granted being compulsorily fixed in advance, and
- on the basis of information provided to the EAGGF relating to payments made by national bodies. Using such information, it should be possible to charge each payment made to the EAGGF financial year during which export formalities were completed.

As a result no other specific mechanisms need be introduced to ensure compliance with limits on value.

2. Compliance with limits on quantity

As regards limits on quantity, the Agreement provides that compliance must be demonstrated in terms of the quantities qualifying for export refunds for which export licences have been issued during the marketing year in question.

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(3) Limits on quantity do not apply to non-Annex II products.

(a) The aim of the "GATT" proposal is to ensure monitoring of the quantities exported using export licences. Accordingly, such licences will become compulsory where products covered by a refund application are exported. This does not rule out the possibility that, for certain product groups where such arrangements already exist, export licences may also be required for purposes of statistical monitoring of trade where export takes place without any refund being granted. It remains to be decided whether monitoring of the quantities exported will mean limiting the duration of validity of export licences to the curent marketing year or whether monitoring can be based on licences issued during the marketing year. The detailed rules for the application of the licence arrangements, and in particular the conditions specifically relating to the issuing, term of validity and transferability of licences, will be laid down, as at present, in accordance with the Management Committee procedure for the product group concerned.

Clearly, compliance with limits on quantity under the Agreement calls for mechanisms to prevent any overrun. As the choice of measures to be taken depends on the specific situation and the requirements of the market in each product, the "GATT" proposal does not dictate the methods to be used for checking quantities available.

(b) One possible option is to determine export refunds by invitation to tender. Here too, the "GATT" proposal does not dictate the procedures to be adopted; refunds could also be fixed periodically as they are now.

(c) It is the Commission's intention to select the approach which involves the least red tape and is best adapted to the specific situation of the product group concerned. This is why the "GATT" proposal lays down flexible legal bases which allow the most suitable solution to be sought for each product group, in particular to make maximum use of the latitude offered by the GATT Agreements and, where appropriate, for the arrangements to be amended in the light of experience in applying them. This approach is, moreover, in line with the way the Commission has hitherto exercised the competence it has enjoyed under the arrangements in force to date.

(d) Some points should be mentioned:

- there are exceptions from the general arrangements:

  * for exports under food-aid operations, which are not subject to any limits on quantity or value,

  * for agricultural products exported in the form of goods not listed in Annex II to the EC Treaty, such goods not being subject to any limit on quantity;

- it is necessary to limit the scope for speculation and to create a linkage with limits on value; accordingly, it is proposed to make advance fixing compulsory, including reference to the destination but allowing changes to another destination within the same geographical area at the same refund rate;

- for certain products, the Agreement sets the quantities which may be exported with payment of refunds at a level which, in the light of experience gained, is unlikely to be exceeded. The Regulation takes account of this by making provision for the Commission, in accordance with the Management Committee procedure, to relax the constraints laid down in this respect for the products concerned to the extent appropriate;

- the pre-financing arrangements should be adapted at a later stage, in particular on account of negative experience in applying them and with a view to ruling out fraud when they are applied.

D. <u>Other provisions on trade</u>

1. The provisions on inward processing arrangements have been maintained without any substantial change.

2. The articles on the prohibition of measures having an effect equivalent to customs duties and quantitative restrictions and measures having an equivalent effect have been adapted to the new arrangements.

3. The article on shortages in supply has been adapted to the extent necessary to take account of the abolition of threshold prices.

III. INCLUSION OF THE TRIPS AGREEMENT

For the first time the GATT Agreements lay down provisions on the protection of intellectual property rights. Under this heading there are specific provisions on the protection of designations of origin.

The Community regulations in force lay down rules on designations of origin in several areas:

- for wine (quality wine psr),
- for spirituous beverages, and
- more generally, for certain agricultural and food products (in Regulation (EEC) No 2081/92).

All these Community regulations (except those on wine) contain a reservation relating to international agreements concluded by the Community. Since the TRIPS agreement contains special arrangements on wine and spirit drinks, specific provisions must be incorporated into the relevant regulations. As a result, when the various Community arrangements are applied, due account may be taken of the obligations and restrictions resulting from the TRIPS Agreement.

IV. VETERINARY AND PLANT-HEALTH LEGISLATION

In the veterinary and plant-health fields, the provisions in force permit the rules in the relevant Agreement to be applied. However, Directive 77/93/EEC on protective measures against the introduction into the Community of organisms harmful to plants or plant products must be amended to ensure uniform application of the arrangements with regard to third countries.

V. ENTRY INTO FORCE

In accordance with the Commission's policy decision that the results of the Uruguay Round should be implemented as a whole, the proposals refer to a Council decision on entry into force which will apply to all the sectors concerned.

94/ 0228(CNS)

Proposal for a
COUNCIL REGULATION (EC) No ...../94
of 1994
on the adjustments and transitional arrangements required in the agriculture sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal[1], as last amended by Regulation (EC) No 1884/94[2], and in particular Article 7(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the Community has adopted a set of rules governing the common agricultural policy;

Whereas, under the Uruguay Round of multilateral trade negotiations, the Community has negotiated various agreements (hereinafter referred to as the "GATT agreements"); whereas several of those agreements concern agriculture, in particular the Agreement on Agriculture (hereinafter referred to as "the Agreement"); whereas the concessions relating to domestic support can be complied with by setting prices and aid at a suitable level and specific provisions need not be laid down on this subject; whereas the Agreement lays down a six-year timetable for the extension of access to the Community market for agricultural products from third countries on the one hand and the gradual reduction in support granted by the Community on exports of agricultural products on the other hand; whereas the agricultural legislation on trade with third countries should be adapted accordingly;

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(1) OJ No L 148, 28.6.1968, p.24.
(2) OJ No L 197, 27.7.1994, p.27.

Whereas, by converting all the measures restricting imports of agricultural products into customs duties (tarification) and by prohibiting the application of such measures in the future, the Agreement requires the abolition of variable import levies and of the other measures and import charges currently provided for under the market organizations; whereas the rates of customs duty applicable to agricultural products in accordance with the Agreement are to be fixed in the common customs tariff; whereas, however, for certain product groups such as cereals, rice, wine and fruit and vegetables, the introduction of supplementary or other trade mechanisms that do not involve the collection of fixed customs duties calls for the adoption of rules providing for derogations in the basic Regulations; whereas, in addition, the measures to protect the Community market against imports of dried grapes and processed cherries can, under the Agreement on Safeguards, be maintained for a period of five years; whereas, moreover, in order to avert problems of supply to the Community market, the suspension of customs duties on certain sugar products should be permitted;

Whereas, in order to maintain a minimum level of protection against the adverse effects on the market as a result of tarification, the Agreement permits the application of additional customs duties under precisely defined conditions but only to products subject to tarification; whereas the corresponding provisions should accordingly be inserted into the basic Regulations concerned;

Whereas the Agreement provides for a series of tariff quotas under arrangements for current and minimum access; whereas the conditions applicable to such quotas are spelled out in detail in the Agreement; whereas the Community has undertaken to open other tariff quotas for certain products under special arrangements; whereas, in view of the large number of quotas and in order to ensure that they are implemented as effectively as possible, the Commission should be responsible for opening and administering them using the management committee procedure;

Whereas the amendments resulting from the framework agreement on bananas concluded with certain countries in South America under the Uruguay Round should be incorporated in Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas[3];

(3) OJ No L 47, 25.02.1993, p.1.

Whereas, since the Agreement on Safeguards lays down clear rules on the application of protective clauses as incorporated in the market organizations, such clauses should be supplemented by a reference to the obligations flowing from international agreements;

Whereas in its trading relations with third countries not subject to the GATT agreements the Community is not bound by the constraints on access to the Community market arising therefrom; whereas, in order to ensure that the necessary measures may be taken where applicable with regard to products from such countries, the Commission should be given the relevant powers, to be exercised through the management committee procedure;

Whereas, by virtue of the Agreement, the granting of export subsidies is limited henceforward to certain groups of agricultural products defined therein; whereas, in addition, it is subject to limits in terms of quantity and value;

Whereas compliance with the limits in terms of value can be ensured at the time when refunds are fixed and through monitoring of payments under the rules relating to the EAGGF; whereas monitoring may be facilitated by the compulsory advance fixing of refunds, while allowing the possibility, in the case of differentiated refunds, of changing the specified destination within the same geographical area to which a single given rate of refund applies;

Whereas monitoring of constraints in terms of quantity calls for the introduction of a reliable and effective system of monitoring; whereas, to that end, the granting of refunds should be made subject to an export licence; whereas refunds should be granted up to the limits available, depending on the particular situation of each product concerned; whereas exceptions to that rule can only be permitted in the case of processed products not listed in Annex II to the Treaty, to which limits in value do not apply, and in the case of food-aid operations, which are exempt from any limitation; whereas provision should be made for derogations from strict compliance with management rules where exports benefiting from refunds are not likely to exceed the limits in quantity laid down; whereas monitoring of the quantities exported with refunds during the marketing years referred to in the Agreement can be carried out on the basis of export licences issued for each marketing year;

Whereas compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights must also be ensured; whereas, to that end, the requisite stipulations must be inserted into Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine[4], as last amended by Regulation (EEC) No 1891/94[5];

Whereas, with regard to plant health, Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products and against their spread within the Community[6], as last amended by Directive 94/13/EC[7], should be amended in order to provide for uniform arrangements vis-à-vis third countries precluding quantitative restrictions or measures having equivalent effect;

Whereas, in the wake of the amendments to the legislation on agriculture provided for in this Regulation, many Council Regulations deriving from the basic Regulations no longer serve any purpose; whereas, for the sake of legal clarity, they should be repealed; whereas certain provisions which have lapsed although they are not directly connected with the GATT Agreements should also be repealed;

Whereas the switchover from the existing arrangements to those resulting from the GATT agreements may give rise to difficulties of adaptation which are not dealt with in this Regulation; whereas, in order to deal with that eventuality, a general provision should be included enabling the Commission to adopt the transitional measures necessary for a certain period,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down the adaptations and transitional measures required in the agriculture sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations.

(4) OJ No L 84, 27.03.1987, p.1.
(5) OJ No L 197, 30.07.1994, p.42.
(6) OJ No L 26, 31.01.1977, p.20.
(7) OJ No L 92, 9.4.1994, p. 27.

Article 2

The adaptations referred to in Article 1 are set out in the Annexes hereto.

Article 3

1. Where transitional measures are necessary under the common agricultural policy in order to facilitate the switchover from the existing arrangements to those resulting from the requirements of the agreements referred to in Article 1, such measures shall be adopted in accordance with the procedure provided for in Article 38 of Regulation No 136/66/EEC or, as appropriate, the corresponding Articles in the other Regulations on the common organization of agricultural markets, or in Regulation (EC) No 3448/93.

   When such measures are adopted, account shall be taken of the special features of the various agricultural sectors, having due regard to the obligations arising from the agreements referred to in Article 1.

2. The measures referred to in paragraph 1 may be adopted during a period expiring on 31 December 1997 and shall not apply beyond that date. The Council, acting by a qualified majority on a proposal from the Commission, can extend that period.

Article 4

1. Where, in view of the special circumstances affecting an agricultural product, compliance with the requirements on export support under the agreements referred to in Article 1 can be assured by means having a lesser effect than those provided for to that end, the Commission may, to the extent and for the period strictly necessary, exempt that product from the application of the provisions on export refunds covered by this Regulation.

2. Without prejudice to the provisions of this Regulation, the Commission may take any measures necessary to protect the Community market against imports of agricultural products from third countries towards which the Community has no binding obligations under the agreements referred to in Article 1.

3. Measures pursuant to paragraphs 1 and 2 shall be adopted in accordance with the procedure provided for in Article 3(1).

Article 5

1. This Regulation shall enter into force on a date determined by a decision on the entry into force of the acts implementing the results of the Uruguay Round.

2. It shall apply from 1 July 1995.

However:

(a) Article 3 and Article 4(2) shall apply from 1 January 1995;

(b) the provisions laid down in the Annexes on import duties and additional import duties which apply to products listed in Annex XIII and XVI for which an entry price is applicable before 1 July 1995 shall apply as from the commencement during 1995 of the marketing year for the products concerned;

(c) the provisions on export refunds shall apply:

- as from 1 September 1995 as regards Annexes II and XVI,
- as from 1 October 1995 as regards Annex IV,
- as from 1 November 1995 as regards Annex V;

(d) the provisions laid down in Annex XV shall apply as from [.....].

(e) the provisions laid down in Annex XVI, I.2, shall apply as from 1 January 1996.

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

Done at For the Council

proposal for a

94/ 0229(COD)

PARLIAMENT AND COUNCIL REGULATION

of 1994

amending Council Regulation (EEC) No 1576/89 laying down general rules on the definition, description and presentation of spirit drinks and Council Regulation (EEC) No 1601/91 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails following the Uruguay Round of the multilateral trade negotiations

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 43 and 100a thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure referred to in Article 189b of the Treaty,

Whereas Council Regulation (EEC) No 1576/89 of 29 May 1989(1), as amended by Regulation (EEC) No 3280/92(2), and Council Regulation (EEC) No 1601/91 of 10 June 1991(3), as amended by Regulation (EEC) No 3279/92(4), lay down general rules for the definition, description and presentation of spirit drinks, aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails; whereas in order to take account in the said Regulations of the obligations arising, in particular, from Articles 23 and 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which forms an integral part of the Agreement establishing the World Trade Organization, provision should be made therein for the parties concerned to prevent, under certain conditions, the unlawful use of geographical designations protected by a third country member of the World Trade Organization,

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(1) OJ No L 160, 12.6.1989, p. 1.
(2) OJ No L 327, 13.11.1992, p. 3.
(3) OJ No L 149, 14.6.1991, p. 1.
(4) OJ No L 327, 13.11.1992, P. 1.

HAVE ADOPTED THE FOLLOWING REGULATION:

Article 1

1. The following Article is inserted after Article 11 of Regulation (EEC) No 1576/89:

"Article 11a

1. Member States shall adopt all measures necessary to permit those concerned to prevent, under the conditions laid down in Articles 23 and 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, the use within the Community of a geographical designation identifying products covered by this Regulation for products which do not originate in the place referred to by the geographical designation in question, including in cases where the actual origin of the product is indicated or where the geographical designation is given in translation or accompanied by expressions such as "like", "type", "style", "imitation" or other.

   For the purposes of this Article, "geographical designation" shall mean any indication identifying a product as originating in the territory of a third country which is a member of the World Trade Organization, or in a region or locality of that territory, where a quality, reputation or other specific characteristic of that product can essentially be attributed to that geographical origin.

2. Paragraph 1 shall apply notwithstanding Article 11 of this Regulation and other provisions of Community legislation laying down rules for the description and presentation of products covered by this Regulation.

3. Detailed rules for the application of this Article, where necessary, shall be adopted in accordance with the procedure laid down in Article 14."

2. The following Article is inserted after Article 10 of Regulation (EEC) No 1601/91:

"Article 10a

1. Member States shall adopt all measures necessary to permit those concerned to prevent, under the conditions laid down in Articles 23 and 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, the use within the Community of a geographical designation identifying products covered by this Regulation for products which do not originate in the place referred to by the geographical designation in question, including in cases where the actual origin of the product is indicated or where the geographical designation is given in translation or accompanied by expressions such as "like", "type", "style", "imitation" or other.

   For the purposes of this Article, "geographical designation" shall mean any indication identifying a product as originating in the territory of a third country which is a member of the World Trade Organization, or in a region or locality of that territory, where a quality, reputation or other specific characteristic of that product can essentially be attributed to that geographical origin.

2. Paragraph 1 shall apply notwithstanding Article 10 of this Regulation and other provisions of Community legislation laying down rules for the description and presentation of products covered by this Regulation.

3. Detailed rules for the application of this Article, where necessary, shall be adopted in accordance with the procedure laid down in Article 13."

Article 2

1. This Regulation shall enter into force on a date determined by a decision on the entry into force of the acts implementing the results of the Uruguay Round.

2. It shall apply from 1 January 1996.

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

Done at

For Parliament For the Council

List of Annexes

ANNEX I

CEREALS

I. Council Regulation (EEC) No 1766/92 of 30 June 1992 (OJ No L 181, 1.7.1992, p.21), as amended by Regulation (EEC) No 1866/94 (OJ No L 197, 30.7.1994, p.1).

(1) Article 3(2) is deleted.

(2) The following subparagraph is added to Article 3(3):

"The intervention price valid for maize and grain sorghum in May shall remain valid in July, August and September of the following marketing year."

(3) The first sentence of the second subparagraph of Article 3(4) is replaced by the following:

"The intervention price shall be subject to monthly increases for the whole or part of the marketing year."

(4) The first and last indents of Article 5 are deleted.

(5) Title II is replaced by the following:

"Title II

Article 9

1. Imports into the Community, or exports therefrom, of any of the products listed in Article 1 shall be subject to presentation of an import or export licence.

Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Articles 12 and 13.

Import and export licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

2. The term of validity of licences and other detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 23.

Article 10

1. Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1.

2. Notwithstanding paragraph 1, the import duty on products covered by CN codes ex 1001 other than meslin, 1002, 1003, ex 1005 other than hybrid seed, and ex 1007 other than hybrid for sowing, shall be equal, , to the intervention price valid for such products on importation and increased by 55%, minus the import price. However, that duty may not exceed the rate of duty in the common customs tariff.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 23. Such detailed rules shall cover in particular the measures necessary to determine and calculate import prices and to verify their authenticity.

Article 11

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1, imports of one or more of such products at the rate of duty laid down in Article 10 may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 23. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

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Article 12

Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 23. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 13

1. To the extent necessary to enable the products listed in Article 1 to be exported without further processing or in the form of goods listed in Annex B on the basis of quotations or prices for those products on the world market and within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, the difference between those quotations or prices and prices in the Community may be covered by export refunds.

   Export refunds on the products listed in Article 1 in the form of goods listed in Annex B may not be higher than those applicable to such products exported without further processing.

2. Refunds shall be the same for the whole Community. They may vary according to destination.

   Refunds shall be fixed in accordance with the procedure laid down in Article 23.

   Refunds may be fixed:

   (a) at regular intervals,

   (b) by invitation to tender.

   Refunds fixed at regular intervals may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or its own initiative.

3. Refunds on products listed in Article 1 and exported without further processing shall only be granted on application and on presentation of the relevant export licence.

4. The refund applicable to exports of products listed in Article 1 exported without further processing shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day for the destination indicated on the licence.

5. Paragraphs 3 and 4 may be made to apply to products listed in Article 1 and exported in the form of goods listed in Annex B in accordance with the procedure laid down in Article 16 of Regulation (EC) No 3448/93.

6. Paragraphs 3 and 4 may be waived in the case of products listed in Article 1 on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 23.

7. Save as otherwise provided in accordance with the procedure laid down in Article 23, the refund on products listed in Article 1(1)(a) and (b) in accordance with paragraph 4 shall be adjusted, during the period from August to June of the same marketing year, in respect of each month elapsing prior to export, by an amount equal to the monthly increase applicable to the intervention price fixed for that marketing year.

   A corrective amount may be fixed in accordance with the procedure laid down in Article 23. However, the Commission may, where necessary, alter corrective amounts.

   The first and second subparagraphs may be applied, in whole or in part, to products listed in Article 1(1)(c) and (d) and to products listed in Article 1 and exported in the form of goods listed in Annex B. In that case, the adjustment referred to in the first subparagraph shall be corrected by applying to the monthly increase a coefficient expressing the ratio between the quantity of basic product and the quantity of the latter contained in the processed product exported or used in the goods exported.

8. In so far as is necessary to take account of the features of production peculiar to certain spirituous beverages obtained from cereals, the criteria for granting export refunds as provided for in paragraph 1 and the procedures for verification may be adapted to fit this particular situation.

9. Detailed rules for the application of this Article and in particular those on the adaptation provided for in paragraph 8 shall be adopted in accordance with the procedure laid down in Article 23. Annex B shall be amended in accordance with the same procedure.

Article 14

1. To the extent necessary for the proper working of the common organization of the market in cereals, the use of inward processing arrangements may be prohibited in whole or in part:

   - in respect of products listed in Article 1 which are intended for the manufacture of products listed in Article 1(1)(c) and (d), and

   - in special cases, in respect of products listed in Article 1 which are intended for the manufacture of goods listed in Annex B.

2. Measures adopted pursuant to this Article shall be decided on in accordance with the procedure laid down in Article 23.

Article 15

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the tariff classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

Article 16

1. Where the quotations or prices on the world market for one or more of the products listed in Article 1 reach the level of Community prices and where that situation is likely to continue and to deteriorate, thereby disturbing or threatening to disturb the Community market, appropriate measures may be taken.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 23.

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Article 17

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 23.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

6. The following is added to Annex A:

"CN code	Description
2306	Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats or oils, other than those of headings 2304 and 2305
2306 90	- other:
	-- other
2306 90 91	--- of germ of maize "

II. Council Regulation (EEC) No 2729/75 of 29 October 1975 (OJ No L 281, 1.11.1975, p.18).

The terms "levy" and "levies" are replaced by "duty" and "duties" respectively.

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ANNEX II

RICE

I. Council Regulation (EEC) No 1418/76 of 21 June 1976 (OJ No L 166, 25.6.1976, p.1), as last amended by Regulation (EEC) No 1869/94 (OJ No L 197, 30.7.1994, p.7).

(1) Article 4(5) is replaced by the following:

"5. The following shall be determined in accordance with the procedure provided for in Article 27:

a) after consultation with the Member States, the intervention centres referred to in paragraph 4,

b) the rate for converting husked rice into paddy rice, or vice versa, and

c) processing costs and the value of by-products to be taken into consideration for the application of paragraph 3."

(2) Title II is replaced by the following:

"Title II

Trade with third countries

Article 10

1. Imports into the Community, or exports therefrom, of any of the products listed in Article 1 shall be subject to presentation of an import or export licence.

Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Articles 14 and 15.

Import and export licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

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2. The term of validity of licences and other detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 27.

Article 11

1. A subsidy may be fixed for consignments to the French overseas department of Réunion of products falling within CN code 1006 (excluding code 1006 10 10) which come from the Member States and are in one of the situations referred to in Article 9(2) of the Treaty.

That subsidy shall be fixed, taking into account the supply requirements of the Réunion market, on the basis of the difference between the quotations or prices of the relevant products on the world market and the quotations or prices of those products on the Community market, and, if necessary the price of those products delivered to Réunion.

The subsidy shall be granted on application by the party concerned. The subsidy may be fixed, where appropriate, by tendering procedure. This tender shall involve the subsidy amount.

The subsidy shall be fixed periodically in accordance with the procedure laid down in Article 27. However, where the need arises, the Commission may, at the request of a Member State or on its own initiative, alter the subsidy in the interval.

2. The rules on the financing of the common agricultural policy shall apply to the subsidy provided for in paragraph 1.

3. The detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 27.

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Article 12

1. Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1.

2. Notwithstanding paragraph 1, the import duty on:

(a) husked rice covered by CN code 1006 20 shall be equal, to the intervention price valid for indica rice and japonica rice respectively on importation increased by

- 80% in the case of indica rice and

- 88% in the case of japonica rice,

minus the import price; and

(b) wholly milled rice covered by CN code NC 1006 30 shall be equal, to the intervention price at the time of importation plus a percentage to be calculated and minus the import price.

However, that duty may not exceed the rate of duty in the common customs tariff.

The percentage referred to in b) shall be calculated by adjusting the respective percentages referred to in a) by reference to the conversion rate, processing costs and the value of by-products, and then adding an amount for the protection of the industry.

3. Notwithstanding paragraph 1:

(a) no duty shall be charged on imports of products falling within products covered by CN code 1006 10 10, CN 1006 20 or CN 1006 40 00 into the French overseas department of Réunion,

(b) the duty to be charged on imports of products falling within CN code 1006 30 into the French overseas department of Réunion shall be muliplied by a coefficient of 0,30.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 27. Such detailed rules shall in particular lay down the criteria for distinguishing the types of imported rice referred to in paragraph 2, fix the amount for the protection of the industry and include the necessary provisions for determining and calculating import prices and checking their authenticity.

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Article 13

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1, imports of one or more of such products at the rate of duty laid down in Article 12 may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 27. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

Article 14

Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules established pursuant to Article 27. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

   (a) guarantees covering the nature, provenance and origin of the product,

   (b) recognition of the document used for verifying the guarantees referred to in (a), and

   (c) the conditions under which import licences are issued and their term of validity.

Article 15

1. To the extent necessary to enable the products listed in Article 1 to be exported without further processing or in the form of goods listed in Annex B on the basis of quotations or prices for those products on the world market and within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, the difference between those quotations or prices and prices in the Community may be covered by export refunds.

Export refunds on the products listed in Article 1 in the form of goods listed in Annex B may not be higher than those applicable to such products exported without further processing.

2. Refunds shall be the same for the whole Community. They may vary according to destination.

Refunds shall be fixed in accordance with the procedure laid down in Article 27.

Refunds may be fixed:

(a) at regular intervals,

(b) by invitation to tender.

Refunds fixed at regular intervals may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

When the amount of the refund is set, account shall be taken in particular of the need to establish a balance between the use of Community basic agricultural products for export as processed goods to third countries, and the use of products from these countries admitted for inward processing.

3. Refunds on products listed in Article 1 and exported without further processing shall only be granted on application and on presentation of the relevant export licence.

4. The refund applicable to exports of products listed in Article 1 exported without further processing shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day for the destination indicated on the licence.

5. Paragraphs 3 and 4 may be made to apply to products listed in Article 1 and exported in the form of goods listed in Annex B in accordance with the procedure laid down in Article 16 of Regulation (EC) No 3448/93.

6. Paragraphs 3 and 4 may be waived in the case of products listed in Article 1 on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 27.

7. Save as otherwise provided in accordance with the procedure laid down in Article 27, the refund on products listed in Article 1(1)(a) and (b) in accordance with paragraph 4 shall be adjusted, during the period from October to July of the same marketing year, in respect of each month elapsing prior to export, by an amount equal to the monthly increase applicable to the intervention price fixed for that marketing year, adjusted according to the degree of processing using the applicable conversion rate.

A corrective amount may be fixed in accordance with the procedure laid down in Article 27. However, the Commission may, where necessary, alter corrective amounts.

The first and second subparagraphs may be applied, in whole or in part, to products listed in Article 1(1)(c) and to products listed in Article 1 and exported in the form of goods listed in Annex B. In that case, the adjustment referred to in the first subparagraph shall be corrected by applying to the monthly increase a coefficient expressing the ratio between the quantity of basic product and the quantity of the latter contained in the processed product exported or used in the goods exported.

8. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 27. Annex B shall be amended in accordance with the same procedure.

Article 16

1. To the extent necessary for the proper working of the common organization of the market in rice, the use of inward processing arrangements may be prohibited in whole or in part in respect of products listed in Article 1.

2. Measures adopted pursuant to this Article shall be decided on in accordance with the procedure laid down in Article 27.

Article 17

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the tariff classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation, including the definitions listed in Annex A, shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction on imports or measure having equivalent effect.

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Article 18

1. Where the quotations or prices on the world market for one or more of the products listed in Article 1(a) or (b) reach the level of Community prices and where that situation is likely to continue and to deteriorate, thereby disturbing or threatening to disturb the Community market, appropriate measures may be taken.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 27.

Article 19

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 27.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

II. Council Regulation (EEC) No 1423/76 of 21 June 1976 (OJ No L 166, 25.6.1976, p.20).

Article 3 is deleted.

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III. Council Regulation (EEC) No 1428/76 of 21 June 1976 (OJ No L 166, 25.6.1976, p.30).

Council Regulation (EEC) No 1431/76 of 21 June 1976 (OJ No L 166, 25.6.1976, p.36).

Council Regulation (EEC) No 1432/76 of 21 June 1976 (OJ No L 166, 25.6.1976, p.39).

Council Regulation (EEC) No 1433/76 of 21 June 1976 (OJ No L 166, 25.6.1976, p.42).

Council Regulation (EEC) No 1263/78 of 12 June 1978 (OJ No L 156, 14.6.1976, p.14).

The above Regulations are repealed.

ANNEX III

DRIED FODDER

Council Regulation (EEC) No 117/78 of 22 May 1978 (OJ No L 142, 30.5.1978, p.2), as last amended by Regulation (EEC) No 3496/93 (OJ No L 319, 21.12.1993, p.17)

(1) In Title II the following Article is inserted before Article 7:

"Article 6a

Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1."

(2) Article 7(2) is replaced by the following:

"Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

- the levying of any charge having equivalent effect to a customs duty,

- the application of any quantitative restriction or measure having equivalent effect".

(3) After Article 7 the following Article is inserted:

"Article 7a

Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted according to the procedure laid down in Article 12. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity."

(4) Article 8 is replaced by the following:

"**Article 8**

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 12.

5. This Article shall be applied in compliance with the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

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ANNEX IV

SUGAR

I. Council Regulation (EEC) No 1785/81 of 30 June 1981 (OJ No L 177, 1.7.1981, p.4), as last amended by Regulation (EC) No 133/94 (OJ No L 22, 27.1.1994, p.7).

(1) Title II is replaced by the following:

"Title II

Trade with third countries

Article 13

1. Imports into the Community, or exports therefrom, of any of the products listed in Article 1(1)(a), (b), (c), (d), (f), (g) and (h) shall be subject to presentation of an import or export licence.

   Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Articles 16 and 17.

   Import and export licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

2. In accordance with the procedure laid down in Article 41:

   (a) the scheme provided for by this Article may be extended to cover the products listed in Article 1(1)(e),

   (b) the term of validity of licences and other detailed rules for the application of this Article, which may lay down in particular a time limit for the issue of licences, shall be adopted.

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Article 14

1. Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1.

2. Notwithstanding paragraph 1, to ensure that the Community market is adequately supplied with the products listed in Article 1(1)(a) (raw sugar for refining falling within CN codes 1701 11 10 and 1701 12 10) and Article 1(1)(c) (molasses) by means of imports from third countries, the Commission may, in accordance with the procedure laid down in Article 41, suspend in whole or in part the application of import duties on these products, and establish the arrangements for any such suspension.

Article 15

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain agricultural products, imports of one or more of such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 41. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

Article 16

1. Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 41. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

   (a) guarantees covering the nature, provenance and origin of the product,

   (b) recognition of the document used for verifying the guarantees referred to in (a), and

   (c) the conditions under which import licences are issued and their term of validity.

Article 17

1. To the extent necessary to enable the products listed in Article 1(1)(a), (c) and (d) to be exported without further processing or in the form of goods listed in Annex I, on the basis of quotations or prices on the world market for those products listed in Article 1(1)(a) and (c), and within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, the difference between those quotations or prices and prices in the Community may be covered by export refunds.

   The export refund granted for raw sugar may not exceed that granted for white sugar.

2. Provision may be made for export refunds in respect of the products listed in Article 1(1)(f), (g) and (h) and exported without further processing or in the form of goods mentioned in Annex I.

   When determining the amount of the refund, for each 100 kg of dry matter particular account shall be taken of:

   (a) the refund applicable to exports of products falling within subheading 1702 30 91 of the Combined Nomenclature,

   (b) the refund applicable to exports of the products referred to in Article 1(1)(d),

   (c) the economic aspects of the planned exports.

3. The refund applicable to products listed in Article 1 exported in the form of good listed in Annex I shall not be greater than that applicable to these products exported without further processing.

4. When the amount of the refund is set, account shall be taken in particular of the need to establish a balance between the use of Community basic agricultural products for export as processed goods to third countries, and the use of products from these countries admitted for inward processing.

   Refunds shall be the same for the whole Community. They may vary according to destination.

   Refunds shall be fixed in accordance with the procedure laid down in Article 41. Refunds may be fixed:

   (a) at regular intervals,

   (b) by invitation to tender.

   Refunds fixed at regular intervals may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

5. Refunds on products listed in Article 1 and exported without further processing shall only be granted on application and on presentation of the relevant export licence.

6. The refund applicable to exports of products listed in Article 1 exported without further processing shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day for the destination indicated on the licence.

7. Paragraphs 5 and 6 may be made to apply to products listed in Article 1 and exported in the form of goods listed in Annex I, in accordance with the procedure laid down in Article 16 of Regulation (EC) No 3448/93.

8. Paragraphs 5 and 6 may be waived in the case of products listed in Article 1 on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 41.

9. Detailed rules for the application of this Article and the amendment of Annex I shall be adopted in accordance with the procedure laid down in Article 41.

Article 18

1. To the extent necessary for the proper working of the common organization of the market in sugar, the use of inward processing arrangements may be prohibited in whole or in part:

   - in respect of products listed in Article 1(a) and (d), and

   - in special cases, in respect of products listed in Article 1(1) which are intended for the manufacture of goods listed in Annex I.

2. Measures adopted pursuant to this Article shall be decided on in accordance with the procedure laid down in Article 41.

Article 19

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the tariff classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

   (a) the levying of any charge having equivalent effect to a customs duty,

   (b) the application of any quantitative restriction or measure having equivalent effect.

Article 20

1. Where the price of sugar on the world market exceeds the intervention price, provision may be made to apply an export levy in respect of the sugar in question. This levy must be applied when the cif price of white sugar or raw sugar is greater than the reference price.

   Save as otherwise provided in accordance with the procedure laid down in Article 41, the levy payable shall be that applicable on the date of export.

2. Where the cif price of white or raw sugar is greater than a reference price to be determined, a decision may be made to suspend the applicable import duty and/or grant an import subsidy for the product in question.

3. The following shall be adopted in accordance with the procedure laid down in Article 41:

   (a) the detailed rules for establishing the cif prices referred to in paragraph 2,

   (b) the reference price referred to in paragraphs 1 and 2,

   (c) the decisions referred to in paragraphs 1 and 2,

   (d) the detailed rules for the application of this Article.

   In the case of the products referred to in Article 1(1)(b), (c), (d), (f), (g) and (h) provisions similar to those in paragraphs 1 and 2 and to the rules for their application may be adopted using the same procedure.

4. The levies stemming from the application of this Article shall be fixed by the Commission.

Article 21

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 41.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

(2) Article 26 is amended as follows:

(a) In paragraph 1 the last sentence is replaced by:

"Articles 8, 9, 17 and 20 shall not apply to such sugar and Articles 9, 17 and 20 to such isoglucose and inulin sirop."

(b) The reference to "Article 18" in paragraph 2 is replaced by a reference to "Article 20".

(3) Article 35(1) is replaced by the following:

"1. No import duty shall apply to imports of preferential sugar."

II. Council Regulation (EEC) No 431/68 of 9 April 1968 (OJ No L 89, 10.4.1968, p.3)

Article 2 is deleted.

III. Council Regulation (EEC) No 766/68 of 18 June 1968 (OJ No L 143, 25.6.1968, p.6), as last amended by Regulation (EEC) No 1489/76 (OJ No L 167, 26.6.1976, p.13)

Council Regulation (EEC) No 770/68 of 18 June 1968 (OJ No L 143, 25.6.1968, p.16)

Council Regulation (EEC) No 226/72 of 31 January 1972 (OJ No L 28, 1.2.1972, p.3)

Council Regulation (EEC) No 608/72 of 23 March 1972 (OJ No L 75, 28.3.1972, p.5)

The above Regulations are repealed.

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ANNEX V

OILS AND FATS

I. Council Regulation No 136/66/EEC of 22 September 1966 (OJ No 172, 30.9.1966, p.3025/66), as last amended by Regulation (EC) No 3179/93 (OJ No L 285, 20.11.1993, p.9).

(1) Title I is replaced by the following:

"Title I

Trade

Article 2

1. Imports into the Community, or exports therefrom, of any of the products listed in Article 1(2) shall be subject to presentation of an import or export licence.

Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Articles 2c and 3.

Import and export licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

2. The term of validity of licences and other detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.

Article 2a

Save where this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1(2).

Article 2b

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1(2)(c), (d) and (e), imports of one or more of such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 38. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

Article 2c

1. Tariff quotas for the products listed in Article 1(2) resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 38. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

   (a) guarantees covering the nature, provenance and origin of the product,

   (b) recognition of the document used for verifying the guarantees referred to in (a), and

   (c) the conditions under which import licences are issued and their term of validity.

Article 3

1. To the extent necessary to enable the olive oil and oilseeds harvested in the Community to be exported on the basis of quotations or prices for those products on the world market and within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, the difference between those quotations or prices and prices in the Community may be covered by export refunds.

2. Refunds shall be the same for the whole Community. They may vary according to destination.

   Refunds shall be fixed in accordance with the procedure laid down in Article 38.

   Refunds may be fixed:

   (a) at regular intervals,

   (b) by invitation to tender.

   Refunds fixed at regular intervals may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

3. Refunds shall only be granted on request and on presentation of the relevant export licence.

4. The refund applicable to exports of products listed in paragraph 1 shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day for the destination indicated on the licence.

5. Paragraphs 3 and 4 may be waived in the case of olive oil and oilseeds on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 38.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.

Article 3a

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the tariff classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

Article 3b

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1(2) is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 38.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

(2) Article 4(1) is replaced by the following:

"1. A production target price, an intervention price and a representative market price for olive oil shall be fixed each year for the Community.

However, when during the marketing year the factors which are used to determine the representative market price for olive oil undergo a change which, on the basis of the criterion to be established under the procedure laid down in Article 38, may be considered as substantial, a decision may be taken under the said procedure to adjust the representative market price during the marketing year.

In such cases, the level of consumption aid referred to in Article 11(5) and (6) may be adjusted in accordance with the same procedure."

(3) Articles 9, 14, 15, 16, 17, 18 and 19 are deleted.

(4) Article 20 is replaced by the following:

"Article 20

1. Where olive oil is exported to third countries and world prices are higher than the Community price, a levy to cover the difference may be charged.

2. The general rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38."

(5) Article 20a is replaced by the following:

"Article 20a

Olive oil used for the manufacture of preserved foods shall benefit from a system of production refunds.

The general rules for the application of this Article and the list of preserved foods in question shall be adopted in accordance with the procedure laid down in Article 38."

(6) Articles 20c and 28 are deleted.

II. Regulation (EEC) No 142/67 of 21 June 1967 (OJ No L 125, 26.6.1967, p.2461/67), as last amended by Regulation (EEC) No 2429/72 (OJ No L 264, 23.11.1972, p.1.)

Regulation (EEC) No 143/67 of 21 June 1967 (OJ No L 125, 26.6.1967, p.2463/67), as last amended by Regulation (EEC) No 2077/71 (OJ No L 220, 30.9.1971, p.1.)

Regulation (EEC) No 19/69 of 20 December 1968 (OJ No L 3, 7.1.1969, p.2), as last amended by Regulation (EEC) No 2429/72 (OJ No L 264, 23.11.1972, p.1.)

Regulation (EEC) No 2596/69 of 18 December 1969 (OJ No L 324, 27.12.1969, p.12)

Regulation (EEC) No 1076/71 of 25 May 1971 (OJ No L 116, 28.5.1971, p.2)

Regulation (EEC) No 443/72 of 29 February 1972 (OJ No L 54, 3.3.1972, p.3), as last amended by Regulation (EEC) No 2560/77 (OJ No L 303, 28.11.1977, p.1.)

Regulation (EEC) No 1569/72 of 20 July 1972 (OJ No L 167, 25.7.1972, p.9), as last amended by Regulation (EEC) No 2206/90 (OJ No L 201, 31.1.1990, p.11.)

Regulation (EEC) No 2751/78 of 23 November 1978 (OJ No L 331, 28.11.1978, p.5)

Regulation (EEC) No 591/79 of 26 March 1979 (OJ No L 78, 30.3.1979, p.2), as last amended by Regulation (EEC) No 2903/89 (OJ No L 280, 29.9.1989, p.3.)

Regulation (EEC) No 1594/83 of 14 June 1983 (OJ No L 163, 22.6.1983, p.44), as last amended by Regulation (EEC) No 1321/90 (OJ No L 132, 23.5.1990, p.15.)

Regulation (EEC) No 1491/85 of 23 May 1985 (OJ No L 151, 10.6.1985, p.15), as last amended by Regulation (EEC) No 1724/91 (OJ No L 162, 26.6.1991, p.35.)

Regulation (EEC) No 2194/85 of 25 July 1985 (OJ No L 204, 2.8.1985, p.7), as last amended by Regulation (EEC) No 1725/91 (OJ No L 162, 26.6.1991, p.37.)

Regulation (EEC) No 1650/86 of 26 May 1986 (OJ No L 145, 30.5.1986, p.8).

The above Regulations are repealed.

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ANNEX VI

FLAX AND HEMP

I. Council Regulation (EEC) No 1308/70 of 29 June 1970 (OJ No L 146, 4.7.1970, p.1), as last amended by Regulation (EEC) No 1557/93 (OJ No L 154, 25.6.1993, p.26).

Articles 7 and 8 are replaced by the following:

"Article 7

Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

- the levying of any charge having equivalent effect to a customs duty,

- the application of any quantitative restriction or measure having equivalent effect.

Article 8

1. The importation of raw hemp falling within CN code 5302 10 00 is permitted only if the product meets the conditions laid down in Article 4(1).

2. The importation of hemp seed falling within CN code 1207 99 10 is permitted only if the seed offers the guarantees laid down in Article 4(1).

3. The importation of hemp seed, not broken, falling within CN code 1207 99 91 is permitted only if it undergoes a check guaranteeing that the seed will be used other than for sowing.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 12.

Article 8a

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 12.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

II. Council Regulation (EEC) No 1054/72 of 18 May 1972 (OJ No L 120, 25.5.1972, p.1).

The above Regulation is repealed.

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ANNEX VII

MILK PRODUCTS

I. Council Regulation (EEC) No 804/68 of 27 June 1968 (OJ No L 148, 28.6.1968, p.13), as last amended by Regulation (EC) No 1880/94 (OJ No L 197, 30.7.1994, p.21).

(1) Article 4 is deleted.

(2) Title III is replaced by the following:

"Title III

Trade with third countries

Article 13

1. Imports into the Community of any of the products listed in Article 1 shall be subject to the presentation of an import licence. Exports from the Community of any such products may be made subject to presentation of an export licence.

2. Licences shall be issued by Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to the measures taken for the application of Articles 16 and 17.

   Import and export licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

3. The following shall be adopted in accordance with the procedure laid down in Article 30:

   (a) the list of products in respect of which import and export licences are required,

   (b) the term of validity of the licences, and

   (c) the other detailed rules for the application of this Article.

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Article 14

Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1.

Article 15

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1, imports of one or more of such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 30. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

Article 16

Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 30. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

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Article 17

1. To the extent necessary to enable the products listed in Article 1 to be exported without further processing or in the form of goods listed in the Annex if they are products listed in Article 1(a), (b), (c), (d), (e) and (g), on the basis of prices for those products on the world market and within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, the difference between those prices and prices in the Community may be covered by export refunds.

   Export refunds on the products listed in Article 1 in the form of goods listed in the Annex may not be higher than those applicable to such products exported without further processing.

2. Refunds shall be the same for the whole Community. They may vary according to destination.

   Refunds shall be fixed in accordance with the procedure laid down in Article 30.

   Refunds may be fixed:

   (a) at regular intervals,

   (b) by invitation to tender.

   Refunds fixed at regular intervals may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

   When the refund is being fixed particular account shall be taken of the need to establish a balance between the use of Community basic products in the manufacture of processed goods to third countries and the use of products from these countries admitted for processing.

3. Refunds on products listed in Article 1 and exported without further processing shall only be granted on application and on presentation of the relevant export licence.

4. The refund applicable to exports of products listed in Article 1 exported without further processing shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day for the destination indicated on the licence.

5. Paragraphs 3 and 4 may be made to apply to products listed in Article 1 and exported in the form of goods listed in the Annex in accordance with the procedure laid down in Article 16 of Regulation (EC) No 3448/93.

6. Paragraphs 3 and 4 may be waived in the case of products listed in Article 1 on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 30.

7. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 30.

Article 18

To the extent necessary for the proper working of the common organization of the market in milk and milk products the Commission may in special cases, in accordance with the procedure laid down in Article 30, prohibit in whole or in part the use of inward processing arrangements in respect of products listed in Article 1 which are intended for the manufacture of products listed in that Article or of goods listed in the Annex.

Article 19

1. The general rules for the interpretation of the combined nomenclature and the special rules for its application shall apply to the tariff classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

Article 20

1. Where the quotations or prices on the world market for one or more of the products listed in Article 1 reach the level of Community prices and where that situation is likely to continue and to deteriorate, thereby disturbing or threatening to disturb the Community market, appropriate measures may be taken.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 30.

Article 21

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 30.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

II. Council Regulation (EEC) No 876/68 of 28 June 1968 (OJ No L 155, 3.7.1968, p.1), as last amended by Regulation (EEC) No 1344/86 (OJ No L 119, 8.5.1986, p.36).

Council Regulation (EEC) No 2115/71 of 28 September 1971 (OJ No L 222, 2.10.1971, p.5).

Council Regulation (EEC) No 2180/71 of 12 October 1971 (OJ No L 231, 14.10.1971, p.1).

Council Regulation (EEC) No 1603/74 of 25 June 1974 (OJ No L 172, 27.6.1974, p.9).

Council Regulation (EEC) No 2915/79 of 18 December 1979 (OJ No L 329, 24.12.1979, p.1), as last amended by Regulation (EEC) No 3798/91 (OJ No L 357, 28.12.1991, p.3).

The above Regulations are repealed.

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ANNEX VIII

BEEF AND VEAL

I. Council Regulation (EEC) No 805/68 of 27 June 1968 (OJ No L 148, 28.6.1968, p.24), as last amended by Regulation (EC) No 1884/94 (OJ No L 197, 30.7.1994, p.27).

(1) Article 3 is deleted.

(2) Title II is replaced by the following:

"Title II

Trade with third countries

Article 9

1. Imports into the Community of any of the products listed in Article 1(1)(a) shall be subject to presentation of an import licence.

Imports into the Community of any of the products listed in Article 1(1)(b) and exports from the Community of products listed in Article 1(1)(a) and (b) may be subject to presentation of an import or export licence.

Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Articles 12 and 13.

Import and export licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

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2. The term of validity of licences and other detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 27.

Article 10

Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1.

Article 11

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain agricultural products listed in Article 1, imports of one or more of such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 27. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

Article 12

Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 27. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 13

1. To the extent necessary to enable the products listed in Article 1 to be exported on the basis of quotations or prices for those products on the world market and within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, the difference between those quotations or prices and prices in the Community may be covered by export refunds.

2. Refunds shall be the same for the whole Community. They may vary according to destination.

   Refunds shall be fixed in accordance with the procedure laid down in Article 27.

   Refunds may be fixed:

   (a) at regular intervals,

   (b) by invitation to tender.

Refunds fixed at regular intervals may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

3. When the amount of the refund is set, account shall be taken in particular of the need to establish a balance between the use of Community basic agricultural products for export as processed goods to third countries and the use of products from these countries admitted for inward processing.

4. Refunds shall be granted only on application and on presentation of the relevant export licence.

5. The refund applicable to exports of products listed in Article 1 exported shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day for the destination indicated on the licence.

6. Paragraphs 3 and 4 may be waived in the case of products listed in Article 1 on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 27.

7. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 27.

Article 14

To the extent necessary for the proper working of the common organization of the market in beef and veal, the Commission, acting in accordance with the procedure laid down in Article 27, may prohibit the use of inward or outward processing arrangements in whole or in part for the products listed in Article 1.

Article 15

1. The general rules for the interpretation of the Combined Nomenclature and the detailed rules for its application shall apply to the tariff classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

Article 16

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 27.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

(3) Article 22a is amended as follows:

(a) paragraph 2 is deleted.

(b) paragraph 3 becomes paragraph 2.

II. Council Regulation (EEC) No 98/69 of 16 January 1969 (OJ No L 14, 21.1.1969, p.2), as amended by Regulation (EEC) No 429/77 (OJ No L 61, 5.3.1977, p.18)

Article 1 is replaced by the following:

"Article 1

1. Disposal of the products held by intervention agencies may be undertaken only:

(a) where the products are intended for a particular use, or

(b) where the products are intended for export, or

(c) in the case of disposal without a specific destination, if no risk of disturbance of the market results, having regard in particular to the level of average market prices for adult bovine animals in the Community and in the Member States, as recorded in accordance with Regulation (EEC) No 1982/87, or

(d) where removal from storage is necessary for technical reasons.

2. In the cases referred to in paragraph 1(a) and (b), special conditions may be laid down to ensure that the products are not used for a purpose other than that for which they were intended and to take account of the particular requirements of such sales.

To ensure that the obligations entered into are fulfilled, such conditions may include the provision of a security which shall be forfeited in whole or in part if the said obligations are not or are only partially fulfilled."

III. Council Regulation (EEC) No 885/68 of 28 June 1968 (OJ No L 156, 4.7.1968, p.2), as last amended by Regulation (EEC) No 427/77 (OJ No L 61, 5.3.1977, p.16)

Council Regulation (EEC) No 1157/92 of 28 April 1992 (OJ No L 122, 7.5.1992, p.4)

The above Regulations are repealed.

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ANNEX IX

SHEEPMEAT AND GOATMEAT

I. Council Regulation (EEC) No 3013/89 of 25 September 1989 (OJ No L 289, 7.10.1989, p.1), as last amended by Regulation (EC) No 1886/94 (OJ No L 197, 30.7.1994, p.30).

Title II is replaced by the following:

"Title II

Trade with third countries

Article 9

1. Imports into the Community, or exports therefrom, of any of the products listed in Article 1 may be subject to presentation of an import or export licence.

   Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Article 12.

   Import and export licences shall be valid throughout the Community. The issuing of such licences may be subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

2. The term of validity of licences and other detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 30.

Article 10

Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1.

Article 11

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1, imports of one or more of such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 30. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

Article 12

Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 30. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

   (a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 13

1. To the extent necessary for the proper working of the common organization of the market in sheepmeat and goatmeat, the use of inward or outward processing arrangements may be prohibited in whole or in part for the products listed in Article 1.

2. Measures adopted pursuant to this Article shall be decided on in accordance with the procedure laid down in Article 23.

Article 14

1. The general rules for the interpretation of the Combined Nomenclature and the detailed rules for its application shall apply to the tariff classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

Article 15

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 30.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

II. Council Regulation (EEC) No 2641/80 of 14 October 1980 (OJ No L 275, 18.10.1980, p.2), as last amended by Regulation (EEC) No 3890/92 (OJ No L 391, 31.12.1992, p.51)

Council Regulation (EEC) No 2642/80 of 14 October 1980 (OJ No L 275, 18.10.1980, p.4), as last amended by Regulation (EEC) No 3939/87 (OJ No L 373, 31.12.1987, p.1)

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Council Regulation (EEC) No 3643/85 of 19 December 1985 (OJ No L 348, 24.12.1985, p.2), as last amended by Regulation (EEC) No 3890/92 (OJ No L 391, 31.12.1992, p.51)

The above Regulations are repealed.

ANNEX X

PIGMEAT

I. Council Regulation (EEC) No 2759/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p.1), as last amended by Regulation (EEC) No 1249/89 (OJ No L 129, 11.5.1989, p.12).

(1) The second subparagraph of Article 4(1) is replaced by the following:

"The basic price shall be fixed taking account, in particular, of the need to fix this price at a level which contributes towards stabilizing market prices without, however, leading to the formation of structural surpluses in the Community."

(2) Article 5(2) is replaced by the following:

"For products of standard quality other than pig carcases, buying-in prices shall be derived from the buying-in price for pig carcases on the basis of the ratio existing between the commercial value of these products to the commercial value of pig carcases."

(3) The following point is added to Article 5(4):

"(d) fixing the coefficient expressing the ratio referred to in paragraph 2."

(4) Title II is replaced by the following:

"Title II

Trade with third countries

Article 8

1. Imports into the Community, or exports therefrom, of any of the products listed in Article 1(1) may be subject to presentation of an import or export licence.

Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Articles 11 and 13.

Import and export licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

2. The term of validity of licences and other detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 24.

Article 9

1. Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1(1).

Article 10

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1(1), imports of one or more of such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 24. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

Article 11

Tariff quotas for the products listed in Article 1(1) resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 24. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 12

Where prices on the Community market rise significantly and where that situation is likely to continue, thereby disturbing or threatening to disturb that market, appropriate measures may be taken.

Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 24.

Article 13

1. To the extent necessary to enable the products listed in Article 1(1) to be exported on the basis of quotations or prices for those products on the world market and within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, the difference between those quotations or prices and prices in the Community may be covered by export refunds.

2. Refunds shall be the same for the whole Community. They may vary according to destination.

   Refunds shall be fixed in accordance with the procedure laid down in Article 24.

   Refunds may be fixed:

   (a) at regular intervals,

   (b) by invitation to tender.

   Refunds fixed at regular intervals may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

3. When the amount of the refund is set, account shall be taken in particular of the need to establish a balance between the use of Community basic agricultural products for export as processed goods to third countries, and the use of products from these countries admitted for inward processing.

4. Refunds shall only be granted on application and on presentation of the relevant export licence.

5. The refund applicable to exports of products listed in Article 1(1) shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day for the destination indicated on the licence.

6. Paragraphs 4 and 5 may be waived in the case of products listed in Article 1(1) on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 24.

7. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 24.

Article 14

1. To the extent necessary for the proper working of the common organization of the market in pigmeat, the use of inward processing arrangements may be prohibited in whole or in part in respect of products listed in Article 1(1) which are intended for the manufacture of products listed in that same paragraph.

2. Measures adopted pursuant to this Article shall be decided on in accordance with the procedure laid down in Article 24.

Article 15

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

Article 16

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1(1) is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 24.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228 of the Treaty."

II. Council Regulation (EEC) No 2764/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p.21), as last amended by Regulation (EEC) No 4160/87 (OJ No L 392, 31.12.1987, p. 46)

Council Regulation (EEC) No 2765/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p. 23)

Council Regulation (EEC) No 2766/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p. 25), as last amended by Regulation (EEC) No 3906/87 (OJ No L 370, 30.12.1987, p. 11)

Council Regulation (EEC) No 2768/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p. 39)

Council Regulation (EEC) No 2769/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p. 43)

The above Regulations are repealed.

ANNEX XI

POULTRYMEAT

I. Council Regulation (EEC) No 2777/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p.77), as last amended by Regulation (EEC) No 1574/93 (OJ No L 52, 24.6.1993, p.1).

(1) Articles 3 to 11 are replaced by the following:

"Article 3

1. Imports into the Community, or exports therefrom, of any of the products listed in Article 1(1) may be subject to presentation of an import or export licence.

Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Articles 6 and 8.

Import and export licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

2. The term of validity of licences and other detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 17.

Article 4

Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1(1).

Article 5

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1(1), imports of one or more of such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 17. Such detailed rules shall specify in particular:

(a) the products to which additional import duties may be applied,

(b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

Article 6

Tariff quotas for the products listed in Article 1(1) resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 17. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 7

Where prices on the Community market rise significantly and where that situation is likely to continue, thereby disturbing or threatening to disturb that market, appropriate measures may be taken.

Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 17

Article 8

1. To the extent necessary to enable the products listed in Article 1(1) to be exported on the basis of prices for those products on the world market and within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, the difference between those prices and prices in the Community may be covered by export refunds.

2. Refunds shall be the same for the whole Community. They may vary according to destination.

   Refunds shall be fixed in accordance with the procedure laid down in Article 17.

   Refunds may be fixed:

   (a) at regular intervals,

   (b) by invitation to tender.

   Refunds fixed at regular intervals may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

3. When the amount of the refund is set, account shall be taken in particular of the need to establish a balance between the use of Community basic agricultural products for export as processed goods to third countries, and the use of products from those countries admitted for inward processing.

4. Refunds shall only be granted on application and on presentation of the relevant export licence.

5. The refund applicable to exports of products listed in Article 1(1) shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day for the destination indicated on the licence.

6. Paragraphs 4 and 5 may be waived in the case of products listed in Article 1(1) on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 17.

7. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 17.

Article 9

To the extent necessary for the proper working of the common organization of the market in poultrymeat, the use of inward processing arrangements may be prohibited in whole or in part in respect of products listed in Article 1 which are intended for the manufacture of products listed in Article 1(1).

Measures adopted pursuant to this Article shall be decided on in accordance with the procedure laid down in Article 17.

Article 10

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

Article 11

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1(1) is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 17.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

(2) Article 12 is deleted.

II. Council Regulation (EEC) No 2778/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p.84), as last amended by Regulation (EEC) No 3714/92 (OJ No L 378, 23.12.1992, p.23).

Council Regulation (EEC) No 2779/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p.90).

Council Regulation (EEC) No 2780/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p.94).

The above Regulations are repealed.

ANNEX XII

EGGS,
OVALBUMIN AND LACTALBUMIN

I. Council Regulation (EEC) No 2771/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p.49), as last amended by Regulation (EEC) No 1574/93 (OJ No L 152, 24.6.1993, p.1).

(1) Articles 3 to 11 (inclusive) are replaced by the following:

"Article 3

1. Imports into the Community, or exports therefrom, of any of the products listed in Article 1(1) shall be subject to presentation of an import or export licence.

Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Articles 6 and 8.

Import and export licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

2. The term of validity of licences and other detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 17.

Article 4

Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1(1).

Article 5

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1(1), imports of one or more of such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 17. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

Article 6

Tariff quotas for the products listed in Article 1(1) resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 17. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 7

Where prices on the Community market rise significantly and where that situation is likely to continue, thereby disturbing or threatening to disturb that market, appropriate measures may be taken.

Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 17.

Article 8

1. To the extent necessary to enable the products listed in Article 1(1) to be exported without further processing or in the form of goods listed in Annex I on the basis of quotations or prices for those products on the world market and within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, the difference between those quotations or prices and prices in the Community may be covered by export refunds.

2. Refunds shall be the same for the whole Community. They may vary according to destination.

   Refunds shall be fixed in accordance with the procedure laid down in Article 17.

   Refunds may be fixed:

   (a) at regular intervals,

   (b) by invitation to tender.

   Refunds fixed at regular intervals may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

3. When the amount of the refund is set, account shall be taken in particular of the need to establish a balance between the use of basic Community agricultural products for export as processed goods to third countries, and the use of basic agricultural products from these countries admitted for inward processing.

4. Refunds on products listed in Article 1(1) and exported without further processing shall only be granted on application and on presentation of the relevant export licence.

5. The refund applicable to exports of products listed in Article 1(1) exported without further processing shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day for the destination indicated on the licence.

6. Paragraphs 4 and 5 may be made to apply to products listed in Article 1(1) and exported in the form of goods listed in Annex I in accordance with the procedure laid down in Article 16 of Regulation (EC) No 3448/93.

7. Paragraphs 4 and 5 may be waived in the case of products listed in Article 1(1) on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 17.

8. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 17. Annex I shall be amended in accordance with the same procedure.

Article 9

1. To the extent necessary for the proper working of the common organization of the market in eggs, the use of inward processing arrangements may be prohibited in whole or in part:

   - in respect of products listed in Article 1(1) which are intended for the manufacture of products listed in Article 1(1)(b), and

   - in special cases, in respect of products listed in Article 1(1) which are intended for the manufacture of goods listed in Annex I.

2. Measures adopted pursuant to this Article shall be decided on in accordance with the procedure laid down in Article 17.

Article 10

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

Article 11

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1(1) is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 17.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

(2) Article 12 is deleted.

II. Council Regulation (EEC) No 2783/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p.104), as last amended by Regulation (EEC) No 4001/87 (OJ No L 377, 31.12.1987, p.44).

(1) The introductory sentence in Article 1 is replaced by the following:

"Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the following products:"

(2) Article 2 is replaced by the following:

"Article 2

1. Imports into the Community, or exports therefrom, of any of the products listed in Article 1 shall be subject to presentation of an import or export licence.

Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Article 4.

Import and export licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

2. The term of validity of licences and other detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 17 of Regulation (EEC) No 2771/75.".

(3) Article 3 is replaced by the following:

"Article 3

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1, imports of one or more of such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 17 of Regulation (EEC) No 2771/75. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices."

(4) Article 4 is replaced by the following:

"Article 4

Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 17 of Regulation (EEC) No 2771/75. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity."

(5) Article 5 is replaced by the following:

"Article 5

Where prices on the Community market rise significantly and where that situation is likely to continue, thereby disturbing or threatening to disturb that market, appropriate measures may be taken.

Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 17 of Regulation (EEC) No 2771/75."

(6) Article 7 is replaced by the following:

"Article 7

To the extent necessary for the proper working of the common organization of the market in eggs and this Regulation, the use of inward processing arrangements may be prohibited in whole or in part in respect of products listed in Article 1 which are intended for the manufacture of products listed in that same Article.

Measures adopted pursuant to this Article shall be decided on in accordance with the procedure laid down in Article 17 of Regulation (EEC) No 2771/75."

(7) Article 8 is replaced by the following:

"Article 8

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

   - the levying of any charge having equivalent effect to a customs duty,
   - the application of any quantitative restriction or measure having equivalent effect."

III. Council Regulation (EEC) No 2773/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p.64), as last amended by Regulation (EEC) No 4155/87 (OJ No L 392, 31.12.1987, p.29)

Council Regulation (EEC) No 2774/75 of 29 October 1975 (OJ No L 282, 1.11.1975, p.68)

Council Regulation (EEC) No 2775/75 of 1 October 1975 (OJ No L 282, 1.11.1975, p.72)

The above Regulations are repealed.

ANNEX XIII

FRUIT AND VEGETABLES

I. Council Regulation (EEC) No 1035/72 of 18 May 1972 (OJ No L 118, 20.5.1972, p.1), as last amended by Regulation (EC) No 3669/93 (OJ No L 338, 31.12.1993, p.26)

Title IV is replaced by the following:

"Title IV

Trade with third countries

Article 22

1. Imports into the Community, or exports therefrom, of any of the products listed in Article 1(2) shall be subject to presentation of an import or export licence.

   Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Articles 25 and 26.

   Import and export licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; excep.in cases of force majeure, the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

2. The term of validity of licences and other detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 33.

Article 23

1. Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1(2).

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 33. Such detailed rules shall cover in particular the measures necessary to check on import prices.

Article 24

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1(2), imports of one or more of such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 33. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

Article 25

Tariff quotas for the products listed in Article 1(2) resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 33. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

   (a) guarantees covering the nature, provenance and origin of the product,

   (b) recognition of the document used for verifying the guarantees referred to in (a), and

   (c) the conditions under which import licences are issued and their term of validity.

Article 26

1. To the extent necessary to enable the products listed in Article 1(2) to be exported on the basis of the prices of these products in international trade and within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, the difference between those prices and prices in the Community may be covered by export refunds.

2. Refunds shall be the same for the whole Community. They may vary according to destination.

   Refunds shall be fixed in accordance with the procedure laid down in Article 33.

   Refunds may be fixed:

   (a) at regular intervals,
   (b) by invitation to tender.

Refunds fixed at regular intervals may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

3. The refund shall be granted only on request and on presentation of the relevant export licence.

4. The refund applicable to exports of products listed in Article 1(2) shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day for the destination indicated on the licence.

5. Paragraphs 3 and 4 may be waived in the case of products listed in Article 1(2) on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 33.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 33.

Article 27

1. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited when importing the products listed in Article 1(2) from third countries:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

2. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

Article 28

1. Appropriate measures may be taken when trading with third countries:

   - if, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1(2) is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty,

   - or if, in the case of the products listed in Annex IIIa, the withdrawal or buying-in operations undertaken pursuant to Articles 18 and 19 involve significant quantities.

Such measures may be applied only until, depending on the case, the disturbance or threat of disturbance has ceased or the quantities withdrawn or bought in have diminished appreciably.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 33.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

II. Council Regulation (EEC) No 2518/69 of 9 December 1969 (OJ No L 318, 18.12.1969, p.17), as last amended by Regulation (EEC) No 2455/72 (OJ No L 266, 14.11.1972, p.7)

Council Regulation (EEC) No 2707/72 of 19 December 1972 (OJ No L 291, 28.12.1972, p.3)

Council Regulation (EEC) No 1200/88 of 28 April 1988 (OJ No L 115, 3.5.1988, p.7), as last amended by Regulation (EEC) No 3821/90 (OJ No L 366, 29.12.1990, p.45)

The above Regulations are repealed.

ANNEX XIV

PROCESSED FRUIT AND VEGETABLES

I. Council Regulation (EEC) No 426/86 of 24 February 1986 (OJ No L 49, 27.2.1986, p.1), as last amended by Regulation (EC) No 1490/94 (OJ No L 161, 29.6.1994, p.13).

(1) Title II is replaced by the following:

"Title II

Trade with third countries

Article 9

1. Imports into the Community, or exports therefrom, of any of the products listed in Article 1(1) may be subject to presentation of an import or export licence.

   Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Articles 12 and 15.

   Import and export licences shall be valid throughout the Community. The issue of such licences may be subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; excep.in cases of force majeure, the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

2. The term of validity of licences and other detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 22.

Article 10

1. Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1(1).

2. A minimum import price for the 1995, 1996, 1997, 1998 and 1999 marketing years shall be fixed for the products listed in Part B of Annex I. The minimum import price shall be determined having regard in particular to:

   - the free-at-frontier prices on import into the Community,
   - the prices obtaining on world markets,
   - the situation on the internal Community market,
   - the trend of trade with third countries.

   Where the minimum import price is not observed, a countervailing charge in addition to customs duty shall be imposed, based on the prices of the main supplier third countries.

3. Minimum import prices and other detailed rules for the application of this Article shall be adopted in accordance with the procedure provided for in Article 22.

Article 11

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1(1), imports of one or more of such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 22. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

Article 12

Tariff quotas for the products listed in Article 1(2) resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 22. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 13

To the extent necessary to enable the export of:

(a) the products not containing added sugar listed in Article 1(1),

(b) - white sugar and raw sugar falling within heading 1701,
- glucose and glucose syrup falling within subheadings 1702 30 51, 1702 30 59, 1702 30 91, 1702 30 99 and 1702 40 90,
- isoglucose falling within subheadings 1702 30 10, 1702 40 10, 1702 60 10 and 1702 90 30, and
- beet and cane syrup falling within subheading 1702 90 90,

used in the products listed in Article 1(1)(b),

on the basis of prices for those products on the world market and within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, the difference between those prices and prices in the Community may be covered by export refunds.

Article 14

1. Refunds shall be the same for the whole Community. They may vary according to destination.

Refunds shall be fixed in accordance with the procedure laid down in Article 22.

Refunds may be fixed:

(a) at regular intervals,

(b) by invitation to tender.

Refunds fixed at regular intervals may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

2. The refund referred to in Article 13(b) shall be equal:

- in the case of raw sugar, white sugar and beet and cane syrup, to the amount of refund for export of these products unprocessed as fixed in accordance with Article 19 of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector and with the provisions adopted for its application,

- in the case of isoglucose, to the amount of the refund for export of this product unprocessed as fixed in accordance with Article 19 of Regulation (EEC) No 1785/81 and with the provisions adopted for its application,

- in the case of glucose and glucose syrup, to the amount of the refund for export of these products unprocessed as fixed for each of these products in accordance with Article 16 of Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals and with the provisions adopted for its application.

3. To qualify for the refund referred to in Article 13(b), the products listed in Article 1(1)(b) must, on export, be accompanied by a declaration from the applicant indicating the amounts of raw sugar, white sugar and beet and cane sugar, isoglucose, glucose and glucose syrup used in their manufacture.

   The accuracy of the declaration referred to in the first subparagraph shall be subject to checks by the competent authorities of the Member State concerned.

4. Where the refund referred to in Article 13(b) is not sufficient to permit exports of the products listed in Article 1(1)(b), the provisions laid down for the refund referred to in Article 13(a) shall apply to those products instead of those laid down in Article 13(b).

5. Refunds shall only be granted on request and on presentation of the relevant export licence.

6. The refund shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day for the destination indicated on the licence.

7. Paragraphs 5 and 6 may be waived in the case of the refunds referred to in Article 13(b) and products listed in Article 1(1) on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 22.

8. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 22.

Article 15

1. To the extent necessary for the proper working of the common organizations of the market in cereals, sugar and fruit and vegetables, the use of inward processing arrangements may, in special cases, be prohibited in whole or in part in respect of:

   - products listed in Article 13(b), and

   - fruit and vegetables

   intended for the manufacture of products listed in Article 1(1)

2. Measures adopted pursuant to this Article shall be decided on in accordance with the procedure laid down in Article 22.

Article 16

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited with regard to imports from third countries:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

Article 17

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1(1) is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 22.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

(2) Annexes II, III and IV are deleted.

II. Council Regulation (EEC) No 518/77 of 14 March 1977 (OJ No L 73, 21.3.1977, p.22).

Council Regulation (EEC) No 519/77 of 14 March 1977 (OJ No L 73, 21.3.1977, p.24).

Council Regulation (EEC) No 520/77 of 14 March 1977 (OJ No L 73, 21.3.1977, p.26).

Council Regulation (EEC) No 521/77 of 14 March 1977 (OJ No L 73, 21.3.1977, p.28).

Council Regulation (EEC) No 1796/81 of 30 June 1981 (OJ No L 183, 4.7.1981), as last amended by Regulation (EEC) No 1122/92 (OJ No L 117, 1.5.1992, p. 98).

Council Regulation (EEC) No 2089/85 of 23 July 1985 (OJ No L 197, 27.7.1985, p. 10).

Council Regulation (EEC) No 3225/88 of 17 October 1988 (OJ No L 288, 21.10.1988, p. 11).

Council Regulation (EEC) No 1201/88 of 28 April 1988 (OJ No L 115, 3.5.1988, p. 9), as last amended by Regulation (EEC) No 2781/90 (OJ No L 265, 28.9.1990, p. 3).

The above Regulations are repealed.

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ANNEX XV

BANANAS

Council Regulation (EEC) No 404/93 of 13 February 1993 (OJ No L 47, 25.2.1993, p.1), as last amended by Regulation (EC) No 3518/93 (OJ No L 320, 22.12.1993, p. 15).

(1) Article 15 is replaced by the following:

"Article 15

1. Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1(2).

2. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1(2), imports of one or more of such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty within the limits set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of paragraph 2 in accordance with the procedure laid down in Article 27. Such detailed rules shall specify in particular:

(a) the products to which additional import duties may be applied,

(b) the criteria for triggering the application of paragraph 2 and in particular the calculation and determination of the various quantities and prices."

(2) The following Article is inserted:

"Article 15a

Articles 15a to 20 inclusive of this Title shall apply only to fresh products falling within CN code ex 0803, excluding plantains.

For the purposes of this Title:

1. 'traditional imports from ACP States' means the quantities of bananas set out in the Annex exported by each ACP State which has traditionally exported bananas to the Community; such bananas shall be referred to as 'traditional ACP bananas';

2. 'non-traditional imports from ACP States' means the quantities of bananas exported by the ACP States which exceed the quantity defined at 1 above; such bananas shall be referred to as 'non-traditional ACP bananas';

3. 'imports from non-ACP third countries' means quantities exported by other third countries; such bananas shall be referred to as 'third-country bananas';

4. 'Community bananas' means bananas produced in the Community;

5. 'to market' and 'marketing' mean placing on the market, not including making the product available to the final consumer."

(3) Article 18 is replaced by the following:

"Article 18

1. A tariff quota of 2.2 million tonnes (net weight) shall be opened each year for imports of third-country bananas and non-traditional ACP bananas.

Within the framework of the tariff quota, imports of third-country bananas shall be subject to a levy of ECU 75 per tonne and imports of non-traditional ACP bananas shall be subject to a zero duty.

For 1994, the tariff quota shall be 2.1 million tonnes (net weight).

Where Community demand determined on the basis of the supply balance referred to in Article 16 increases, the volume of the quota shall be increased in consequence, in accordance with the procedure laid down in Article 27. Any such adjustment shall be made before 30 November preceding the marketing year concerned.

2. By derogation from Article 15(1), non-traditional ACP bananas imported outside the tariff quota referred to in paragraph 1 of this Article shall be subject to a customs duty per tonne equal to the duty referred to in Article 15(1) less ECU 100.

3. The quantities of third-country bananas and non-traditional ACP bananas re-exported from the Community shall not be charged to the quota referred to in paragraph 1.

4. The amounts referred to in this Article shall be converted into national currency at the rate applicable to the products concerned in connection with the common customs tariff."

(4) The following indents are added to Article 20:

"- measures guaranteeing the provenance and origin of bananas imported within the tariff quota provided for in Article 18(1),

- measures necessary to fulfil obligations arising from agreements concluded by the Community in accordance with Article 228 of the Treaty."

(5) Article 23 is replaced by the following:

"Article 22

The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff."

(6) Article 23 is replaced by the following:

"Article 23

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be taken in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 27.

5. This Article shall be applied having regard to the obligations arising from international agreements concluded in accordance with Article 228(2) of the Treaty."

ANNEX XVI

WINE

I. Council Regulation (EEC) No 822/87 of 16 March 1987 (OJ No L 84, 27.3.1987, p.1), as last amended by Regulation (EEC) No 1891/94 (OJ No L 197, 30.7.1994, p.42).

(1) Title IV is replaced by the following:

"Title IV

Trade with third countries

Article 52

1. Imports into the Community of any of the products listed in Article 1(2)(a) and (b) shall be subject to presentation of an import licence. Imports into the Community of any other products listed in Article 1(2) and exports from the Community of any products listed in Article 1(2) may be subject to presentation of an export licence.

2. Licences shall be issued by Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Articles 55 and 56.

Licences shall be valid throughout the Community.

Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; the security shall be forfeited in whole or in part if import or export is not carried out, or is only carried out partially, within that period.

3. The following shall be adopted in accordance with the procedure laid down in Article 83:

(a) the list of products in respect of which export licences are required,

(b) the term of validity of the licences and other detailed rules for the application of this Article.

Article 53

1. Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1.

2. The detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 83. Such detailed rules shall include the provisions necessary for the verification of import prices.

Article 54

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain agricultural products, imports of one or more such products at the rate of duty laid down in the common customs tariff may be subject to payment of an additional import duty under the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations.

2. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 83. Such detailed rules shall specify in particular:

   (a) the products to which additional import duties may be applied,

   (b) the criteria for triggering the application of paragraph 1 and in particular the calculation and determination of the various quantities and prices.

Article 55

Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 83. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 56

1. To the extent necessary to enable the export of:

   (a) products listed in Article 1(2),

   (b) sugars falling within Combined Nomenclature code 1701, glucose and glucose syrup falling within CN subheadings 1702 30 91, 1702 30 99, 1702 40 90 and 1702 90 50, including in the form of products falling within subheadings 1702 30 51 and 1702 30 59, incorporated into the products falling within subheadings 2009 60 11, 2009 60 71, 2009 60 79 and 2204 30 99,

   on the basis of prices for those products on the world market and within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, the difference between those prices and prices in the Community may be covered by export refunds.

2. Refunds shall be the same for the whole Community. They may vary according to destination.

   The refunds referred to in paragraph 1(a) shall be fixed in accordance with the procedure laid down in Article 83. They may be fixed:

   (a) at regular intervals,

   (b) by invitation to tender.

   Refunds fixed at regular intervals may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

3. The amount of the refund referred to in paragraph 1(b) shall be:

   - in the case of raw sugar and white sugar, to the amount of refund for export of these products unprocessed as fixed in accordance with Article 19 of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector and with the provisions adopted for its application,

   - in the case of glucose and glucose syrup, to the amount of the refund for export of these products unprocessed as fixed for each of these products in accordance with Article 17 of Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals and with the provisions adopted for its application.

4. To qualify for the refund referred to in paragraph 1(b), processed products must, on export, be accompanied by a declaration from the applicant indicating the amounts of raw sugar, white sugar, glucose and glucose syrup used in their manufacture.

   The accuracy of this declaration shall be subject to checks by the competent authorities of the Member State concerned.

5. Refunds shall only be granted on application and on presentation of the relevant export licence.

6. The refund applicable to exports of products listed in Article 1 shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day for the destination indicated on the licence.

7. Paragraphs 4 and 5 may be waived in the case of products listed in Article 1 on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 83.

8. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 83.

Article 57

1. To the extent necessary for the proper working of the common organization of the market in wine the use of inward processing arrangements may be prohibited wholly or partially in respect of all or some of the products listed in Article 1(2).

2. The measures taken pursuant to this Article shall be adopted in accordance with the procedure laid down in Article 83.

Article 58

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

Article 59

1. The import of the products referred to in Article 1(2) to which alcohol has been added, with the exception of those products equivalent to products originating in the Community in respect of which such an admixture is permitted pursuant to Article 25(1) and (2), shall be prohibited.

2. Detailed rules for the application of this Article, and in particular the conditions for the equivalence of products, shall be adopted in accordance with the procedure laid down in Article 83.

Article 60

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1(2) is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

   In order to assess whether the situation justifies the application of such measures, the following must be taken into account:

   (a) the quantities in respect of which import licences have been issued or applied for and the figures given in the forecast supply balance;

   (b) where appropriate, the scale of the intervention.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 83.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty.

Article 61

1. Imported wine intended for direct human consumption and described with the aid of a geographical ascription may be eligible, with regard to its marketing in the Community and with the proviso that reciprocity exists, for the control and protection arrangements referred to in Article 16 of Regulation (EEC) No 823/87 for quality wines produced in specified regions.

2. The provision laid down in paragraph 1 shall be implemented by means of agreements with interested third countries to be negotiated and concluded in accordance with the procedure laid down in Article 113 of the Treaty.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 83."

(2) The following is inserted after Article 72:

"Article 72a

1. The Member States shall take all necessary measures to enable interested parties to prevent, on the terms stipulated in Articles 23 and 24 of the Agreement on Trade-related Aspects of Intellectual Property Rights, the use in the Community of a geographical indication attached to the products referred to in Article 1(2)(b) for products not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

For the purposes of this Article, "geographical indications" is taken to mean indications which identify a product as originating in the territory of a third country which is a member of the World Trade Organization or in a region or locality within that territory, in cases where a certain quality, reputation or other given characteristic of the product may be attributed essentially to that geographic place of origin.

2. Paragraph 1 shall apply notwithstanding other specific provisions in Community legislation laying down rules for the designation and

presentation of the products referred to in Article 1(2)(b).

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 83."

(3) Annex VII is deleted.

II. Council Regulation (EEC) No 344/79 of 5 February 1979 (OJ No L 54, 5.3.1979, p.67)

Council Regulation (EEC) No 345/79 of 5 February 1979 (OJ No L 54, 5.3.1979, p.69), as amended by Regulation (EEC) No 2009/81 (OJ No L 195, 18.7.1981, p.6)

The above Regulations are repealed.

ANNEX XVII

TOBACCO

Council Regulation (EEC) No 2075/92 of 30 June 1992 (OJ No L 215, 30.7.1992, p.70)

Title IV is replaced by the following:

"Title IV

Trade with third countries

Article 15

Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1.

Article 16

Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 23. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 16a

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the tariff classification of products covered by this Regulation.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

   (a) the levying of any charge having equivalent effect to a customs duty,

   (b) the application of any quantitative restriction or measure having equivalent effect.

Article 16c

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 23.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

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ANNEX XVIII

HOPS

Council Regulation (EEC) No 1696/71 of 26 July 1971 (OJ No L 175, 4.8.1971, p.1), as last amended by Regulation (EEC) No 3124/92 (OJ No L 313, 30.10.1992, p.1)

Title V is replaced by the following:

"Title V

Trade with third countries

Article 14

Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1.

Article 15

Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 20. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 15a

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the tariff classification of products covered by this Regulation.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

Article 15c

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 20.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

ANNEX XIX

LIVE TREES AND OTHER PLANTS, BULBS, ROOTS AND THE LIKE, CUT FLOWERS AND ORNAMENTAL FOLIAGE

I. Council Regulation (EEC) No 234/68 of 27 February 1968 (OJ No L 55, 2.3.1968, p.1), as last amended by Regulation (EEC) No 3336/92 (OJ No L 336, 20.11.1992, p.1).

Articles 8, 9 and 10 are replaced by the following:

"Article 8

1. Imports into the Community of any of the products listed in Article 1 may be subject to presentation of an import licence.

Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community.

Import licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported during the term of validity of the licence; the security shall be forfeited in whole or in part if import is not carried out, or is only carried out partially, within that period.

2. The term of validity of licences and other detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 14.

Article 9

Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1.

Article 10

Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 14. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 10a

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the tariff classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

   - the levying of any charge having equivalent effect to a customs duty,

   - the application of any quantitative restriction or measure having equivalent effect.

Article 10b

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 14.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

II. Council Regulation (EEC) No 3290/75 of 16 December 1975 (OJ No L 326, 18.12.1975, p.4).

The above Regulation is repealed.

ANNEX XX

SEEDS

I. Council Regulation (EEC) No 2358/71 of 26 October 1971 (OJ No L 246, 5.11.1971, p.1), as last amended by Regulation (EC) No 3375/93 (OJ No L 303, 10.12.1993, p.9).

(1) Articles 5, 6 and 7 are replaced by the following:

"Article 5

1. Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in Article 1.

2. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

Article 6

Tariff quotas for the products listed in Article 1 resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 11. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 7

Save as otherwise provided for in this Regulation or pursuant to a provision thereof, the following shall be prohibited in trade with third countries:

- the levying of any charge having equivalent effect to a customs duty,

- the application of any quantitative restriction or measure having equivalent effect.

Article 7a

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 11.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

(2) Article 8a is deleted.

II. Council Regulation (EEC) No 1578/72 of 20 July 1972 (OJ No L 168, 26.7.1972, p.1), as amended by Regulation (EEC) No 1984/86 (OJ No L 171, 28.6.1986, p.3).

The above Regulation is repealed.

ANNEX XXI

MISCELLANEOUS REGULATIONS

I. Council Regulation (EEC) No 827/68 of 28 June 1968 (OJ No L 151, 30.6.1968, p.16), as last amended by Regulation (EEC) No 794/94 (OJ No L 92, 9.4.1994, p.15).

(1) Articles 2 and 3 are replaced by the following:

"Article 2

1. Unless this Regulation provides otherwise, the rates of duty in the common customs tariff shall apply to the products listed in the Annex.

2. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

3. Save as otherwise provided for in this Regulation or pursuant to a provision thereof, and subject to the obligations arising from international agreements concerning the products listed in the Annex, the following shall be prohibited in trade with third countries:

- the levying of any charge having equivalent effect to a customs duty,

- the application of any quantitative restriction or measure having equivalent effect.

Article 3

Tariff quotas for the products listed in the Annex resulting from agreements concluded in accordance with Article 228 of the Treaty or from any other act of the Council pursuant to the Treaty shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 14. Such detailed rules shall provide for annual quotas, suitably phased over the year, to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product,

(b) recognition of the document used for verifying the guarantees referred to in (a), and

(c) the conditions under which import licences are issued and their term of validity.

Article 3a

1. If, by reason of an increase in imports or exports, the Community market in one or more of the products listed in the Annex is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 6.

5. This Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 228(2) of the Treaty."

(2) Article 6 is replaced by the following:

"Article 6

Where reference is made to this Article, mesures shall be adopted in accordance with the procedures laid down in Article 38 of Regulation No 136/66/EEC and the corresponding articles of the other regulations on the common organizations of agricultural markets."

II. Council Regulation (EEC) No 234/79 of 5 February 1979 (OJ No L 34, 9.2.1979, p.2), as last amended by Regulation (EEC) No 3209/89 (OJ No L 312, 27.10.1989, p.5).

Article 2(2) is deleted.

ANNEX XXII

THE MOST REMOTE REGIONS

I. Council Regulation (EEC) No 3763/91 of 16 December 1991 (OJ No L 356, 24.12.1991, p.1), as amended by Regulation (EEC) No 3714/92 (OJ No L 378, 23.12.1992, p.23).

Article 2(2) is amended as follows:

(a) In the first subparagraph, the part of the sentence which reads: "The levies fixed pursuant to Article 13(1) of Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals" is replaced by:

"The import duties provided for in the common customs tariff".

(b) In the second subparagraph, the words "the levy (exemption)" are replaced by "(exemption from) import duty".

II. Council Regulation (EEC) No 1600/92 of 15 June 1992 (OJ No L 173, 27.6.1992, p.1), as amended by Regulation (EEC) No 3714/92 (OJ No L 378, 23.12.1992, p.23).

(1) In Article 3(1), the words "Levies and/or" are deleted.

(2) In Article 5(1)(a), the words "and/or levies referred to in Article 9 of Council Regulation (EEC) No 805/68 on the common organization of the market in beef and veal" are deleted.

III. Council Regulation (EEC) No 1601/92 of 15 June 1992 (OJ No L 173, 27.6.1992, p.13), as amended by Regulation (EEC) No 3714/92 (OJ No L 378, 23.12.1992, p.23).

(1) In Article 3(1), the words "Levies and/or" are deleted.

(2) In Article 5(1)(a), the words "and/or levies referred to in Article 9 of Council Regulation (EEC) No 805/68" are deleted.

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ANNEX XXIII

PLANT HEALTH LEGISLATION

Council Directive 77/93/EEC of 21 December 1977 (OJ No L 26, 31.1.1977, p.20), as last amended by Directive 94/13/EC (OJ No L 92, 9.4.1994, p.27).

In Article 14(1), the introductory part of the first subparagraph is replaced by the following:

"In accordance with the procedure laid down in Article 16 or, in cases of emergency, in accordance with that laid down in Article 17, provision shall be made for derogations:".

Part 6

Commercial defence

Commercial defence:

Anti-dumping

Proposal for a

Council Regulation (EC)

on protection against dumped imports from countries not members of the European Community

Explanatory Memorandum

A. Introduction

The Uruguay Round trade negotiations, concluded in 1994, have led to a new agreement on anti-dumping which requires to be implemented into Community legislation in order that, as agreed at Marrakech, it can come into effect on 1 January 1995.

The new Agreement, namely, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Agreement), contains new and detailed rules on almost every aspect of anti-dumping and in view of the extent of the changes and to ensure an adequate and transparent implementation of the new rules, it is considered necessary to transpose the language of the Agreement into Community legislation to the extent possible and for this purpose the Agreement, rather than the existing Community legislation, Regulation (EC) No 2423/88[1], has been taken as the basis for the proposed legislation.

Additions to the Agreement are few and they have, for the most part, been restricted to: clarifications where the Agreement is unclear; incorporation of existing provisions on EU's rather unique procedures and decision-making, amended to take account of Court judgements; and the amendment or incorporation of EU specific rules on issues, such as negligible import volumes, absorption, circumvention and Community interest, on which the Agreement is silent, imprecise or where it merely gives an indication of minima.

The Agreement sets tougher standards for the imposition of anti-dumping measures with its new and detailed rules on the calculation of dumping, its increased procedural requirements for initiation and subsequent investigation, its restrictions on the imposition of provisional duties and the restriction on the application of duty absorption rules. Its implementation into Community legislation will, of course, produce the same result.

Moreover, the adoption of these new rules, would at the same time, achieve one of the key objectives set by the Community at the outset of these negotiations, i.e., to improve legal certainty through greater precision, to extend transparency and to increase the right of parties.

In the same vein, some of the new rules, such as on negligible import volumes and Community interest, should further reinforce this effect of transparency and legal certainty. Community industries would have a clear idea of the minimum level of import volumes required both for complaints and final action. Moreover, all interested parties would be made aware of their rights and obligations with regard to the Community interest aspects of these cases, in that a structured framework would be provided for the provision and treatment of information by the authorities.

Another key objective in the Uruguay round negotiations was that measures, once taken, should be more effectively enforced and the suggested amendments on retroactivity, absorption and circumvention are aimed at achieving this objective. In this regard, it should be noted that these enforcement provisions are not new concepts since they are specifically provided for in existing EU legislation and the amendments proposed are simply to make them more workable and/or more compatible with GATT rules.

It should be noted that the proposed text does not include rules on subsidies as this matter shall be dealt with in a separate proposal.

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1 OJ No L 209, 2.9.1988, p.1

B. The main changes

This section details the main areas where the transposition of the text of the Agreement into Community legislation involves changes or clarifications to that text.

1. Start-up costs

a) The problem

This new Code (Article 2.2.1.1) provides for an allowance for the exporter in a start-up situation which, unfortunately, it does not define, e.g. it does not give any guidance on whether start-up refers to a new product or a new factory, or both, or give any guidance with regard to the length of the start-up phase. In considering this problem, it has to be borne in mind that the Agreement already provides for costs, be they high or low, to be allocated in accordance with normal accounting principles, which means that, even without a specific start-up allowance, high start-up costs would still be allocated over a reasonable number of years. Therefore, the situation for which an adjustment has to be made is the low production volume which may prevail during start-up and which may give rise to abnormally high unit costs.

b) The solution

As can be seen in Article 2.5.2 of the proposal, the existence of a start-up situation can be defined relatively easily by providing for it to include all situations where there is significant investment and new production facilities and this would cover both new products or new factories.

However, it is a lot more difficult to define the length of a start-up period. Consideration has been given to specifying a normal sales quantity or setting a precise duration for the length of a start-up phase, e.g. 6 months. Such specific definitions would, however, be controversial and could take no account of differences between products and industries. It also has to be borne in mind that the rules on start-up cannot be defined in isolation from the other Code rules and, in this respect, account has to be taken of the fact that the Agreement states that the normal period for cost recovery for a product is 12 months. Logically, therefore, a start-up phase can only constitute a part of that period of cost recovery and this is made clear in the proposed text. While the above suggestion leaves a certain imprecision, the alternatives are even less palatable. Moreover, it would permit some flexibility to cater for situations which differ from product to product and industry to industry.

2. Normal value for non-market economy countries

a) The problem

The problem here is that with the introduction of time limits, it may not always be possible, in the restricted time available, to find a suitable market economy analogue country which is willing to cooperate. Under the wording of the existing legislation, such circumstances would require the use of Community prices and costs, a situation which should be avoided except in exceptional circumstances. Consequently, provision has to be made to permit the use of other reasonable methods in such situations. Moreover, as the choice of analogue country is sometimes a matter of controversy, the proposal provides for the exporters to be consulted before a final selection is made.

b) The solution

In Article 2.7 of the proposed text, provision is made for normal value to be based "on any reasonable basis" and this would permit the application of methods other than Community prices and costs.
At the same time, the proposed text would require that exporters are given 10 days to comment on the choice of analogue country. Also, mention is made of time limits and, for the choice of analogue country, preference may be given to a country subject to the same investigation though it would, of course, have to fulfil the "reasonable" criteria.

3. Fair comparison

a) The problem

In existing Community legislation, level of trade is dealt with under the section dealing with the establishment of prices (Article 2.3), rather than under fair comparison as is the case in the Agreement. Moreover, as "quantities" are also dealt with in the Agreement under "fair comparison" it is difficult for the EU to continue to deal with the related factors, namely discounts and rebates, under the above-mentioned Article 2.3.

b) The solution

In order to keep strict consistency with the Agreement it is proposed to cater for level of trade under the heading "fair comparison" (Article 2.10) in the draft text. In the same manner, it appears necessary to treat discounts and rebates, alongside quantities, under the same heading.
Furthermore, with the new emphasis on level of trade adjustments, it is no longer rational to grant an adjustment for a fixed overhead like salesmen salaries outside the context of a level of trade adjustment. It is, therefore, proposed to give this adjustment under level of trade, in accordance with the Agreement.

4. Conclusion of investigations

a) The problem

The Agreement (Article 5.10) provides that investigations should normally be concluded within 12 months which conflicts with the 15 months which is envisaged for EU investigations next year

b) The solution

It is proposed to incorporate the provisions of the Agreement into EU legislation (Article 6.9). This shall permit complex cases to be completed in 18 months as set out in the Agreement but, of course, provisional duties would still have to be applied within 9 months.

5. Violation or withdrawal of undertakings

a) The problem

Over the years, there have been continual problems on what to do in cases where exporters have violated or withdrawn undertakings. In such circumstances, it is considered that the Community should be entitled to impose definitive duties based on the findings of the previous investigation, otherwise an exporter which is violating its undertaking could end up in a more advantageous position than its rivals which may be faithfully applying the undertakings. Moreover, carrying out a completely new investigation based on new facts is a time-consuming affair which should only be carried where the circumstances justify it. Violation does not appear to be one of these circumstances.

b) The solution

The new provisions set out in article 8.9 and 8.10 of the draft text would permit the imposition of definitive duties in cases of proven violation or withdrawal though, of course, the exporter's rights would be safeguarded in that he would be entitled to a ask for a review if the circumstances with regard to dumping or injury have changed. Moreover, the change in measures would not generate a new 5 year "sunset" period. Where violation is only suspected, the remedy is a provisional duty while the matter is under investigation.

6. Negligible volume of imports

a) The problem

The Agreement (Article 5.8) fixes negligible import volumes below which action could not normally be taken, i.e., where the dumped imports are less than 3% of total imports and where those less than 3% collectively account for more than 7%. These minima are set in relation to volume of imports rather than in relation to consumption which is the usual Community practice.

b) The solution

Simply to transpose the Agreement provision into EU legislation

7. Retroactivity

a) The problem

The retroactivity provisions in the Agreement (Article 10.4) need to be defined to deal with situations where importers, in order to avoid the impact of provisional duties, import a substantial quantity just prior to the imposition of such duties. The Agreement requires the investigating authority to show a "history of dumping" or "awareness" of dumping and "massive" imports before action can be taken. This problem also exists in the existing Code but because of the imprecise nature of these terms, and the fact that customs have had no means of imposing duties retroactively because the goods were not marked on entry, it was not possible to use the provisions.

b) The solution

It is proposed (Article 10.4 of proposal) that a history of dumping could be considered to be established where it has been taking place over an extended period and "awareness" would be established where the margins alleged or found are high. The requirement "massive" would be achieved where, in addition to the level of the dumped imports during the investigation period, there was a further substantial increase in imports just prior to the imposition of provisional duties. Thus, both combined would satisfy the requirement of the term "massive" in the Agreement.

8. Refund of anti-dumping duties

a) The problem

The Community's calculations for refund claims, concerning importers which are related to exporters, have to be changed to reflect the Agreement provisions on "duty as a cost" as set out in its Article 9.3.3.

To grasp the full implications of the change it should be recalled that, in any dumping calculation, export prices between related parties are deemed to be unreliable because of the relationship. Thus, it is necessary to re-construct a reliable export price and this is done by taking the first independent price charged by the related importer in the Community and deducting from it the costs and profit of the related importer, a process which gives a reliable Community frontier export price.

The implications of the above for related importers in refund claims is that, as clearly specified in existing EU legislation, an anti-dumping duty is one of the costs which must be deducted to arrive at a reliable export price and, therefore, a related importer has to do more than just reflect the cost of the duty in its resale price to obtain a refund. It would also, for example, have to reduce normal values or in fact increase its resale prices by more than the level of the duty. This is equivalent to the treatment given to independent importers, who need to do more than just pay the duty before they can obtain a refund.

The Agreement, however, restricts the application of "duty as a cost" by stating that this principle cannot apply where resale prices and subsequent selling prices in the Community have increased to reflect the cost of the duty.

b) The solution

The simple solution is to incorporate the Agreement provision into Community legislation. The Agreement provision has been added at the end of Article 11 in the proposed text so that the restrictions placed on its use by GATT would be extended to all cases where export prices may have to be reconstructed, e.g. in reviews.

9. Absorption of anti-dumping duties

a) The problem

The existing Community legislation (Article 13.11) has provisions to deal with cases where duties do not have any price effects on the goods subject to measures. These provisions have been criticised because they appear to permit the imposition of additional duties because duties have not led to price increases and without a new calculation of dumping being made. In fact, their underlying rationale is that the lack of a price increase must mean that the exporter is bearing the cost of the duty, an occurrence which automatically increases the margin of dumping.

b) The solution

The draft text includes a radical re-draft in Article 12 of the absorption provisions and they now specifically require a re-assessment of export prices and a new calculation of dumping margins, where measures have had no impact on the prices of the goods subject to duty. In contrast to the existing provisions they also permit an investigation to take account of changes in the normal values where evidence of this is produced by the exporter.

In common with the refund provisions, duties cannot, in contrast to the position now, be treated as a cost incurred between importation and resale in cases of a re-construction of export prices, where measures have impacted on prices or where there is legitimate reason why prices have not increased following the measures.

The new provisions may be slightly less wide-ranging than those set out in Article 13.11 of existing legislation but they can now be considered safe in that they are compatible with GATT.

10. Circumvention

a) The problem

Circumvention can occur in several forms ranging from assembly operations, in the importing country or in third countries, to more direct instances of duty avoidance, such as wrong origin declarations, imports of knockdown kits and slightly altered products, etc. The Community has encountered all these forms of circumvention in the recent past, e.g. cameras, bicycles and compact discs and, as such, there appears to be an immediate problem which requires attention.

At present, however, our existing circumvention legislation (Article 13.10), which only deals with assembly operations in the Community, has been criticised by a GATT panel. Moreover, origin rules are proving increasingly inadequate to deal even with cases of blatant circumvention, such as is apparently occurring, or has occurred, in the above-mentioned cases. Also, the result of the Uruguay does not give any guidance. Negotiations in this area failed and there is nothing in the Agreement, though Marrakech produced a Ministerial Declaration on this subject which appears, for the first time, to permit individual Members to deal with problem unilaterally, pending a multilateral solution via

the GATT Anti-Dumping Committee. In this respect, the Community has always made it clear that its acceptance of the above-mentioned panel report was conditional on a satisfactory solution in the Uruguay Round, a condition that has not been realised.

b) The solution

New circumvention provisions are set out in Article 13 of the proposal. The classic circumvention provisions, i.e. assembly in the importing country or a third country, are to the degree possible, modelled on the importing country provision set out in the "Dunkel Draft" of December 1991, which was later dropped in the last days of the negotiations in December 1993, while the rules set out for other forms of circumvention have been inspired by concepts set out in customs law.

(i) Classic circumvention

The proposal maintains the existing Community rules on the percentage of parts which must originate in the exporting country before action can be taken, i.e. at least 60% as compared to 70% in the Dunkel Draft. These levels equate to those set out in Community legislation and there seems little reason to change them as they have proved workable for all parties concerned when they have been applied. Moreover, it would be unwise to lower the percentages given that this would undermine the EU's negotiating position in Geneva, when the problem of circumvention comes up for negotiation.

Some of the more burdensome and, in some cases, illogical conditions contained in the Dunkel Draft, including an additional dumping test, have been omitted. The aim is to combat the circumvention of existing measures quickly and not to carry out lengthy de novo investigations of dumping and injury. However, the proposal maintains the "Dunkel" provision that measures may only be extended where their remedial effects are being undermined and this will ensure that these provisions are only used in truly deserving cases.

(ii) Other forms of circumvention

The proposed draft would also permit action to be taken against other forms of circumvention which, nowadays, are probably more important than classic circumvention in terms of undermining measures. This would allow quick investigation of changes in the pattern of trade which coincide with anti-dumping investigations, to check whether such practices have been set up to circumvent measures. In the same way as for classic circumvention, an injury test would be undertaken and no measures could be applied unless it was shown that the remedial effects of the measures were being undermined. This is a very important restriction which would limit the use of this provision.

The provisions may appear wide-ranging, in that investigations can be opened following distinct changes in the pattern of trade which coincide with anti-dumping action. It should be noted, however, that measures could only be imposed under narrowly defined circumstances, with the underlying rationale stemming from the Customs Code, which does not grant legal recognition to acts whose only economic justification is to avoid payment of duties. It could be argued that these problems should be dealt with by customs authorities but this would not be practical or effective for three reasons;

(i) customs do not appear to have the means, or the necessary legal provisions, to carry these investigations, certainly not as quickly as would be necessary; (ii) the circumvention provisions would need to cover undertakings which are outside the remit of customs; and most importantly (iii) these provisions require injury investigations to be carried out and this can only be done by the anti-dumping services of the Commission.

Provisions to deal with these other forms of circumvention are important for another reason. They are almost always practised via third countries and, unless effective measures are taken to deal with them, there will always be an incentive for investment to go to these other third countries rather than the Community.

(iii) How these provisions will operate in practice

A circumvention investigation can only be opened following receipt of a complaint by the Community industry and appraisement would be withheld, or imports would be registered, pending the outcome of the investigation which would be completed within a time limit of 9 months.

The withholding of appraisement, or registration of imports, which is a mechanism under which neither cash deposits or guaranties are collected but the imports are recorded, is necessary in order to be able to impose and collect duties at the Community frontier, in accordance with the panel report, should circumvention be found.

The proposals have been deliberately left open with regard to certain aspects of product coverage, both for initiation and the imposition of measures as it considered that questions relating to product or country coverage can only be addressed on a case-by-case basis. In any event, once a circumvention investigation is initiated, the proposal envisages a flexible certificate system under which certain products, parts or exporters could be exempted from the scope of the investigation, from the moment it becomes clear that they should be so exempted. These certificates could easily be obtained by traders from the authorities in order to avoid payment of duties. In fact, this type of certificate system is not new to customs as they operate them in other areas and they are considered indispensable here to be able to comply with the findings of the GATT panel.

11. Suspension of anti-dumping measures

a) The problem

There are times during the application of measures where market conditions may indicate that such measures are temporarily inappropriate, yet at the moment there is no way of dealing with this problem short of lifting the measures altogether, and this is something that cannot easily be done at present if it is suspected that the lack of injury is only temporary.

b) The solution

Provide specifically for such an eventuality in the legislation and this is done in its Article 14.4. The ability to place measures in suspension, which would only take place after consultation of the Community industry, would be of great value and would mean that duties are only collected where necessary. The suspension would be for a limited period and measures could be re-instated swiftly should the need arise.

12. Withholding of appraisement (Registration of imports)

a) The problem

This concept of withholding of appraisement is one of the important innovations introduced by the Agreement in its Article 7. It is a mechanism under which imports would not be subject to either cash deposit or guarantee but they would be recorded by customs until a decision was taken on the matter which led to such withholding, e.g. investigations for new exporters, retroactivity and circumvention. The mechanics of the system would be identical to those used for provisional measures, except that importers would be in a better position because they would not pay cash or have to give guarantees on importation. Customs may well have some reservations about not being able to require guarantees but that is not a sufficient reason not to apply a concept which is now firmly embedded in the Agreement and which is considered absolutely essential for circumvention.

b) The solution

The solution is simple and it is to cater for a system of withholding of appraisement as set out in Article 14.5 of the proposal. Note that the term "withholding of appraisement" has been substituted by the more understandable term "registration of imports" in the text.

13. Community interest

The proposal contains an Article 21 which would formalise the way in which the Community interest is to be taken into account in anti-dumping investigations. This would have the advantage that it would permit the examination of this aspect to be carried out within a structured framework which is considered to be absolutely essential when time limits come into operation.

Paragraph 1 of the above-mentioned Article sets out the principles relating to Community interest and an attempt has been made to highlight the two basic interests which have to be taken into account, i.e. the need, on the one hand, to eliminate injurious dumping and restore effective competition and, on the other hand, to grant certain rights to users and consumers. This will, for the first time, give users and consumers a comprehensive set of rights, under which they will be entitled to provide information, to see information provided by other parties and to comment on it, to have their information taken into account and presented to Member States, and to have proper disclosure rights for both provisional and definitive measures.

However, when rights are obtained, obligations inevitably also arise and these are inherent in the time limits within which all parties have to work and in the fact that information presented has to be substantiated to a sufficient degree.

C. Conclusion

In order to implement the 1994 Anti-Dumping agreement as concluded as a result of the Uruguay Round of multilateral trade negotiations, and to take account of the issues set out in section B above, the Commission submits to the Council.

- a proposal to replace the Community's basic anti-dumping legislation.

Proposal for implementation of Uruguay Round results on Anti-Dumping

[redacted] Regulation

[Underlining indicates text which differs from new Agreement or existing legislation]

Council Regulation (EC) No

on protection against dumped imports from countries not members of the European Community

The Council of the European Union,

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

Having regard to the Regulations establishing the common organisation of agricultural markets and the Regulations adopted under Article 235 of the Treaty applicable to goods manufactured from agricultural products, and in particular the provisions of those Regulations which allow for derogation from the general principle that protective measures at frontiers may be replaced solely by the measures provided for in those Regulations,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European parliament,

Whereas, by Regulation (EC) No 2423/88 ([1]), as amended by Regulation (EC) No 521/94([2]) and Regulation (EC) No 522/94 ([3]), the Council adopted common rules for protection against dumped or subsidised imports from countries which are not members of the European Economic Community;

Whereas, these rules were adopted in accordance with existing international obligations, in particular those arising from Article VI of the General Agreement on Tariffs and Trade, from the Agreement on Implementation of Article VI of the GATT (1979 Anti-Dumping Code) and from the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT (Code on Subsidies and Countervailing Duties);

Whereas, the multilateral trade negotiations concluded in 1994 have led to new Agreements on the implementation of Article VI of GATT and it is therefore appropriate to amend the Community rules in the light of these new Agreements; whereas it is also desirable, in the light of the different nature of the new rules for dumping and subsidies, to have separate Community rules in these two areas and, consequently, the new rules on protection against subsidies and countervailing duties are dealt with in a separate Regulation;

Whereas, in applying these rules it is essential, in order to maintain the balance of rights and obligations which the GATT Agreement establishes, that the Community takes account of their interpretation by the Community's major trading partners;

Whereas, the new agreement on dumping , namely, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (1994 Anti-Dumping Agreement), contains new and detailed rules, in particular, with regard to the calculation of dumping, procedures for initiation and the subsequent investigation, including the establishment and treatment of the facts, the imposition of provisional measures, the imposition and collection of anti-dumping duties, the duration and review of anti-dumping measures and the public disclosure of information relating to anti-dumping investigations; whereas, in view of the extent of the changes and to ensure an adequate and transparent implementation of the new rules, it is appropriate to transpose the language of the new agreements into Community legislation to the extent possible;

([1]) OJ No L 209, 2.8.1988, p. 1.
([2]) OJ No L 66, 10.3.1994, p. 7.
([3]) OJ No L 66, 10.3.1994, p. 10.

Whereas, it is desirable to lay down clear and detailed rules on the calculation of normal value, in particular that in all cases it should be based on representative sales in the ordinary course of trade in the exporting country; whereas, it is expedient to define the circumstances in which domestic sales may be considered to be made at a loss and disregarded and that recourse may be made to remaining sales or constructed value or sales to a third country; whereas it is also desirable to provide for a proper allocation of costs, including in start-up situations, where it is also appropriate to lay down guidance on the definition of start-up and the extent and method of allocation; whereas it is also necessary, when constructing normal value, to indicate the methodology that shall be applied to determine the amounts for selling, general and administrative costs and the profit that shall be included in such value.

Whereas, when determining normal value for non-market economy countries, it appears prudent to set out rules of procedure for choosing the appropriate market economy third country that shall be used for such purpose and, where it is not possible to find a suitable third country, to provide that normal value may be established on any reasonable basis.

Whereas, it is expedient to define the export price and to enumerate the adjustments which shall be made in those cases where a reconstruction of this price from the first open-market price is deemed necessary;

Whereas, for the purpose of ensuring a fair comparison between export price and normal value, it is advisable to list the factors which may affect prices and price comparability and to lay down specific rules on when and how the adjustments shall be made, including the fact that any duplication of adjustments has to be avoided; whereas, it is also necessary to provide that comparison may be made using average prices though individual export prices may be compared to an average normal value where the former vary by customer, region or time period;

Whereas, it is desirable to lay down clear and detailed guidance on the factors which may be relevant for the determination of whether the dumped imports have caused material injury or are threatening to cause injury; whereas, in demonstrating that the volume and price levels of the imports concerned are responsible for injury sustained by a Community industry, attention should be given to the effect of other factors and in particular existing market conditions in the Community.

Whereas, it is advisable to define the term "Community industry" and provide that parties related to exporters may be excluded from such industry and to define the term "related"; whereas, it is also necessary to provide for anti-dumping action to be taken on behalf of producers in a region of the Community and to lay down guidelines on the definition of such a region.

Whereas, it is necessary to set down who may lodge an anti-dumping complaint, including the extent to which it should be supported by the Community industry, and the information on dumping, injury and causality which such complaint should contain; whereas, it is also expedient to specify the procedures with regard to the rejection of complaints or the initiation of proceedings.

Whereas, it is necessary to lay down how interested parties shall be given notice of the information which the authorities require, ample opportunity to present all relevant evidence and a full opportunity for the defence of their interests; whereas, it is also desirable to set out clearly the rules and procedures to be followed during the investigation, in particular that interested parties have to make themselves known, present their views and submit information within specified time limits, if such views and information are to be taken into account; whereas, it is also appropriate to set out the conditions under which an interested party may have access to, and comment on, information presented by other interested parties; whereas, there should also be cooperation between the Member States and the Commission with regard to the collection of information.

Whereas, it is necessary to lay down the conditions under which provisional duties may be imposed, including that they may not be imposed sooner than 60 days from initiation and no later than 9 months from initiation; whereas, for administrative reasons, it is also necessary to provide that such duties may in all cases be imposed by the Commission either directly for a nine month period or in two stages of six and three months.

Whereas, it is necessary to specify procedures for the acceptance of undertakings which eliminate the dumping and injury instead of the imposition of provisional or definitive duties; whereas, it is also appropriate to lay down the consequences of violation or withdrawal of undertakings and that provisional duties may be imposed in cases of suspected violation or where further investigation is necessary to complete the findings; whereas, in accepting undertakings, care should be taken that the proposed undertakings, and their enforcement, do not lead to anti-competitive behaviour.

Whereas, in order to reflect the provisions of the Agreement, it is necessary to provide for the termination of cases, with or without measures, normally within twelve months, and in no case later than eighteen months, from the initiation of the investigation; whereas, investigations or proceedings should be terminated where the dumping is de-minimis or the injury is negligible and it is appropriate to define these terms; whereas, where measures are to be imposed, it is necessary to provide for the termination of investigations and to lay down that measures should be less than the margin of dumping if such lesser amount would remove the injury, as well as to specify the method of calculating the level of measures in cases of sampling.

Whereas, it is necessary to provide for the retroactive collection of provisional duties as deemed appropriate and to define the circumstances which may trigger the retroactive application of duties to avoid the undermining of the definitive measures to be applied; whereas it is also necessary to provide that duties may be applied retroactively in cases of violation or withdrawal of undertakings.

Whereas, it is necessary to provide that measures shall lapse after five years unless a review investigation indicates that they should be maintained; whereas, it is also necessary to provide, in cases where sufficient evidence is submitted of changed circumstances, for interim reviews or for investigations to determine whether refunds of anti-dumping duties are warranted; whereas it is also appropriate to lay down that in any re-calculation of dumping which necessitates a reconstruction of export prices, duties shall not be treated as a cost incurred between importation and resale where the said duty is being reflected in the prices of the products subject to measures in the Community.

Whereas, it is necessary to specifically provide for the re-assessment of export prices and dumping margins where the duty is being absorbed by the exporter through a form of compensatory arrangement and the measures are not being reflected in the prices of the products subject to measures in the Community.

Whereas, the 1994 Anti-Dumping Agreement does not contain provisions with regard to the circumvention of anti-dumping measures, though a separate GATT Ministerial Decision recognises circumvention as a problem and has referred it to the GATT Anti-dumping Committee for resolution; whereas given the failure of the multilateral negotiations so far and pending the outcome of the referral to the GATT Anti-Dumping Committee, it is necessary to introduce new provisions into Community legislation to deal with practices, including simple assembly in the Community or a third country, which have as their main aim the circumvention of anti-dumping measures.

Whereas, it is expedient to permit the suspension of anti-dumping measures where there is a temporary change in market conditions which make the continued imposition of such measures temporarily inappropriate.

Whereas, it is necessary to provide that imports under investigation may be made subject to registration upon importation to enable measures to be subsequently applied against such imports.

Whereas, to ensure a proper enforcement of measures, it is necessary that Member States monitor and report to the Commission the import trade of products subject to investigation and subject to measures and the amount of duties collected under this regulation.

Whereas, it is necessary to provide for consultations of an Advisory Committee at regular and specified stages of the investigation; whereas, the committee shall consist of representatives of Member States with a representative of the Commission as chairman.

Whereas, it is expedient to provide for verification visits to check information submitted on dumping and injury, though such visits should be dependent on proper replies to questionnaires being received.

Whereas, it is essential to provide for sampling in cases where the number of parties or transactions are large in order to permit a timely completion of investigations.

Whereas, it is necessary to provide that for parties who do not cooperate satisfactorily other information may be used to establish findings and such information may be less favourable to the party than if it had cooperated.

Whereas, provision should be made for the treatment of confidential information so that business secrets are not divulged.

Whereas, it is essential that provision is made for the proper disclosure of the essential facts and considerations to parties which qualify for such treatment and that such disclosure is made, with due regard to the decision-making process in the Community, within a time period which permits parties to defend their interests.

Whereas, it is prudent to provide for an administrative system under which arguments can be presented in relation to whether measures are in the Community interest, including the consumer interest, and to lay down the time periods within which such information has to be presented as well as the disclosure rights of the parties concerned.

Whereas, it is imperative to link the implementation of time limits for the lodging of complaints, the initiation of proceedings and the imposition of provisional duties to the establishment of the necessary administrative structure within the Commission's services; whereas, the Council, therefore, should specify, in a decision to be adopted by qualified majority no later than 1 April 1995, when these time limits shall apply.

Has Adopted This Regulation:

Article 1

Principles

1.1 An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury.

1.2 A product is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country.

1.3 The exporting country shall normally be the country of origin. However, it may be an intermediate country, except where, for example, the products are merely trans-shipped through that country, or the products concerned are not produced in that country, or there is no comparable price for them in that country.

1.4 For the purpose of this Regulation, the term "like product" shall be interpreted to mean a product which is identical, i.e., alike in all respects to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Article 2

Determination of dumping

A. Normal value

2.1 The normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country.

2.1.1 Where the producer or exporter in the exporting country neither produces nor sells the like product the normal value may be established on the basis of prices of other sellers or producers.

2.1.2 Prices between parties which appear to be associated or to have a compensatory arrangement with each other may be considered as being in the ordinary course of trade and may be used to establish normal value only if it is determined that they are not affected by the relationship.

2.2 Sales of the like product destined for domestic consumption, shall normally be used to determine normal value if such sales volume constitute 5 per cent or more of the sales volume of the product under consideration to the Community. However, a lower volume of sales may be used when, for example, the prices charged are considered representative for the market concerned.

2.3 When there are no or insufficient sales of the like product in the ordinary course of trade, or where because of the particular market situation such sales do not permit a proper comparison, the normal value of the like product shall be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or based on the export prices, in the ordinary course of trade, to an appropriate third country, provided that these prices are representative.

2.4 Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below per unit (fixed and variable) costs of production plus selling, general and administrative costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if it is determined that such sales are made within an extended period of time in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time.

2.4.1 If prices which are below costs at the time of sale are above weighted average costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

2.4.2 The extended period of time should normally be one year but shall in no case be less than six months and sales below per unit cost shall be considered to be made in substantial quantities within such a period when it is established that the weighted average selling price is below the weighted average unit cost, or that the volume of sales below unit cost is not less than 20 per cent of sales being used to determine normal value.

2.5 For the purpose of Article 2, Section A, costs shall normally be calculated on the basis of records kept by the party under investigation, provided that such records are in accordance with the generally accepted accounting principles of the country concerned and it is shown that the records reasonably reflect the costs associated with the production and sale of the product under consideration.

2.5.1 Consideration shall be given to evidence submitted on the proper allocation of costs, provided that it is shown that such allocations have been historically utilised. In the absence of a more appropriate method, preference shall be given to the allocation of costs on the basis of turnover. Unless already reflected in the cost allocations under this paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production.

2.5.2 Where the costs for part of the period for cost recovery are affected by the use of new production facilities requiring substantial additional investment and by low capacity utilisation rates, which are the result of start-up operations which take place within or during part of the investigation period, the average costs for the start-up phase shall be those applicable, under the above-mentioned allocation rules, at the end of such a phase, and shall be included at that level, for the period concerned, in the weighted average costs referred to in paragraph 4.1. The length of a start-up phase shall be determined in relation to the circumstances of the producer or exporter concerned. but shall not exceed an appropriate initial portion of the period for cost recovery. For this adjustment to costs applicable during the investigation period, information relating to a start-up phase which extends beyond that period shall be taken into account in so far as it is submitted prior to verification visits and within three months of the initiation of the investigation.

2.6 For the purpose of Article 2, Section A, the amounts for selling, general and administrative costs and for profits shall be based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined, on the basis of:

(i) the weighted average of the actual amounts determined for other exporters or producers subject to investigation in respect of production and sales of the like product, or individual types thereof, in the domestic market of the country of origin;

(ii) the actual amounts applicable to production and sales, in the ordinary course of trade, of the same general category of products for the exporter or producer in question in the domestic market of the country of origin;

(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realised by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

2.7 In the case of imports from non-market economy countries and, in particular, those to which Regulation (EC) No 519/94[4]) applies, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where these are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted, if necessary, to include a reasonable profit margin.

2.7.1 For the purpose of this paragraph, an appropriate market economy third country shall be selected in a not unreasonable manner, with due account taken of any reliable information made available at the time of selection. Account shall also be taken of time limits and, where appropriate, a market economy third country which is subject to the same investigation shall be used.

2.7.2 The parties to the investigation shall be informed shortly after initiation of the market economy third country envisaged and shall be given 10 days to comment.

([4]) OJ No L 67, 10.3.1994, p. 89.

B. Export price

2.8 The export price shall be the price actually paid or payable for the product when sold from the exporting country to the Community.

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

2.9.1 In these cases, adjustment for all costs, including duties and taxes, incurred between importation and resale, and for profits accruing, shall be made to establish a reliable export price, at the Community frontier level.

2.9.2 The costs for which adjustment shall be made include those normally borne by an importer but paid by any party, either in or outside the Community, which appears to be associated or to have a compensatory arrangement with the importer or exporter, including: usual transport, insurance, handling, loading and ancillary costs; customs duties, any anti-dumping duties, and other taxes payable in the importing country by reason of the importation or sale of the goods; and a reasonable margin for selling, general and administrative costs and profit.

C. Comparison

2.10 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade and in respect of sales made at as nearly as possible the same time and with due account taken of other differences. Where the normal value and the export price as established are not on such a comparable basis due allowance, in the form of adjustments, shall be made in each case, on its merits, for differences in factors which are claimed, and demonstrated to affect prices and, therefore, price comparability. Any duplication when making adjustments shall be avoided, in particular in relation to discounts, rebates, quantities and level of trade. When the specified conditions are met, the factors for which adjustments can be made are listed hereafter:

(a) Physical characteristics

An adjustment shall be made for differences in the physical characteristics of the product concerned. The amount of the adjustment shall correspond to a reasonable estimate of the market value of the difference.

(b) Import charges and indirect taxes

An adjustment shall be made to normal value for an amount corresponding to any import charges or indirect taxes borne by the like product and by materials physically incorporated therein, when destined for consumption in the exporting country and not collected or refunded in respect of the product exported to the Community.

(c) Discounts, rebates and quantities

An adjustment shall be made for differences in discounts and rebates, including those given for differences in quantities, if these are properly quantified and are directly linked to the sales under consideration. An adjustment may also be made for deferred discounts and rebates if the claim is based on consistent practice in prior periods, including compliance with the conditions required to qualify for the discount or rebates.

(d) Level of trade

An adjustment for differences in levels of trade shall be granted where, in relation to the distribution chain in both markets, it is shown that the export price, including a constructed export price, is at a different level of trade to the normal value and the difference has affected price comparability which is demonstrated by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market of the exporting country. The amount of the adjustment shall be based on the market value of the difference.

(e) Transport, insurance, handling, loading, and ancillary costs

An adjustment shall be made for differences in the directly related costs incurred for conveying the product concerned from the premises of the exporter to an independent buyer, where such costs are included in the prices charged. These costs comprise transport, insurance, handling, loading and ancillary costs.

(f) Packing:

An adjustment shall be made for differences in the respective, directly related costs of the packing for the product concerned.

(g) Credit

An adjustment shall be made for differences in the cost of any credit granted for the sales under consideration, provided that it is a factor taken into account in the determination of the prices charged.

(h) After-sales costs

An adjustment shall be made for differences in the direct costs of providing warranties, guarantees, technical assistance and services, as provided for by law and/or in the sales contract.

(i) Commissions

An adjustment shall be made for differences in commissions paid in respect of the sales under consideration.

(j) Currency conversions

When the price comparison requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Normally, the date of sale should be the date of invoice but the date of contract, purchase order or order confirmation, may be used if these more appropriately establish the material terms of sale. Fluctuations in exchange rates shall be ignored and exporters shall be granted 60 days to reflect a sustained movement in exchange rates during the period of investigation.

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D. Dumping margin

2.11 Subject to the relevant provisions governing fair comparison, the existence of margins of dumping during the investigation period shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions to the Community or by a comparison of individual normal values and individual export prices to the Community on a transaction to transaction basis. However, a normal value established on a weighted average basis may be compared to prices of all individual export transactions to the Community, if there is a pattern of export prices which differ significantly among different purchasers, regions or time periods and the methods specified in the first sentence of this paragraph would not reflect the full degree of dumping being practised. This paragraph shall not preclude the use of sampling in accordance with Article 17.

2.12 The dumping margin shall be the amount by which the normal value exceeds the export price. Where dumping margins vary, a weighted average dumping margin may be established.

Article 3

Determination of Injury

3.1 Under this Regulation, the term "injury" shall, unless otherwise specified, be taken to mean material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

3.2 A determination of injury shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the Community market for like products, and (b) the consequent impact of these imports on the Community industry.

3.3 With regard to the volume of the dumped imports, consideration shall be given as to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Community. With regard to the effect of the dumped imports on prices, consideration shall be given as to whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the Community industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3.4 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports shall be cumulatively assessed only if it is determined that (a) the margin of dumping established in relation to the imports from each country is more than de minimis as defined in Article 9.3 and that the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

3.5 The examination of the impact of the dumped imports on the Community industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry including: the fact that an industry is still in the process of recovering from the effects of past dumping or subsidisation, the magnitude of the actual margin of dumping, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity; factors affecting Community prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.6 It must be demonstrated, from all the relevant evidence presented in relation to paragraph 2, that the dumped imports are causing injury within the meaning of this Regulation. Specifically, this shall entail a demonstration that the volume and/or price levels identified under paragraph 3 are responsible for an impact on the Community industry as provided for in paragraph 5, and that this impact exists to a degree which enables it to be classified as material.

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3.7 Known factors other than the dumped imports, which at the same time are injuring the Community industry shall also be examined to ensure that injury caused by these other factors is not attributed to the dumped imports under paragraph 6. Factors which may be considered in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and Community producers, developments in technology and the export performance and productivity of the Community industry.

3.8 The effect of the dumped imports shall be assessed in relation to the production of the Community industry of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

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

3.9.1 In making a determination regarding the existence of a threat of material injury, consideration should be given to, inter alia, such factors as:

(i) a significant rate of increase of dumped imports into the Community market indicating the likelihood of substantially increased imports;

(ii) sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to the Community, taking into account the availability of other export markets to absorb any additional exports;

(iii) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would likely increase demand for further imports; and

(iv) inventories of the product being investigated.

3.9.2 No one of the factors listed above by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

Article 4

Definition of Community industry

4.1 For the purposes of this Regulation, the term " the Community industry" shall be interpreted as referring to the Community producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion, as defined in Article 5.4, of the total Community production of those products, except that

(i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "the Community industry" may be interpreted as referring to the rest of the producers;

(ii) in exceptional circumstances the territory of the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Community. In such circumstances, injury may be found to exist even where a major portion of the total Community industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

4.2 For the purpose of paragraph 1, producers shall be considered to be related to exporters or importers only if (a) one of them directly or indirectly controls the other: or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph. one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

4.3 Where the Community industry has been interpreted as referring to the producers in a certain region, the exporters shall be given an opportunity to offer undertakings pursuant to Article 8 in respect of the region concerned. If an adequate undertaking is not offered promptly or the situations set out in Article 8.9 and Article 8.10 apply, a provisional or definitive duty may be imposed in respect of the Community as a whole. In such cases, the duties may, if practicable, be limited to specific products or exporters.

4.4 The provisions of Article 3.8 shall be applicable to this Article.

Article 5

Initiation of proceedings

5.1 Except as provided for in Article 5.6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry.

5.1.1 The complaint may be submitted to the Commission, or a Member State, which shall forward it to the Commission. The Commission shall send Member States a copy of any complaint it receives. ***The complaint shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission.***

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

5.2 A complaint under paragraph 1 shall include evidence of dumping, injury and a causal link between the allegedly dumped imports and the alleged injury. The complaint shall contain such information as is reasonably available to the complainant on the following:

(i) identity of the complainant and a description of the volume and value of the Community production of the like product by the complainant. Where a written complaint is made on behalf of the Community industry, the complaint shall identify the industry on behalf of which the complaint is made by a list of all known Community producers of the like product (or associations of Community producers of the like product) and, to the extent possible, a description of the volume and value of Community production of the like product accounted for by such producers;

(ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the Community;

(iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product on the Community market and the consequent impact of the imports on the Community industry, as demonstrated by relevant factors and indices having a bearing on the state of the Community industry, such as those listed in Article 3.3 and 3.5.

5.3 The Commission shall, to the degree possible, examine the accuracy and adequacy of the evidence provided in the complaint to determine whether there is sufficient evidence to justify the initiation of an investigation.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless it has been determined, on the basis of an examination of the degree of support for, or opposition to, the complaint expressed by Community producers of the like product, that the complaint has been made by or on behalf of the Community industry. The complaint shall be considered to have been made "by or on behalf of the Community industry" if it is supported by those Community producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25 per cent of total production of the like product produced by the Community industry.

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicising of the complaint for the initiation of an investigation. However, after receipt of a properly documented complaint and before proceeding to initiate an investigation, the government of the exporting country concerned shall be notified.

5.6 If in special circumstances, it is decided to initiate an investigation without having received a written complaint by or on behalf of the Community industry for the initiation of such investigation, this shall be done on the basis of sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.

5.7 The evidence of both dumping and injury shall be considered simultaneously in the decision whether or not to initiate an investigation. A complaint shall be rejected where there is insufficient evidence of either dumping or of injury to justify proceeding with the case. In this respect, the imports concerned shall normally be regarded as negligible if the volume of dumped imports from a particular country accounts for less than 3 per cent of imports of the like product in the Community unless countries which individually account for less than 3 per cent of the imports of the like product in the Community collectively account for more than 7 per cent of imports of the like product in the Community.

5.8 The complaint may be withdrawn prior to initiation, in which case it shall be considered not to have been lodged.

5.9 Where, after consultation, it is apparent that there is sufficient evidence to justify initiating proceedings the Commission ***shall initiate proceedings within one month of the lodging of the complaint*** and publish a notice in the Official Journal of the European Communities. Where insufficient evidence has been presented, the complainant shall, after consultation, be so informed ***within one month of the date on which the complaint is lodged with the Commission.***

5.10 The notice of initiation of the proceedings shall announce the initiation of an investigation, indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the ***periods*** within which interested parties may make themselves known, present their views in writing ***and submit information, if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties*** may apply to be heard by the Commission in accordance with ***Article 6.5.***

5.11 The Commission shall advise the exporters and importers known to it to be concerned, as well as representatives of the exporting country and the complainants, of the initiation of the proceedings and, with due regard to the protection of confidential information, provide the full text of the written complaint received under Article 5.1 to the known exporters, and to the authorities of the exporting country and make it available, upon request, to other interested parties involved. Where the number of exporters involved is particularly high, the full text of the written complaint should instead be provided only to the authorities of the exporting country or to the relevant trade association.

5.12 An anti-dumping investigation shall not hinder the procedures of customs clearance.

Article 6

The investigation

A. Information and procedure

6.1 Following the initiation of the proceedings, the Commission, acting in co-operation with the Member States, shall commence an investigation at Community level. Such investigation shall cover both dumping and injury and these shall be investigated simultaneously. For the purpose of a representative finding, an investigation period shall be selected which, in the case of dumping shall, normally, cover a period of not less than six months immediately prior to the initiation of the proceedings. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

6.2 Parties receiving questionnaires used in an anti-dumping investigation shall be given at least thirty days for reply. The time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the exporter or transmitted to the appropriate diplomatic representative of the exporting country. An extension to the thirty day period may be granted, taking due account of the time limits of the investigation and provided the party gives a good reason, in terms of its particular circumstances, for such extension.

6.3 The Commission may request Member States to supply information and Member States shall take whatever steps are necessary in order to give effect to such requests. They shall send to the Commission the information requested together with the results of all inspections, checks or investigations carried out. Where this information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to the Member States, provided it is not confidential, in which case a non-confidential summary shall be forwarded.

6.4 The Commission may request Member States to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers, and to carry out investigations in third countries, provided the firms concerned give their consent and the government of the country in question has been officially notified and raises no objection. Member States shall take whatever steps are necessary in order to give effect to such requests from the Commission. Officials of the Commission shall be authorised, if the Commission or a Member State so requests, to assist the officials of Member States in carrying out their duties.

6.5 The interested parties, which have made themselves known in accordance with Article 5.10, may be heard if they have, within the period prescribed in the notice published in the Official Journal of the European Communities, made a written request for a hearing showing that they are an interested party likely to be affected by the result of the proceedings and that there are particular reasons why they should be heard.

6.6 Opportunities shall, on request, be provided for the importers, exporters, representatives of the government of the exporting country and the complainants, which have made themselves known in accordance with Article 5.10, to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Oral information provided under this paragraph shall be taken into account in so far as it is subsequently reproduced in writing.

6.7 The complainants, importers, exporters, users and consumer organisations, which have made themselves known in accordance with Article 5.10, as well as the representatives of exporting country may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Community or its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 19, and that it is used in the investigation. Such parties may respond to such information and their comments should be taken into consideration, to the extent that they are sufficiently substantiated in the response.

6.8 Except in the circumstances provided for in Article 18, the information supplied by interested parties and upon which findings are based, shall be examined for accuracy to the degree possible.

6.9 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

Article 7

Provisional measures

7.1 Provisional measures may be applied if proceedings have been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with Article 5.10, a provisional affirmative determination has been made of dumping and consequent injury to the Community industry, and the Community interest calls for intervention to prevent such injury. ***The provisional measures shall be imposed no sooner than 60 days from the initiation of the proceedings but no later than nine months from the initiation of the proceedings.***

7.2 The amount of the provisional anti-dumping duty shall not exceed the margin of dumping as provisionally established but it should be less than the margin, if such lesser duty would be adequate to remove the injury to the Community industry.

7.3 Provisional measures shall take the form of a security and the release of the products concerned for free circulation in the Community shall be conditional upon the provision of such security.

7.4 The Commission shall take provisional action after consultation or, in cases of extreme urgency, after informing the Member States. In this latter case, consultations shall take place 10 days, at the latest, after notification to the Member States of the action taken by the Commission.

7.5 Where a Member State requests immediate intervention by the Commission and the conditions of Article 7.1 are met, the Commission shall within a maximum of five working days of receipt of the request, decide whether a provisional anti-dumping duty should be imposed.

7.6 The Commission shall forthwith inform the Council and the Member States of any decision taken under this Article. The Council, acting by a qualified majority, may decide differently.

7.7 Provisional duties may be imposed for six months and extended for a further three months or they may be imposed for nine months. However, they may only be extended, or imposed for a nine month period, where exporters representing a significant percentage of the trade involved so request or do not object upon notification by the Commission.

Article 8

Undertakings

8.1 Investigations may be terminated without the imposition of provisional or definitive duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the Commission, after consultation, is satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping and they should be less than the margin of dumping if such increases would be adequate to remove the injury to the Community industry.

8.2 Undertakings may be suggested by the Commission, but no exporter shall be obliged to enter into such an undertaking. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, it may be determined that a threat of injury is more likely to be realised if the dumped imports continue. Undertakings shall not be sought or accepted from exporters unless a provisional affirmative determination of dumping and injury caused by such dumping has been made. Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made under Article 20.5.

8.3 Undertakings offered need not be accepted if their acceptance is considered impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. The exporter concerned may be provided with the basis on which it is intended to propose the rejection of the offer of an undertaking and may be given an opportunity to make comments thereon. The reasons for rejection shall be set out in the definitive decision.

8.4 Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation.

8.5 Where undertakings are, after consultation, accepted and there is no objection raised within the Advisory Committee, the investigation shall be terminated. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal that the investigation be terminated. The investigation shall stand terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

8.6 If the undertakings are accepted, the investigation of dumping and injury shall normally be completed. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases the authorities may require that an undertaking be maintained for a reasonable period. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Regulation.

8.7 The Commission shall require any exporter from which an undertaking has been accepted to provide, periodically, information relevant to the fulfilment of such undertaking, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a violation of the undertaking.

8.8 Where undertakings are accepted from certain exporters during the course of an investigation, they shall, for the purpose of Article 11, be deemed to take effect from the date on which the investigation is concluded for the exporting country.

8.9 In case of violation or withdrawal of undertakings by any party, a definitive duty shall be imposed in accordance with Article 9, on the basis of the facts established within the context of the investigation which led to the undertaking, provided that such investigation was concluded with a final determination on dumping and injury and the exporter concerned, except in the case of withdrawal of undertakings by the exporter, has been given an opportunity to comment.

8.10 A provisional duty may, after consultation, be imposed in accordance with Article 7 on the basis of the best information available, where there is reason to believe that an undertaking is being violated, or in case of violation or withdrawal of undertaking where the investigation which led to the undertaking was not concluded.

Article 9

Termination without measures; imposition of definitive duties

9.1 Where the complaint is withdrawn, proceedings may be terminated unless such termination would not be in the Community interest.

9.2 Where, after consultation, protective measures are unnecessary and there is no objection raised within the Advisory Committee, the investigation or proceedings shall be terminated. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal that the proceedings be terminated. The proceedings shall stand terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

9.3 For proceedings initiated under Article 5.9, injury shall normally be regarded as negligible where the imports concerned represent less than the volumes set out in Article 5.7. For the same proceedings, there shall be immediate termination where it is determined that the margin of dumping is less than 2 per cent, expressed as a percentage of the export price, provided that it is only the investigation that shall be terminated where the margin is below 2% for individual exporters and they shall remain subject to the proceedings and may be re-investigated in any subsequent review carried out for the country concerned under Article 11.

9.4 Where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Council, acting by simple majority on a proposal submitted by the Commission after consultation of the Advisory Committee. Where provisional duties are in force, a proposal for definitive action shall be submitted to the Council not later than one month before the expiry of such duties. The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.

9.5 An anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except as to imports from those sources from which undertakings under the terms of this Regulation have been accepted. The Regulation shall specify the duty for each supplier or, if that is impracticable and in the cases referred to in Article 2.7, the supplying country concerned.

9.6 When the Commission has limited its examination in accordance with Article 17, any anti-dumping duty applied to imports from exporters or producers which have made themselves known in accordance with Article 17 but were not included in the examination shall not exceed the weighted average margin of dumping established for the parties in the sample. For the purpose of this paragraph, the Commission shall disregard any zero and de minimis margins, and margins established under the circumstances referred to in Article 18. The authorities shall apply individual duties or normal values to imports from any exporter or producer which is granted individual treatment, as provided for in Article 17.

Article 10

Retroactivity

10.1 Provisional measures and definitive anti-dumping duties shall only be applied to products which enter free circulation after the time when the decision taken under Article 7.1 and Article 9.5, respectively enters into force, subject to the exceptions set out in this Regulation.

10.2 Where a provisional duty has been applied and the facts as finally established show that there is dumping and injury, the Council shall decide, irrespective of whether a definitive anti-dumping duty is to be imposed, what proportion of the provisional duty is to be definitively collected. For this purpose, 'injury' shall not include material retardation of the establishment of a Community industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury. In all other cases involving such threat or retardation, any provisional amounts shall be released and definitive duties can only be imposed from the date that a final determination of threat or material retardation is made.

10.3 If the definitive anti-dumping duty is higher than the provisional duty, the difference shall not be collected. If the definitive duty is lower than the provisional duty, the duty shall be recalculated. Where a final determination is negative, the provisional duty shall not be confirmed.

10.4 A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures but not prior to the initiation of the investigation, provided that imports have been registered in accordance with Article 14.5, the Commission has provided the importers concerned with an opportunity to comment, and that:

(i) there is, for the product in question, a history of dumping over an extended period, or the importer was aware of the dumping or the importer should have been aware of the dumping, in terms of the extent of the dumping and injury alleged or found; and

(ii) in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

10.5 In cases of violation or withdrawal of undertakings, definitive duties may be levied in accordance with this Regulation on goods entered for free circulation not more than ninety days before the application of provisional measures, provided that imports have been registered in accordance with Article 14.5, and that any such retroactive assessment shall not apply to imports entered before the violation or withdrawal of the undertaking.

Article 11

Duration, reviews and refunds

11.1 An anti-dumping measure shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

11.2 A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers and the measure shall remain in force pending the outcome of such review.

11.2.1 An expiry review shall be initiated where the request contains sufficient evidence that the removal of the measures would be likely to result in a continuation or recurrence of dumping and injury. Such a likelihood may, for example, be indicated by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping.

11.2.2 In carrying out investigations under this paragraph, the exporters, importers, the representatives of the exporting country and the Community producers shall be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request and conclusions shall be reached with due account taken of all relevant and duly supported evidence presented in relation to the question of whether the removal of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.

11.2.3 Under this paragraph, a notice of impending expiry shall be published in the Official Journal of the European Communities at an appropriate time in the final year of the period of application of the measures as defined in this paragraph. Thereafter, the Community producers shall, no later than three months before the end of the five year period, be entitled to lodge a review request in accordance with paragraph 2.1. A notice announcing the actual expiry of measures under this paragraph shall also be published.

11.3 The need for the continued imposition of measures may also be reviewed, where warranted on the initiative of the Commission or at the request of a Member State or, provided that a reasonable period of time of at least 1 year has elapsed since the imposition of the definitive measure, upon a request, by any exporter or importer or by the Community producers, which contains sufficient evidence substantiating the need for such an interim review.

11.3.1 An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping and/or the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract dumping which is causing injury.

11.3.2 In carrying out investigations under this paragraph, the Commission may, inter alia, consider whether the circumstances with regard to dumping and injury have changed significantly, or whether existing measures are achieving the intended results in removing the injury previously established in accordance with Article 3 of this Regulation. In these respects, account shall be taken of all relevant and duly supported evidence in the final determination.

11.4 A review shall also be carried out for the purpose of determining individual margins of dumping for new exporters in the exporting country in question which have not exported the product during the period of investigation on which the measures were based.

11.4.1 The review shall be initiated where a new exporter or producer can show that it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping measures on the product, and where they have actually exported to the Community following the above-mentioned investigation period, or where they can demonstrate that they have entered into a an irrevocable contractual obligation to export a significant quantity to the Community.

11.4.2 A review for a new exporter shall be initiated, and carried out on an accelerated basis, after consultation of the Advisory Committee and Community producers have been given an opportunity to comment. The Commission Regulation initiating a review shall repeal the duty in force with regard to the new exporter concerned, by amending the Regulation which imposed the duty, and making imports subject to registration in accordance with Article 14.5 in order to ensure that, should the review result in a determination of dumping in respect of such an exporter, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

11.4.3 The provisions of this paragraph shall not apply where duties have been imposed under the provisions of Article 9.6.

11.5 The relevant provisions of this Regulation with regard to procedures and the conduct of investigations, excluding those relating to time limits, shall apply to any review carried out under paragraphs 2, 3 and 4. Any such review shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.

11.6 Reviews under this Article shall be initiated by the Commission after consultation of the Advisory Committee. Where warranted by reviews, measures shall be repealed or maintained under paragraph 2, or repealed, maintained or amended under paragraphs 3 and 4, by the Community institution responsible for their introduction. Where measures are repealed for individual exporters, but not for the country as a whole, such exporters shall remain subject to the proceedings and may, automatically, be re-investigated in any subsequent review carried out for that country under this Article.

11.7 Where a review of measures under paragraph 3 is in progress at the end of the period of application of measures as defined in paragraph 2, such review shall also cover the circumstances set out in paragraph 2.

11.8 Notwithstanding paragraph 2, an importer may request reimbursement of duties collected where it is shown that the dumping margin, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force.

11.8.1 In order to request a refund of anti-dumping duties, the importer shall submit an application to the Commission. The application shall be submitted via the Member State in the territory of which the products were released for free circulation and within six months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty. Member States shall forward the request to the Commission forthwith.

11.8.2 An application for refund shall only be considered to be duly supported by evidence where it contains precise information on the amount of refund of anti-dumping duties claimed and all customs documentation relating to the calculation and payment of such amount. It shall also include evidence, for a representative period, on normal values and export prices to the Community for the exporter or producer to which the duty applies. In cases where the importer is not associated to the exporter or producer concerned and such information is not immediately available, or the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the dumping margin has been reduced or eliminated, as specified in this Article, and that the relevant supporting evidence shall be provided to the Commission. Where such evidence is not forthcoming from the exporter or producer, within a reasonable period of time, the application shall be rejected.

11.8.3 The Commission shall, after consultation of the Advisory Committee, decide whether and to what extent the application should be granted or it may decide at any time to initiate an interim review and the information and findings from such review, carried out in accordance with the provisions applicable for such reviews, shall be used to determine whether and to what extent a refund is justified. Refunds of duties shall normally take place within 12 months, and in no case more than 18 months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The payment of any refund authorised should normally be made by Member States within 90 days of the above-mentioned decision.

11.9 In all review or refund investigations carried out under this Article, the Commission shall apply, in so far as circumstances have not changed, the same methodology as in the investigation which led to the duty, with due account taken of the provisions set out in Article 2, and in particular Section D thereof, and the provisions of Article 17 of this Regulation.

11.10 In any investigation carried out under this Article, the Commission shall examine the reliability of export prices in accordance with Article 2. However, where it is decided to construct the export price in accordance with Article 2.9, it shall calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected in resale prices and the subsequent selling prices in the Community.

Article 12

12.1 Where the Community industry submits sufficient information showing that measures have led to no movement, or insufficient movement, in resale prices or subsequent selling prices in the Community, the investigation may, after consultation, be re-opened to examine whether the measure has had effects on the above-mentioned prices.

12.2 During an investigation under this Article, exporters, importers and Community producers shall be provided with an opportunity to clarify the situation with regard to resale prices and subsequent selling prices and if it is concluded that the measure should have led to movements in such prices, in order to remove the injury previously established in accordance with Article 3, export prices shall be re-assessed in accordance with Article 2, and dumping margins shall be re-calculated to take account of the re-assessed export prices. Where it is considered that a lack of movement in the prices in the Community is due to a fall in export prices, which occurred prior to or following the imposition of measures, dumping margins may be re-calculated to take account of such lower export prices.

12.3 Where a re-investigation under this Article shows increased dumping, the measures in force shall be amended by the Council, by simple majority on a proposal from the Commission, in accordance with the new findings on export prices.

12.4 The relevant provisions of Article 5 and Article 6 shall apply to any review carried out under this Article, except that such review shall be carried out expeditiously and shall normally be concluded within six months of the date of initiation of the re-investigation.

12.5 Alleged changes in normal value shall only be taken into account under this Article where complete information on revised normal values, duly substantiated by evidence, is made available to the Commission within the time limits set out in the notice of initiation of an investigation. Where an investigation involves a re-examination of normal values, imports may be made subject to registration in accordance with Article 14.5 pending the outcome of the investigation.

Article 13

Circumvention

13.1 Anti-dumping duties imposed under this Regulation may be extended to apply to imports from third countries of like products, or parts thereof, when circumvention of the measures in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and the Community which stems from a practice, process or work for which there is insufficient due cause or economic justification, other than the imposition of the duty, and there is evidence that the remedial effects of the duty are being undermined, in terms of the prices and/or quantities of the assembled like product.

13.2 An assembly operation in the Community or a third country shall be considered to circumvent the measures in force where:

(i) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures; and

(ii) the parts constitute 60% or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in during the assembly or completion operation, is greater than 25% of the manufacturing cost; and

(iii) the remedial effects of the duty are being undermined, in terms of the prices and/or quantities of the assembled like product.

13.3 Investigations shall be initiated under this Article where the request contains sufficient evidence on the factors set out in paragraph 1. Initiations shall be made, after consultation of the Advisory Committee, by Commission Regulation which shall also instruct the customs authorities to make imports subject to registration in accordance with Article 14.5 or to request guarantees. Investigations shall be carried out by the Commission, which may be assisted by customs authorities, and shall be concluded within nine months. When the facts, as finally ascertained, justify the extension of measures, this shall be done by the Council, acting by simple majority and on a proposal from the Commission, from the date that registration was imposed under Article 14.5 or guarantees were requested. The relevant procedural provisions of this Regulation with regard to initiations and the conduct of investigations shall apply under this Article.

13.4 Products shall not be subject to registration under Article 14.5 or measures where they are accompanied by a customs certificate declaring that the importation of the goods does not constitute circumvention. These certificates may be issued to importers, upon written application, by the authorities following authorisation by a decision of the Commission after consultation of the Advisory Committee or the decision of the Council imposing measures and they shall remain valid for the period, and under the conditions, set down therein.

13.5 Nothing in this Article shall preclude the normal application of the provisions in force concerning customs duties.

Article 14

General provisions

14.1 Provisional or definitive anti-dumping duties shall be imposed by Regulation, and collected by Member States in the form, at the rate specified and according to the other criteria laid down in the Regulation imposing such duties. Such duties shall also be collected independently of the customs duties, taxes and other charges normally imposed on imports. No product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation.

14.2 Regulations imposing provisional or definitive anti-dumping duties, or Regulations or Decisions accepting undertakings or terminating investigations or proceedings, shall be published in the Official Journal of the European Communities. Such Regulations or Decisions shall contain, in particular, and with due regard to the protection of confidential information, the names of the exporters, if practical, or countries involved, a description of the product and a summary of the material facts and considerations relevant to the dumping and injury determinations. In each case, a copy of the Regulation or Decision shall be sent to known interested parties. The provisions of this paragraph shall apply mutatis mutandis to reviews.

14.3 Special provisions, in particular with regard to the common definition of the concept of origin, as contained in Council Regulation (EEC) No 2913/92 of 12 October 1992, may be adopted in, or under, this Regulation.

14.4 In the Community interest, measures imposed under this Regulation may, after consultation of the Advisory Committee, be suspended by a decision of the Commission for a period of up to one year because of a change in market conditions in the Community which makes the application of such measures temporarily inappropriate, provided that the Community industry has been given an opportunity to comment. The suspension may be extended for a further period if the Council so decides, by simple majority, on a proposal from the Commission. Measures may, at any time and after consultation, be re-instated if the reason for suspension is no longer applicable.

14.5 The Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against these imports from the date of such registration. Imports may be made subject to registration following a request from the Community industry which contains sufficient evidence to justify such action. Registration shall be introduced by Regulation which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports may not be made subject to registration for a period longer than nine months.

14.6 Member states shall report to the Commission, on a monthly basis, the import trade of products subject to investigation and subject to measures, and the amount of duties collected under this Regulation.

Article 15

Consultations

15.1 Any consultations provided for in this Regulation shall take place within an Advisory Committee, which shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately on request by a Member State or on the initiative of the Commission ***and in any event within a time frame which allows the time limits set by this Regulation to be respected.***

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

15.3 Where necessary, consultation may be in writing only; in such case the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation ***which the chairman shall arrange, provided that such oral consultation can be held within a time frame which allows the time limits set by this Regulation to be respected.***

15.4 Consultation shall in particular cover:

(i) the existence of dumping and the methods of establishing the dumping margin;

(ii) the existence and extent of injury;

(iii) the causal link between the dumped imports and injury;

(iv) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping and the ways and means for putting such measures into effect.

Article 16

Verification visits

16.1 The Commission shall, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations, to verify information provided on dumping and injury. In the absence of a proper and timely reply, a verification visit may not be carried out.

16.2 The Commission may carry out investigations in third countries as required, provided it obtains the agreement of the firms concerned, it notifies the representatives of the government of the country in question and the latter does not object to the investigation. As soon as the agreement of the firms concerned has been obtained the Commission should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.

16.3 The firms concerned shall be advised of the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, though this should not preclude requests to be made during the verification for further details to be provided in the light of information obtained.

16.4 In investigations carried out under this paragraph, the Commission shall be assisted by officials of those Member States who so request.

Article 17

Sampling

17.1 In cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.

17.2 The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided such parties make themselves known and make sufficient information available, within three weeks of initiation, to enable a representative sample to be chosen.

17.3 In cases where the examination has been limited in accordance with this Article, an individual margin of dumping shall, nevertheless, be calculated for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in this Regulation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and prevent the timely completion of the investigation.

17.4 Where it is decided to sample and there is a degree of non-co-operation by some or all of the parties selected which is likely to materially affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-co-operation persists or there is insufficient time to select a new sample, the relevant provisions of Article 18 shall apply.

Article 18

Non-co-operation

18.1 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information ***within the time limits as provided for in this Regulation,*** or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available. Where it is found that any interested party has supplied false or misleading information, ***the information shall be disregarded and use may be made of facts available.*** Interested parties should be made aware of the consequences of non-co-operation.

18.2 A lack of a computerised response shall not be deemed to constitute non-co-operation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost.

18.3 Where the information presented by an interested party may not be ideal in all respects it should not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and provided the information is appropriately submitted in timely fashion, it is verifiable and the party has acted to the best of its ability.

18.4 If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor and should be granted an opportunity to provide further explanations within the time limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information should be disclosed and given in any published findings.

18.5 If determinations, including those with respect to normal value, are based on the provisions of paragraph 1 of this Article, including the information supplied in the complaint, it should, where practicable and with due regard to the time limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation.

18.6 If an interested party does not cooperate, or only cooperates partially, and thus relevant information is being withheld, the result could be less favourable to the party than if it had cooperated.

Article 19

Confidentiality

19.1 Any information which is by nature confidential, (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities.

19.2 Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarisation is not possible must be provided.

19.3 If it is considered that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information available or to authorise its disclosure in generalised or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct. Requests for confidentiality should not be arbitrarily rejected.

19.4 This Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken pursuant to this Regulation are based, or disclosure of the evidence relied on by the Community authorities in so far as necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interest of the parties concerned that their business secrets should not be divulged.

19.5 The Council, the Commission and Member States, or the officials of any of these, shall not reveal any information received pursuant to this Regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier. Exchanges of information between the Commission and Member States or any information relating to consultations made pursuant to Article 15 or any internal documents prepared by the authorities of the Community or its Member States shall not be divulged except as specifically provided for in this Regulation.

19.6 Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

Article 20

Disclosure

20.1 The complainants, importers, exporters and representatives of the exporting country may request disclosure of the details underlying the essential facts and considerations, on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures and the disclosure shall be made in writing as soon as possible thereafter.

20.2 The parties mentioned in paragraph 1, may request final disclosure of the essential facts and considerations, on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures, with particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures.

20.3 Requests for final disclosure, as defined in paragraph 2, shall be addressed to the Commission in writing and be received, in cases where a provisional duty has been applied, not later than one month after publication of the imposition of that duty. Where a provisional duty has not been applied, parties shall be provided with an opportunity to request final disclosure within time limits set by the Commission.

20.4 Final disclosure shall be given in writing. It shall be made, with due regard paid to the protection of confidential information, as soon as possible and, normally, not later than one month prior to a definitive decision or the submission by the Commission of any proposal for final action pursuant to Article 9. Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision which may be taken by the Commission or the Council but, where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

20.5 Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

Article 21

Community interest

21.1 Under this Regulation, a determination as to whether the Community interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers, and a determination under this Article shall only be made where all parties have been given the opportunity to make their views known under paragraph 2. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration. Measures, as determined on the basis of the dumping and injury found, may not be applied, where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures.

21.2 In order to provide a sound basis on which the authorities can take account of all views and information in the decision on whether, or not, the imposition of measures is in the Community interest, the complainants, importers, representative users and representative consumer organisations may, within the time limits specified in the notice of initiation of the anti-dumping investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this Article, and they shall be entitled to respond to such information.

21.3 The parties which have acted in conformity with paragraph 2 may request a hearing. Such requests may be granted when they are submitted within the time limits set in paragraph 2, and when they set out the particular reasons, in terms of the Community interest, why the parties should be heard.

21.4 The parties which have acted in conformity with paragraph 2, may provide comments on the application of any provisional duties imposed. Such comments shall be received within one month of the application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.

21.5 The Commission shall examine the information which is properly submitted, and the extent to which it is representative, and the results of such analysis, together with an opinion on its merits, shall be transmitted to the Advisory Committee. The balance of views expressed in the Committee shall be taken into account by the Commission in any proposal made under Article 9.

21.6 The parties which have acted in conformity with paragraph 2, may request the facts and considerations on which final decisions are likely to be taken to be made available to them. Such information shall be made available to the extent possible and without prejudice to any subsequent decision taken by the Commission or the Council.

21.7 Under this Article, information shall only be taken into account where it is supported by actual evidence which substantiates its validity.

Article 22

Final provisions

This Regulation shall not preclude the application of:

(i) any special rules laid down in agreements concluded between the Community and third countries;

(ii) the Community Regulations in the agricultural sector and of Regulation (EEC) No 1059/69 ([5]), (EEC) No 2730/75 ([6]); and (EEC) No 2783/75 ([7]); this Regulation shall operate by way of complement to those Regulations and in derogation from any provisions thereof which preclude the application of anti-dumping duties;

(iii) special measures, provided that such action does not run counter to obligations under the GATT.

Article 23

Repeal of existing legislation

Regulation (EC) No 2423/88, as amended by Regulation (EC) No 521 and Regulation (EC) No 522, is hereby repealed. References to the repealed Regulation shall be construed as references to this Regulation.

Article 24

Entry into force

This Regulation shall enter into force on the date determined by the decision on the entry into force of the acts implementing the results of the Uruguay Round. It shall apply to proceedings already initiated. However, the references to time limits for the initiation of proceedings and the imposition of provisional duties, shall only apply after a date which the Council shall specify in a Decision to be adopted by a qualified majority no later than 1 April 1995 on the basis of a Commission proposal to be submitted to the Council once the necessary budgetary resources have been made available.

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

Done at Brussels,

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5 OJ No L 141, 12.06.1969, p. 1.
6 OJ No L 281, 01.11.1975, p. 20.
7 OJ No L 282, 01.11.1975, p. 104.

Commercial defence:

Subsidies

Explanatory memorandum

A. INTRODUCTION

The Uruguay Round trade negotiations, concluded in 1994, have led to the new Agreement on Subsidies and Countervailing Measures ("The Subsidies Agreement") which, as regards countervailing measures, is required to be implemented into Community legislation in order that, as agreed at Marrakech, it can come into effect on 1 January 1995.

The Subsidies Agreement contains new and detailed rules on subsidies and countervailing duty investigations, and in view of the extent of the changes and to ensure an adequate and transparent implementation of the new rules, it is considered necessary to transpose the language of the Subsidies Agreement into Community legislation to the extent possible and for this purpose the Agreement, rather than the existing Community legislation, Regulation (EC) No 2423/88[1], has been taken as the basis for the proposed legislation.

Additions to the Subsidies Agreement have been, for the most part, been restricted to : clarifications where the Agreement is unclear; incorporation of existing provisions on the EU's rather unique procedures and decision-making, amended to take account of Court judgements; and the amendment or incorporation of EU specific rules on issues such as negligible import volumes, sampling, non-corporation, circumvention and Community interest, on which the Agreement is silent, imprecise or where it merely gives an indication of minima. On several issues, more detailed provisions from the new anti-dumping regulation are used in this regulation, where there is no conflict with the provisions of the Subsidies Agreement.

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1 OJ No L 209, 2.9.1988, p. 1.

The Subsidies Agreement sets new standards for the imposition of countervailing measures with its new and detailed rules on the definition of a subsidy, countervailability and calculation, its increased procedural requirements for initiation and subsequent investigation and its restrictions on the imposition of provisional duties. Its implementation into Community legislation will, of course, produce the same result. Moreover, the adoption of these new rules would,at the same time, improve legal certainty through greater precision, extend transparency and increase the rights of parties.

In the same vein, some of the new rules, such as on negligible import volumes and Community interest, should further reinforce this effect of transparency and legal certainty. Community industries would have a clear idea of the minimum level of import volumes required both for complaints and final action. Moreover, all interested parties would be made aware of their rights and obligations with regard to the Community interest aspects of these cases, in that a structured framework would be provided for the provision and treatment of information by the authorities.

Furthermore, it is important that measures, once taken, should be effective, and in this regard a new provision on circumvention has been added.

Finally, it will be noted that this draft countervailing duty regulation is, for the first time, entirely separate from the proposed legislation on anti-dumping. This development is justified by the far more detailed nature of the new Subsidies Agreement, the increasingly distinct procedures with regard to CVD and anti-dumping investigations, and the consequent need to give the CVD instrument greater autonomy.

B. MAIN FEATURES OF DRAFT COUNTERVAILING DUTY REGULATION

1. Definition of a subsidy (Article 2)

The definition of a subsidy reproduces literally that contained in the Subsidies Agreement, that is, a financial contribution by public authorities and a benefit to enterprises which is derived from such financial contribution.

2. Notion of a countervailable subsidy (Article 3)

The conditions for countervailability (or non-countervailability, as the case may be) also reproduce those of the Subsidies Agreement concerning specificity of subsidies and the green list, as well as the so-called "green box" contained in the Agreement on Agriculture.

3. Calculation of the amount of a countervailable subsidy (Article 4)

The provision on calculation of the amount of a countervailable subsidy espouses the principle of "benefit to the recipient". This approach is now permitted by Article 14 of the Subsidies Agreement, and will enhance the possibility of the Community using countervailing duty actions compared to the "cost to the government" approach. The "benefit to the recipient" approach is more in line with the methodology employed in state aid cases in the Community.

4. **Injury and Community industry (Articles 5 and 6)**

These provisions closely follow those of the Subsidies Agreement.

5. **Initiation of proceedings (Article 7)**

In addition to the basic criteria for initiating countervailing duty proceedings, Paragraphs 5-7 also set out the conditions under which investigations can be opened with regard to non-countervailable types of subsidy in order to determine whether the criteria for non-countervailability have been met.

6. **Conclusion of investigations (Article 8)**

The Subsidies Agreement provides that investigations should normally be concluded within 12 months, which conflicts with the 13 months envisaged for EU investigations from 1995 onwards.

It is proposed to incorporate the provisions of the Agreement into this regulation (Article 8.9), although provisional duties would still have to be applied with 9 months (Article 9.1).

7. **Undertakings (Article 10)**

(a) In countervailing duty investigations, undertakings may be accepted from Governments or exporters.

(b) Over the years, there have been continual problems on what to do in cases where exporters have violated or withdrawn undertakings. In such circumstances, it is considered that the Community should be entitled to impose definitive duties based on the findings of the previous investigation, otherwise an exporter which is violating its undertaking could end up in a more advantageous position than its rivals which may be faithfully applying the undertakings. Moreover, carrying out a completely new investigation based on new facts is a time-consuming affair which should only be undertaken where the circumstances justify it. Violation does not appear to be one of these circumstances.

The new provisions set out in Articles 10.9 and 10.10 of the draft text would permit the imposition of definitive duties in cases of proven violation or withdrawal though, of course, the exporter's rights would be safeguarded in that he would be entitled to ask for a review if the circumstances with regard to subsidization or injury have changed. Moreover, the change in measures would not generate a new 5 year "sunset" period. Where violation is only suspected, the remedy is a provisional duty while the matter is under investigation.

8. <u>Negligible import volumes and de minimis subsidy</u> (Article 11).

(a) This Regulation takes over the negligible import volumes for developing countries set out in the Subsidies Agreement. It also takes over the provision of the Agreement that a subsidy amount of less than 1% ad-valorem is de minimis.

(b) It is proposed not to define developing countries for the purpose of this Regulation..

9. **Reviews and refunds (Article 13)**

(a) The provisions on reviews and refunds are broadly in line with those of the anti-dumping regulation, with one exception.

(b) As regards accelerated reviews for new exporters (Section C), the Subsidies Agreement is far less explicit than the Anti-Dumping Agreement on the question of new exporters. Article 19.3 states only that :

"Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to co-operate, shall be entitled to an expedited review in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter."

There is no equivalent to the anti-dumping provisions which stipulate that the exporter must not have exported to the Community during the investigation period and must not be related to other exporters; neither is it stated that duties must not be collected during the review period.

In these circumstances, it is proposed to maintain a text based on the Subsidies Agreement.

10. Circumvention (Article 14)

Anti-circumvention measures are not mentioned in the Subsidies Agreement, and the appropriateness of measures against the circumvention of countervailing duties has to be evaluated on the basis of certain specified conditions. It should also be considered that the circumvention of countervailing duties, which result from a subsidy granted by a Government, by exporters, is a particular situation, which needs to be analysed in its proper context.

Therefore, the anti-circumvention provision of this regulation emphasises the possibility of taking measures to prevent circumvention of countervailing duties through practices, either assembly in third countries or the Community, for which there is insufficient due cause or economic justification other than the imposition of the duty. If the remedial effects of duties are undermined, measures may be taken, provided that the imported like product and/or parts still benefit from a countervailable subsidy.

This provision provides a solid safeguard against circumvention of countervailing duties, and enables the Community to ensure that measures remain effective.

The procedural part of the Article is in line with the anti-dumping regulation.

11. Sampling (Article 18)

There are no specific provisions on sampling in the Subsidies Agreement. However, it is desirable to establish rules for sampling in countervailing duty cases, since the same problems of large numbers of exporters and importers which arise in anti-dumping investigations may also arise in countervailing duty proceedings. Therefore it is proposed to transpose the anti-dumping regulation's provisions on sampling into the countervailing duty regulation.

12. Non-co-operation (Article 19)

Article 12.7 of the Subsidies Agreement only contains the following brief reference to this issue :

"In cases in which any interested Member or interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available."

The same provision exists in the Anti-Dumping Agreement, but is supplemented by Annex II to that Agreement, which does not appear in the Subsidies Agreement.

As regards the countervailing duty regulation, it is proposed to take over the anti-dumping regulation's provisions on non-co-operation, given that these do not conflict with Subsidy Agreement's provision, but simply expand on it, and are aimed at greater transparency and predictability of the Community's actions on this issue.

13. Confidentiality (Article 20)

Provisions on confidentiality are based on the provisions of the Subsidies Agreement, which are slightly different from those of the Anti-Dumping Agreement because of the direct involvement of Governments in countervailing duty proceedings, and therefore of the presence, in the record of an investigation, of government confidential, as well as business confidential, information. In particular, it will be specified that details of all bilateral consultations with Governments under the Subsidies Agreement are confidential.

14. Simultaneous imposition of anti-dumping and countervailing duties (Article 15.1)

The basic provision of GATT Article VI:5 is included in the CVD regulation.

15. Relationship between countervailing duty measures and multilateral remedies (Article 23)

A provision has been inserted to permit withdrawal of countervailing duties in cases in which a multilateral subsidy action has been carried out (Panel) and measures other than countervailing duties have been taken as a consequence of such action (since countervailing duty investigations and GATT panels can be carried out in parallel, but only one type of remedy is allowed under the Subsidies Agreement).

16. Other

It should be noted that the provisions on suspension of measures and registration of imports (Article 15) and Community interest (Article 22), are in line with the anti-dumping provisions, as are most of the procedural rules in this regulation which are not specifically referred to in this section.

C. CONCLUSION

In order to implement the 1994 Agreement on Subsidies and Countervailing Measures as concluded as a result of the Uruguay Round of multilateral trade negotiations, and to take account of the issues set out above, the Commission submits to the Council

- a proposal to replace the Community's basic countervailing duty legislation.

PROPOSAL FOR :

COUNCIL REGULATION (EC) N° ...../94 94/ 0231(ACC)
on protection against subsidised imports
from countries not members of the European Community.

The Council of the European Union

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

Having regard to the Regulations establishing the common organisation of agricultural markets and the Regulations adopted under Article 235 of the Treaty applicable to goods manufactured from agricultural products, and in particular the provisions of those Regulations which allow for derogation from the general principle that protective measures at frontiers may be replaced solely by the measures provided for in those Regulations,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas, by Regulation (EEC) N° 2423/88[1] , as amended by Regulation (EC) N° 521/94[2] and Regulation (EC) N° 522/94[3] the Council adopted common rules for protection against dumped or subsidised imports from countries which are not members of the European Economic Community;

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(1) O.J. L209, 2.8.1988, p. 1
(2) O.J. L66, 16.3.1994, p. 7
(3) O.J. L66, 16.3.1994, p. 10

Whereas, these rules were adopted in accordance with existing international obligations, in particular those arising from Article VI of the General Agreement on Tariffs and Trade ("the GATT"), from the Agreement on Implementation of Article VI of the GATT ("the 1979 Anti-Dumping Code") and from the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT ("the 1979 Subsidies Code");

Whereas, the conclusion of the Uruguay Round of multilateral trade negotiations has led to the establishment of the World Trade Organisation ("the WTO");

Whereas, Annex 1A to the Agreement establishing the WTO ("the WTO Agreement") contains, *inter alia*, the General Agreement on Tariffs and Trade 1994 ("the GATT 1994"), an Agreement on Agriculture ("the Agreement on Agriculture"), a new Agreement on implementation of Article VI of the GATT 1994 ("the Anti-Dumping Agreement"), and a new Agreement on Subsidies and Countervailing Measures ("the Subsidies Agreement");

Whereas, in order to reach greater transparency and effectiveness in the application by the Community of the rules laid down in respectively the Anti-Dumping Agreement and the Subsidies Agreement, it is considered necessary to adopt two separate Regulations which will lay down in sufficient detail the requirements for the application of each of these commercial defence instruments;

Whereas, it is therefore appropriate to amend Community rules governing the application of countervailing measures in the light of the new multilateral rules, *inter alia* with regard to the procedures for initiation of proceedings and the conduct of subsequent investigations, including the establishment and treatment of the facts, the application of provisional measures, the imposition and collection of countervailing duties, the duration and review of countervailing measures, and the public disclosure of information relating to countervailing investigations;

Whereas, in view of the extent of the changes brought about by the new Agreements and to ensure an adequate and transparent implementation of the new rules, it is appropriate to transpose the language of the new Agreements into Community legislation to the extent possible;

Whereas, furthermore it seems advisable to explain, in adequate detail, when a subsidy shall be deemed to exist, according to which principles it shall be countervailable (in particular whether the subsidy has been granted specifically), and according to which criteria the amount of the countervailable subsidy shall be calculated;

Whereas, it is clear that in determining the existence of a subsidy it is necessary to demonstrate that there has been a financial contribution by a government or any public authority within the territory of a country, or that there has been any form of income or price support in the sense of Article XVI of the GATT 1994, and that a benefit has thereby been conferred to the recipient enterprise;

Whereas, it is necessary to explain in sufficient detail which kind of subsidies are not countervailable and which procedure shall be followed if during an investigation it is determined that an investigated enterprise has received non-countervailable subsidies;

Whereas, the Subsidies Agreement states that the provisions concerning non-countervailable subsidies shall cease to apply five years after the date of entry into force of the WTO Agreement, unless they are extended by mutual agreement of the Members of the WTO, and that it may therefore be necessary to amend this Regulation accordingly, if the validity of those provisions is not so extended;

Whereas, the measures listed in Annex 2 to the Agreement on Agriculture are non-countervailable, to the extent provided for in that Agreement;

Whereas, it is desirable to lay down clear and detailed guidance on the factors which may be relevant for the determination of whether the subsidised imports have caused material injury or are threatening to cause injury; and whereas, in demonstrating that the volume and price levels of the imports concerned are responsible for injury sustained by a Community industry, attention should be given to the effect of other factors and in particular existing market conditions in the Community;

Whereas, it is advisable to define the term "Community industry" and provide that parties related to exporters may be excluded from such industry and to define the term "related"; and whereas it is also necessary to provide for countervailing duty action to be taken with regard to producers in a region of the Community and to lay down guidelines on the definition of such a region;

Whereas, it is necessary to set down who may lodge a countervailing duty complaint, including the extent to which it should be supported by the Community industry, and the information on countervailable subsidies, injury and causality which such complaint should contain; and whereas it is also expedient to specify the procedures with regard to the rejection of complaints or the initiation of proceedings;

Whereas, it is necessary to lay down how interested parties shall be given notice of the information which the authorities require, ample opportunity to present all relevant evidence and a full opportunity for the defence of their interests; whereas, it is also desirable to set out clearly the rules and procedures to be followed during the investigation, in particular that interested parties have to make themselves known, present their views and submit information within specified time limits, if such views and information are to be taken into account; and whereas it is also appropriate to set out the conditions under which an interested party may have access to, and comment on, information presented by other interested parties; whereas there should also be cooperation between the Member States and the Commission with regard to the collection of information;

Whereas, it is necessary to lay down the conditions under which provisional duties may be imposed, including that they may not be imposed sooner than 60 days from initiation and no later than 9 months from initiation; whereas, such duties may in all cases be imposed by the Commission only for a four month period;

Whereas, it is necessary to specify procedures for the acceptance of undertakings which eliminate or offset the countervailable subsidies and injury instead of the imposition of provisional or definitive duties; whereas it is also appropriate to lay down the consequences of violation or withdrawal of undertakings and that provisional duties may be imposed in cases of suspected violation or where further investigation is necessary to complete the findings; whereas, in accepting undertakings, care should be taken that the proposed undertakings, and their enforcement, do not lead to anti-competitive behaviour;

Whereas, in order to reflect the provisions of the Subsidies Agreement, it is necessary to provide for the termination of cases, without or without measures, normally within twelve months, and in no case later than eighteen months from the initiation of the investigation; whereas, an investigation should be terminated in case the amount of the subsidy is found to be *de minimis* or if, particularly in case of imports originating in developing countries, the volume of subsidised imports or the injury is negligible, and it is appropriate to define these criteria; whereas, where measures are to be imposed, it is necessary to provide for the termination of investigations and to lay down that measures should be less than the amount of countervailable subsidies if such lesser amount would remove the injury, as well as to specify the method of calculating the level of measures in cases of sampling;

Whereas, it is necessary to provide for the retroactive collection of provisional duties as deemed appropriate and to define the circumstances which may trigger the retroactive application of duties to avoid the undermining of the definitive measures to be applied; whereas it is also necessary to provide that duties may be applied retroactively in cases of violation or withdrawal of undertakings;

Whereas, it is necessary to provide that measures shall lapse after five years unless a review investigation indicates that they should be maintained; whereas, it is also necessary to provide, in cases where sufficient evidence is submitted of changed circumstances, for interim reviews or for investigations to determine whether refunds of countervailing duties are warranted;

Whereas, even though the Subsidies Agreement does not contain provisions concerning circumvention of countervailing measures, the possibility of such circumvention exists, in terms similar, albeit not identical, to the circumvention of anti-dumping measures; whereas it appears therefore appropriate to enact an anti-circumvention provision in this Regulation;

Whereas, it is expedient to permit the suspension of countervailing measures where there is a temporary change in market conditions which make the continued imposition of such measures temporarily inappropriate;

Whereas, it is necessary to provide that imports under investigation may be made subject to registration upon importation to enable measures to be subsequently applied against such imports;

Whereas, to ensure a proper enforcement of measures, it is necessary that Member States monitor and report to the Commission the import trade of products subject to investigation and subject to measures and the amount of duties collected under this regulation;

Whereas, it is necessary to provide for consultations of an Advisory Committee at regular and specified stages of the investigation; whereas the committee shall consist of representatives of Member States with a representative of the Commission as chairman;

Whereas, it is expedient to provide for verification visits to check information submitted on countervailable subsidies and injury, though such visits should be dependent on proper replies to questionnaires being received;

Whereas, it is essential to provide for sampling in cases where the number of parties or transactions are large in order to permit a timely completion of investigations;

Whereas, it is necessary to provide that for parties who do not cooperate satisfactorily other information may be used to establish findings and such information may be less favourable to the party than if it had cooperated;

Whereas, provision should be made for the treatment of confidential information so that business or governmental secrets are not divulged;

Whereas, it is essential that provision is made for the proper disclosure of the essential facts and considerations to parties which qualify for such treatment and that such disclosure is made, with due regard to the decision-making process in the Community, within a time period which permits parties to defend their interests;

Whereas, it is prudent to provide for an administrative system under which arguments can be presented in relation to whether measures are in the Community interest, including the interests of consumers, and to lay down the time periods within which such information has to be presented as well as the disclosure rights of the parties concerned;

Whereas, it is imperative to link the implementation of time limits for the lodging of complaints, the initiation of proceedings and the imposition of provisional duties to the establishment of the necessary administrative structure within the Commission's services; whereas the Council, therefore, should specify, in a decision to be adopted by qualified majority no later than 1 April 1995, when these time limits shall apply;

Whereas, in applying the rules of the Subsidies Agreement it is essential, in order to maintain the balance of rights and obligations which this Agreement sought to establish, that the Community take account of their interpretation by the Community's major trading partners, as reflected in legislation or established practice,

HAS ADOPTED THIS REGULATION :

Article 1

Principles

1. This Regulation lays down provisions for protection against subsidised imports from countries not members of the European Community. A countervailing duty may be imposed for the purpose of offsetting any subsidy granted, directly or indirectly, for the manufacture, production, export or transport of any product whose release for free circulation in the Community causes injury.

2. For the purpose of this Regulation, a product is considered as being subsidised if it benefits from a countervailable subsidy as defined in Articles 2 and 3 of this Regulation.

3. Such subsidy may be granted by the Government of the country of origin of the imported product, or by the Government of an intermediate country from which the product is exported to the Community, known for the purpose of this Regulation as "the country of export".

4. Notwithstanding the above, where products are not directly imported from the country of origin but are exported to the Community from an intermediate country, the provisions of this Regulation shall be fully applicable and the transaction or transactions shall, where appropriate, be regarded as having taken place between the country of origin and the Community.

5. For the purpose of this Regulation the term "like product" shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Article 2

Definition of a subsidy

A subsidy shall be deemed to exist if:

1. (a) there is a financial contribution by a government or any public body within the territory of the country of origin or export (hereinafter referred to as "government"), i.e. where:

(i) a government practice involves a direct transfer of funds (e.g., grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g., loan guarantees);

(ii) government revenue that is otherwise due, is foregone or not collected (e.g., fiscal incentives such as tax credits); in this regard, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amount not in excess of those which have been accrued, shall not be deemed to be a subsidy, provided that such an exemption is granted in accordance with the provisions of Annexes I-III to this Regulation;

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government

- makes payments to a funding mechanism, or
- entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government, and

the practice, in no real sense, differs from practices normally followed by governments;

or

(b) there is any form of income or price support in the sense of Article XVI of the GATT 1994,

and

2. a benefit is thereby conferred.

Article 3

Countervailability of subsidies

A. PRINCIPLE

1. Subsidies as defined by Article 2 shall be subject to countervailing measures only if they are specific, as defined in Paragraphs 2 to 4 below.

B. SPECIFICITY

2. In order to determine whether a subsidy, as defined in Article 2 above is specific to an enterprise or industry or group of enterprises or industries (hereinafter referred to as "certain enterprises") within the jurisdiction of the granting authority, the following principles shall apply:

(a) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific.

(b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to.

For the purpose of this Article, objective criteria or conditions mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise.

The criteria or conditions must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification.

(c) If, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b) above, there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In this regard, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall, in particular, be considered.

In applying this provision, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

3. A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. The setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Regulation.

4. Irrespective of the provisions of paragraphs 2 and 3 above, the following subsidies shall be deemed to be specific:

(a) Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I to this Regulation.

Subsidies shall be considered to be contingent in fact upon export performance when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is accorded to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.

(b) Subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

5. Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.

C. NON-COUNTERVAILABLE SUBSIDIES

6. The following subsidies shall not be subjected to countervailing measures:

(a) Subsidies which are not specific within the meaning of paragraphs 2 and 3 of this Article;

(b) Subsidies which are specific, within the meaning of paragraphs 2 and 3 of this Article, but which meet the conditions provided for in paragraphs 7, 8 or 9 below.

(c) The element of subsidy which may exist in any of the measures listed in Annex IV to this Regulation.

7. Subsidies for research activities conducted by firms or by higher education or research establishments on a contract basis with firms shall not be subject to countervailing measures, if the subsidies cover not more than 75 per cent of the costs of industrial research or 50 per cent of the costs of pre-competitive development activity, and provided that such subsidies are limited exclusively to:

(i) personnel costs (researchers, technicians and other supporting staff employed exclusively in the research activity);

(ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;

(iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;

(iv) additional overhead costs incurred directly as a result of the research activity;

(v) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.

For the purpose of this paragraph:

(a) The allowable levels of non-countervailable subsidy referred to in this paragraph shall be established by reference to the total eligible costs incurred over the duration of an individual project.

In case of programmes which span both "industrial research" and "pre-competitive development activity", the allowable level of non-countervailable subsidy shall not exceed the simple average of the allowable levels of non-countervailable subsidy applicable to the above two categories, calculated on the basis of all eligible costs as set forth in items (i)-(v) of this paragraph.

(b) The term "industrial research" means planned search or critical investigation aimed at discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes or services, or in bringing about a significant improvement to existing products, processes or services.

(c) The term "pre-competitive development activity" means the translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services whether intended for sale or use, including the creation of a first prototype which would not be capable of commercial use. It may further include the conceptual formulation and design of products, processes or services alternatives and initial demonstration or pilot projects, provided that these same projects cannot be converted or used for industrial application or commercial exploitation. It does not include routine or periodic alterations to existing products, production lines, manufacturing process, services, and other on-going operations even though those alterations may represent improvements. The provisions of this paragraph shall not apply to civil aircraft (as defined in the 1979 Agreement on Trade in Civil Aircraft, as amended, or in any later Agreement amending or replacing such Agreement).

8. Subsidies to disadvantaged regions within the territory of the country of origin and/or export, given pursuant to a general framework of regional development, and which would be non-specific if the criteria laid down in paragraphs 2 and 3 of this Article were applied to each eligible region concerned, shall not be subject to countervailing measures provided that:

(i) each disadvantaged region is a clearly designated contiguous geographical area with a definable economic and administrative identity;

(ii) the region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;

(iii) the criteria include a measurement of economic development which shall be based on at least one of the following factors:

- one of either income per capita or household income per capita, or GDP per capita, which must not be above 85 per cent of the average for the territory of the country of origin or export concerned;

- unemployment rate, which must be at least 110 per cent of the average for the territory of the country of origin or export concerned;

as measured over a three-year period: such measurement, however, may be a composite one and may include other factors.

For the purpose of this paragraph :

(a) A "general framework of regional development" means that regional subsidy programmes are part of an internally consistent and generally applicable regional development policy and that regional development subsidies are not granted in isolated geographical points having no, or virtually no influence on the development of a region.

(b) "Neutral and objective criteria" means criteria which do not favour certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy. In this regard, regional subsidy programmes shall include ceilings on the amount of subsidy which can be granted to

each subsidised project. Such ceilings must be differentiated according to the different levels of development of eligible regions and must be expressed in terms of investment costs or the cost of job creation. Within such ceilings, the distribution of subsidy shall be sufficiently broad and even to avoid the predominant use of a subsidy by, or the granting of disproportionately large amounts of subsidy to, certain enterprises. This sub-paragraph shall be applied in the light of the criteria set out in paragraphs 2 and 3 of this Article.

9. Subsidies to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms, shall not be subject to countervailing measures, provided that the subsidy:

(i) is a one-time non-recurring measure; and

(ii) is limited to 20 per cent of the cost of adaptation; and

(iii) does not cover the cost of replacing and operating the subsidised investment, which must be fully borne by firms; and

(iv) is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and

(v) is available to all firms which can adopt the new equipment and/or production processes.

For the purpose of this paragraph the term "existing facilities" means facilities having been in operation for at least two years at the time when new environmental requirements are imposed.

Article 4

Calculation of the amount of the countervailable subsidy

A. PRINCIPLE

1. The amount of countervailable subsidies, for the purpose of this Regulation, shall be calculated in terms of the benefit conferred to the recipient which is found to exist during the investigation period for subsidisation. Normally this period shall be the most recent accounting year of the beneficiary, but may be any other period of at least six months prior to the initiation of the investigation for which reliable financial and other relevant data are available.

B. CALCULATION OF BENEFIT TO THE RECIPIENT

2. As regards the calculation of benefit to the recipient, the following rules shall apply:

(a) Government provision of equity capital shall not be considered as conferring a benefit, unless the investment can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the country of origin and/or export.

(b) A loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount that the firm would pay for a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference between the two amounts.

(c) A loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay for a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees.

(d) The provision of goods or services or purchases of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

C. GENERAL PROVISIONS ON CALCULATION

3. The amount of countervailable subsidies shall be determined according to the following provisions

(a) The amount of the countervailable subsidies shall be determined per unit of the subsidised product exported to the Community.

(b) In establishing this amount the following elements may be deducted from the total subsidy:

(i) any application fee, or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy;

(ii) export taxes, duties or other charges levied on the export of the product to the Community specifically intended to offset the subsidy.

Where an interested party claims a deduction, it must prove that the claim is justified.

(c) Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy shall be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidisation.

(d) Where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned. The amount so calculated which is attributable to the investigation period, including that which derives from fixed assets acquired before this period, shall be allocated as described in sub-paragraph 3(c).

Where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan, and be treated in accordance with paragraph 2(b) of this Article.

(e) Where a subsidy cannot be linked to the acquisition of fixed assets, the amount of the benefit received during the investigation period shall in principle be attributed to this period, and allocated as described in sub-paragraph 3(c), unless special circumstances arise justifying attribution over a different period.

Article 5

Determination of Injury

1. Under this Regulation, the term "injury" shall, unless otherwise specified, be taken to mean material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry, and shall be interpreted in accordance with the provisions of this Article.

2. A determination of injury shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidised imports and the effect of the subsidised imports on prices in the Community market for like products, and (b) the consequent impact of these imports on the Community industry.

3. With regard to the volume of the subsidised imports, consideration shall be given as to whether there has been a significant increase in subsidised imports, either in absolute terms or relative to production or consumption in the Community. With regard to the effect of the subsidised imports on prices, consideration shall be given as to whether there has been a significant price undercutting by the subsidised imports as compared with the price of a like product of the Community, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

4. Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the effects of such imports shall be cumulatively assessed only if it is determined that (1) the amount of countervailable subsidies established in relation

to the imports from each country is more than *de minimis* as defined in paragraph 3 of Article 11 and that the volume of imports from each country is not negligible and (2) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

5. The examination of the impact of the subsidised imports on the Community industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including: the fact that an industry is still in the process of recovering from the effects of past subsidisation or dumping, the magnitude of the amount of countervailable subsidies, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity; factors affecting Community prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on Government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

6. It must be demonstrated, from all the relevant evidence presented in relation to paragraph 2, that the subsidised imports are causing injury within the meaning of this Regulation. Specifically, this shall entail a demonstration that the volume and/or price levels identified under paragraph 3 are responsible for an impact on the Community industry as provided for in paragraph 5, and that this impact exists to a degree which enables it to be classified as material.

7. Known factors other than the subsidised imports which at the same time are injuring the Community industry shall also be examined to ensure that injury caused by these other factors is not attributed to the subsidised imports under paragraph 6. Factors which may be considered in this respect include, inter alia, the volume and prices of non-subsidised imports, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and Community producers, developments in technology and the export performance and productivity of the Community industry.

8. The effect of the subsidised imports shall be assessed in relation to the production of the Community industry of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the subsidised imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

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

10. In making a determination regarding the existence of a threat of material injury, consideration should be given to, inter alia, such factors as:

(i) the nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;

(ii) a significant rate of increase of subsidised imports into the Community market indicating the likelihood of substantially increased imports;

(iii) sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased subsidised exports to the Community market, taking into account the availability of other export markets to absorb any additional exports;

(iv) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would likely increase demand for further imports; and

(v) inventories of the product being investigated.

11. No one of the factors listed above by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further subsidised exports are imminent and that, unless protective action is taken, material injury would occur.

Article 6

Definition of Community Industry

1. For the purposes of this Regulation, the term "Community industry" shall be interpreted as referring to the Community producers as a whole of the like product or to those of them whose collective output of the products constitutes a major proportion, as defined in paragraph 8 of Article 7, of the total Community production of those products, except that

(i) when producers are related to the exporters or importers or are themselves importers of the allegedly subsidised product, the term "the Community industry" may be interpreted as referring to the rest of the producers;

(ii) in exceptional circumstances the territory of the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Community. In such circumstances, injury may be found to exist even where a major proportion of the total Community industry is not injured, provided there is a concentration of subsidised imports into such an isolated market and provided further that the subsidised imports are causing injury to the producers of all or almost all of the production within such market.

2. For the purpose of paragraph 1, producers shall be considered to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting

that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

3. Where the Community industry has been interpreted as referring to the producers in a certain region, the exporters or the Government granting countervailable subsidies shall be given an opportunity to offer undertakings pursuant to Article 10 in respect of the region concerned. If an adequate undertaking is not offered promptly or the situations set out in paragraphs 9 and 10 of Article 10 apply, a provisional or definitive countervailing duty may be imposed in respect of the Community as a whole. In such cases the duties may, if practicable, be limited to specific products or exporters.

4. The provisions of paragraph 8 of Article 5 shall apply to this Article.

Article 7

Initiation of proceedings

1. Except as provided for in paragraph 10 of this Article, an investigation to determine the existence, degree and effect of any alleged subsidy shall be initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry.

(i) The complaint may be submitted to the Commission, or a Member State, which shall forward it to the Commission. The Commission shall send Member States a copy of any complaint it receives. The complaint shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission.

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

2. A complaint under paragraph 1 shall include sufficient evidence of the existence of countervailable subsidies (including, if possible, of their amount), injury and a causal link between the allegedly subsidised imports and the alleged injury. The complaint shall contain such information as is reasonably available to the complainant on the following:

(i) identity of the complainant and a description of the volume and value of the Community production of the like product by the complainant. Where a written complaint is made on behalf of the Community industry, the complaint shall identify the industry on behalf of which the complaint is made by a list of all

known Community producers of the like product (or associations of Community producers of the like product) and, to the extent possible, a description of the volume and value of Community production of the like product accounted for by such producers;

(ii) a complete description of the allegedly subsidised product, the names of the country or countries of origin and/or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) evidence with regard to the existence, amount, nature and countervailability of the subsidies in question;

(iv) information on the evolution of the volume of the allegedly subsidised imports, the effect of these imports on prices of the like product in the Community market and the consequent impact of the imports on the Community industry, as demonstrated by relevant factors and indices having a bearing on the state of the Community industry, such as those listed in paragraphs 3 and 5 of Article 5.

3. The Commission shall, to the degree possible, examine the accuracy and adequacy of the evidence provided in the complaint to determine whether there is sufficient evidence to justify the initiation of an investigation.

4. An investigation may be initiated in order to determine whether or not the alleged subsidies are specific within the meaning of paragraphs 2 and 3 of Article 3 of this Regulation.

5. An investigation may also be initiated in respect of subsidies non-countervailable according to paragraphs 7, 8 or 9 of Article 3 in order to determine whether or not the conditions laid down in those paragraphs have been met.

6. If a subsidy is granted pursuant to a subsidy programme which has been notified in advance of its implementation to the WTO Committee on Subsidies and Countervailing Measures in accordance with the provisions of Article 8 of the Subsidies Agreement, and in respect of which the Committee has failed to determine that the relevant conditions laid down in Article 8 of the Subsidies Agreement have not been met, an investigation shall not be initiated in respect of a subsidy granted pursuant to such a programme, unless a violation of Article 8 of the Subsidies Agreement has been ascertained by the competent WTO Dispute Settlement Body or through arbitration as provided in paragraph 5 of Article 8 of the Subsidies Agreement.

7. An investigation may also be initiated in respect of measures of the type listed in Annex IV to this Regulation, to the extent that they contain an element of subsidy as defined by Article 2, in order to determine whether the measures in question fully conform to the provisions of Annex IV.

8. An investigation shall not be initiated pursuant to paragraph 1 unless it has been determined, on the basis of an examination of the degree of support for, or opposition to, the complaint expressed by Community producers of the like product, that the complaint has been made by or on behalf of the Community industry. The complaint shall be considered to have been made "by or on behalf of the Community industry" if it is supported by those Community producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25 per cent of total production of the like product produced by the Community industry.

9. The Commission shall avoid, unless a decision has been made to initiate an investigation, any publicising of the complaint for the initiation of an investigation. However, as soon as possible after the receipt of a properly documented complaint under this Article, and in any event before the initiation of an investigation, the Commission shall notify the Government of the country of origin and/or export concerned, and this Government shall be invited for consultations with the aim of clarifying the situation as to matters referred to in Paragraph 2 above and arriving at a mutually agreed solution.

10. If in special circumstances, the Commission decides to initiate an investigation without having received a written complaint by or on behalf of the Community industry for the initiation of such investigation, this shall be done on the basis of sufficient evidence of the existence of countervailable subsidies, injury and causal link, as described in paragraph 2, to justify the initiation of an investigation.

11. The evidence of both subsidies and injury shall be considered simultaneously in the decision whether or not to initiate an investigation. A complaint shall be rejected where there is insufficient evidence of either countervailable subsidies or of injury to justify proceeding with the case.

12. The complaint may be withdrawn prior to initiation, in which case it shall be considered not have been lodged.

13. Where, after consultation, it is apparent that there is sufficient evidence to justify initiating proceedings the Commission shall initiate proceedings within one month of the lodging of the complaint and publish a notice in the *Official Journal of the European Communities*. Where insufficient evidence has been presented, the complainant shall, after consultation, be so informed within one month of the date on which the complaint is lodged with the Commission.

14. The notice of initiation of the proceeding shall announce the initiation of an investigation, indicate the product and countries concerned, give a summary of the information received and provide that all relevant information is to be communicated to the Commission; it shall state the periods within which interested parties may make themselves known, present their views in writing and submit information, if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard by the Commission in accordance with paragraph 5 of Article 8.

15. The Commission shall advise the exporters and importers known to it to be concerned, as well as the Government of the country of origin and/or export and the complainants, of the initiation of the proceedings and, with due regard to the protection of confidential information, provide the full text of the written complaint received under paragraph 1 to the known exporters, and to the authorities of the country of origin and/or export, and make it available, upon request, to other interested parties involved. Where the number of exporters involved is particularly high, the full text of the written complaint should instead be provided only to the authorities of the country of origin and/or export or to the relevant trade association.

16. A countervailing duty investigation shall not hinder the procedures of customs clearance.

Article 8

The investigation: information and procedure

1. Following the initiation of the proceedings, the Commission, acting in co-operation with the Member States, shall commence an investigation at Community level. Such investigation shall cover both subsidisation and injury and these shall be investigated simultaneously. For the purpose of a representative finding, an investigation period shall be selected which, in the case of subsidisation, shall normally cover the investigation period provided for in paragraph 1 of Article 4. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

2. Parties receiving questionnaires used in a countervailing duty investigation shall be given at least thirty days for reply. The time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the country of origin and/or export. An extension to the thirty day period may be granted, taking due account of the time limits of the investigation and provided the party gives a good reason, in terms of its particular circumstances, for such extension.

3. The Commission may request Member States to supply information, and Member States shall take whatever steps are necessary in order to give effect to such requests. They shall send to the Commission the information requested together with the results of all inspections, checks or investigations carried out. Where this information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to the Member States, provided it is not confidential, in which case a non-confidential summary shall be forwarded.

4. The Commission may request Member States to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers, and to carry out investigations in third countries, provided the firms concerned give their consent and the government of the country in question has been officially notified and raises no objection. Member States shall take whatever steps are necessary in order to give effect to such requests from the Commission. Officials of the Commission shall be authorised, if the Commission or a Member State so requests, to assist the officials of Member States in carrying out their duties.

5. The interested parties, which have made themselves known in accordance with paragraph 14 of Article 7, may be heard if they have, within the period prescribed in the notice published in the *Official Journal of the European Communities*, made a written request for a hearing showing that they are an interested party likely to be affected by the result of the proceedings and that there are particular reasons why they should be heard.

6. Opportunities shall, on request, be provided for the importers, exporters and the complainants, which have made themselves known in accordance with paragraph 14 of Article 7, and the Government of the country of origin and/or export, to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Oral information provided under this Paragraph shall be taken into account by the Commission in so far as it is subsequently reproduced in writing.

7. The complainants, the Government of the country of origin and/or export, importers, exporters, users and consumer organisations, which have made themselves known in accordance with paragraph 14 of Article 7, may, upon written request, inspect all information made available to the Commission by any party to an investigation, as distinct from internal

documents prepared by the authorities of the Community or its Member States, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 20, and that it is used in the investigation. Such parties may respond to such information and their comments may be taken into consideration, to the extent that they are sufficiently substantiated in the response.

8. Except in circumstances provided for in Article 19, the information supplied by interested parties and upon which findings are based, shall be examined for accuracy to the degree possible.

9. Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

10. Throughout the investigation, the Commission shall afford the Government of the country of origin and/or export a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and arriving at a mutually agreed solution.

Article 9

Provisional measures

1. Provisional measures may be applied if proceedings have been initiated in accordance with the provisions of Article 7, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with paragraph 14 of Article 7, a provisional affirmative determination has been made that the imported product benefits from countervailable subsidies and of consequent injury to the Community industry, and the Community interest calls for intervention to prevent such injury. The provisional measures shall be imposed no sooner than 60 days from the initiation of the proceedings but no later than nine months from the initiation of the proceedings.

2. The amount of the provisional countervailing duty shall not exceed the total amount of countervailable subsidies as provisionally established but it should be less than this amount, if such lesser duty would be adequate to remove the injury to the Community industry.

3. Provisional measures shall take the form of a security and the release of the products concerned for free circulation in the Community shall be conditional upon the provision of such security.

4. The Commission shall take provisional action after consultation or, in cases of extreme urgency, after informing the Member States. In this latter case, consultations shall take place 10 days, at the latest, after notification to the Member States of the action taken by the Commission.

5. Where a Member State requests immediate intervention by the Commission and the conditions of paragraph 1 of Article 9 are met, the Commission shall, within a maximum of five working days of receipt of the request, decide whether a provisional countervailing duty should be imposed.

6. The Commission shall forthwith inform the Council and the Member States of any decision taken under this Article. The Council, acting by qualified majority, may decide differently.

7. Provisional countervailing duties shall have a maximum period of validity of four months.

Article 10

Undertakings

1. Investigations may be terminated without the imposition of provisional or definitive duties upon acceptance of satisfactory voluntary undertakings under which.

(i) the Government of the country of origin and/or export agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(ii) any exporter undertakes to revise its prices or to cease exports to the area in question as long as such exports benefit from countervailable subsidies, so that the Commission, after consultation, is satisfied that the injurious effect of the subsidies is eliminated. Price increases under such undertakings shall not be higher than necessary to offset the amount of countervailable subsidies, and should be less than the amount of countervailable subsidies if such increases would be adequate to remove the injury to the Community industry.

2. Undertakings may be suggested by the Commission, but no Government or exporter shall be obliged to enter into such an undertaking. The fact that Governments or exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, it may be determined that a threat of injury is more likely to be realised if the subsidised imports continue. Undertakings shall not be sought or accepted from Governments or exporters unless a provisional affirmative determination of subsidisation and injury caused by such subsidisation has been made. Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made under Paragraph 5 of Article 21.

3. Undertakings offered need not be accepted if their acceptance is considered impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. The exporter and/or the Government of the country of origin and/or export concerned may be provided with the basis on which it is intended to propose the rejection of the offer of an undertaking and may be given an opportunity to make comments thereon. The reasons for rejection shall be set out in the definitive decision.

4. Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation.

5. Where undertakings are, after consultation, accepted, and there is no objection raised within the Advisory Committee, the investigation shall be terminated. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal that the proceedings be terminated. The proceedings shall stand terminated if, within one month, the Council, acting by qualified majority, has not decided otherwise.

6. If the undertakings are accepted, the investigation of subsidisation and injury shall normally be completed. In such a case, if a negative determination of subsidisation or injury is made, the undertaking shall automatically lapse except in cases where such a determination is due in large part to the existence of an undertaking. In such cases, the authorities may require that an undertaking be maintained for a reasonable period. In the event that an affirmative determination of subsidisation and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Regulation.

7. The Commission shall require any Government or exporter from whom undertakings have been accepted to provide, periodically, information relevant to the fulfilment of such undertaking, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a violation of the undertaking.

8. Where undertakings are accepted from certain exporters during the course of an investigation, they shall, for the purpose of Article 13, deemed to take effect from the date on which the investigation is concluded for the country of origin and/or export.

9. In case of violation or withdrawal of undertakings by any party , a definitive duty shall be imposed in accordance with Article 11, on the basis of the facts established within the context of the investigation which led to the undertaking, provided that such investigation was concluded with a final determination on subsidisation and injury, and the exporter concerned, or the Government of the country of origin and/or export, except in the case of withdrawal of undertakings by the exporter or such Government, has been given an opportunity to comment.

10. A provisional duty may, after consultation, be imposed in accordance with Article 9 on the basis of the best information available, where there is reason to believe that an undertaking is being violated, or in case of violation or withdrawal of undertakings where the investigation which led to the undertaking was not concluded.

Article 11

Termination without measures and imposition of definitive duties

1. Where the complaint is be withdrawn, proceedings may be terminated unless such termination would not be in the Community interest.

2. Where, after consultation, protective measures are unnecessary and there is no objection raised within the Advisory Committee, the investigation or proceedings shall be terminated. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal that the proceedings be terminated. The proceedings shall stand terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

3. Subject to and in accordance with the provisions of paragraphs 4 and 5 below, there shall be immediate termination of the proceedings where it is determined that the amount of countervailable subsidies is *de minimis*, or where the volume of subsidised imports, actual or potential, or the injury, is negligible.

4. With regard to investigations concerning imports from developing countries, the volume of subsidised imports shall be considered negligible if it represents less than 4 per cent of the total imports of the like product in the Community, unless imports from developing countries whose individual shares of total imports represent less than 4 per cent collectively account for more than 9 per cent of the total imports of the like product in the Community.

5. For the same investigations, the amount of the countervailable subsidies shall be considered to be *de minimis* if such amount is less than 1 per cent *ad valorem*, except that

(a) as regards investigations concerning imports from developing countries the *de minimis* threshold shall be 2% ad valorem; and

(b) for those developing countries Members of the WTO referred to in Annex VII of the Subsidies Agreement as well as for developing countries Members of the WTO which have completely eliminated export subsidies as defined in paragraph 4(a) of Article 3 of this Regulation, the *de minimis* subsidy threshold shall be 3 per cent *ad valorem;* where the application of this provision depends on the elimination of export subsidies, it shall apply from the date that the elimination of export subsidies is notified to the WTO Committee on Subsidies and Countervailing Measures, and for so long as export subsidies are not granted by the developing country concerned; this provision shall expire eight years from the date of entry into force of the WTO Agreement;

provided that it is only the investigation that shall be terminated where the amount of the countervailable subsidies is below the relevant *de minimis* level for individual exporters and they shall remain subject to the proceedings and may be re-investigated in any subsequent review carried out for the country concerned under Article 13.

6. Where the facts as finally established show the existence of countervailable subsidies and injury caused thereby, and the Community interest calls for intervention in accordance with Article 22, a definitive countervailing duty shall be imposed by the Council, acting by simple majority on a proposal submitted by the Commission after consultation of the Advisory Committee, unless the subsidy or subsidies are withdrawn or it has been demonstrated that the subsidies no longer confer any benefit to the exporters involved. Where provisional duties are in force, a proposal for definitive action shall be submitted to the Council not later than one month before the expiry of such duties. The amount of the countervailing duty shall not exceed the amount of countervailable subsidies from which the exporters have been found to benefit, established under this Regulation, but should be less than the total amount of countervailable subsidies, if such lesser duty would be adequate to remove the injury to the Community industry.

7. A countervailing duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis, on imports of a product from all sources found to benefit from countervailable subsidies and causing injury, except as to imports from those sources from which undertakings under the terms of this Regulation have been accepted. The Regulation shall specify the duty for each supplier, or, if that is impracticable, the supplying country concerned.

8. When the Commission has limited its examination in accordance with Article 18, any countervailing duty applied to imports from exporters or producers which have made themselves known in accordance with Article 18 but were not included in the examination shall not exceed the weighted average amount of countervailable subsidies established for the parties in the sample. For the purpose of this paragraph, the Commission shall disregard any zero and *de minimis* amounts of countervailable subsidies, and amounts of countervailable subsidies established under the circumstances referred to in Article 19. The authorities shall apply individual duties to imports from any exporter or producer which is granted individual treatment, as provided for in Article 18.

Article 12

Retroactivity

1. Provisional measures and definitive countervailing duties shall only be applied to products which enter for consumption after the time when the decision taken under Paragraph 1 of Article 9 and Paragraph 7 of Article 11, respectively, enters into force, subject to the exceptions set out in this Regulation.

2. Where a provisional duty has been applied and the facts as finally established show the existence of countervailable subsidies and injury, the Council shall decide, irrespective of whether a definitive countervailing duty is to be imposed, what proportion of the provisional duty is to be definitively collected. For this purpose, 'injury' shall not include material retardation of the establishment of a Community industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury. In all other cases involving such threat or retardation, any provisional amounts shall be released and definitive duties can only be imposed from the date that a final determination of threat or material retardation is made.

3. If the definitive countervailing duty is higher than the provisional duty, the difference shall not be collected. If the definitive duty is lower than the provisional duty, the duty shall be recalculated. Where a final determination is negative, the provisional duty shall not be confirmed.

4. A definitive countervailing duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures but not prior to the initiation of the investigation, provided that the imports have been registered in accordance with paragraph 5 of Article 15, the importers concerned have been given an opportunity to comment by the Commission, and that it is found that:

(i) there exist critical circumstances where for the subsidised product in question injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from countervailable subsidies under the terms of this Regulation; and,

(ii) where it is deemed necessary, in order to preclude the recurrence of such .injury, to assess countervailing duties retroactively on those imports.

5. In cases of violation or withdrawal of undertakings, definitive duties may be levied in accordance with this Regulation on goods entered for consumption not more than ninety days before the application of provisional measures, provided than the imports have been registered in accordance with paragraph 5 of Article 15, and that any such retroactive assessment shall not apply to imports entered before the violation or withdrawal of the undertaking.

Article 13

Duration, reviews and refunds

1. A countervailing measure shall remain in force only as long as and to the extent necessary to counteract the countervailable subsidies which are causing injury.

A. Expiry reviews

2. A definitive countervailing measure shall expire five years from its imposition or five years from the date of the most recent review which has covered both subsidisation and injury, unless it is determined in a review that the expiry would be likely to lead to continuation or recurrence of subsidisation and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon a request made by or on behalf of the Community producers and the measure shall remain in force pending the outcome of such review.

3. An expiry review shall by initiated where the request contains sufficient evidence that the removal of measures would be likely to result in a continuation or recurrence of subsidisation and injury. Such a likelihood may, for example, be indicated by evidence of continued subsidisation and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious subsidisation.

4. In carrying out investigations under this section, the exporters, importers, the Government of the country of origin and/or export and the complainants shall be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request and conclusions shall be reached with due account taken of all relevant and duly supported evidence presented in relation to the question of whether the removal of measures would be likely, or unlikely, to lead to the continuation or recurrence of subsidisation and injury.

5. Under this section, a notice of impending expiry shall be published in the *Official Journal of the European Communities* at an appropriate time as defined in this paragraph in the final year of the period of application of the measures. Thereafter, the Community producers shall, no later than three months before the end of the five year period, be entitled to lodge a review request in accordance with paragraph 3. A notice announcing the actual expiry of measures under this section shall also be published.

B. Interim reviews

6. The need for the continued imposition of measures may also be reviewed, where warranted on the initiative of the Commission or at the request of a Member State or, provided that a reasonable period of time of at least 1 year has elapsed since the imposition of the definitive measure, upon a request by any exporter, importer or the Community producers or the Government of the country of origin and/or export which contains sufficient evidence substantiating the need for such an interim review.

7. An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset the countervailable subsidy and/or the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the countervailable subsidy which is causing injury.

8. Where countervailing duties have been imposed in accordance with paragraph 7 of Article 11, an interim review shall be initiated if the Community producers provide sufficient evidence that the duties have led to no movement or insufficient movement of resale prices of the imported product in the Community. If the investigation proves the allegations to be correct, countervailing duties may be increased to achieve the price increase required to remove injury, although the increased duty level shall not exceed the amount of the countervailable subsidies.

9. In carrying out investigations under this section , the Commission may, *inter alia*, consider whether the circumstances with regard to subsidisation and injury have changed significantly, or whether existing measures are achieving the intended results in removing the injury previously established in accordance with Article 5 of this Regulation. In these respects, account shall be taken of all relevant and duly supported evidence in the final determination.

C. Accelerated reviews

10. Any exporter whose exports are subject to a definitive countervailing duty but who was not individually investigated during the original investigation for reasons other than a refusal to co-operate with the Commission, shall be entitled, upon request, to an accelerated review in order that the Commission promptly establish an individual countervailing duty rate for that exporter. Such a review shall be initiated after consultation of the Advisory Committee and Community producers have been given an opportunity to comment.

D. General provisions on reviews

11. The relevant provisions of Article 7 and Article 8, excluding those relating to time limits, shall apply to any review carried out under sections A, B and C of this Article. Any such review shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.

12. Reviews under this Article shall be initiated by the Commission after consultation of the Advisory Committee. Where warranted by reviews, measures shall be repealed or maintained under section A, or repealed, maintained or amended under sections B and C, by the Community institution responsible for their introduction. Where measures are repealed for individual exporters, but not for the country as a whole, such exporters shall remain subject to the proceedings and may be re-investigated in any subsequent review carried out for that country under this Article.

13. Where a review of measures under section B is in progress at the end of the period of application of measures as defined in section A, the measures shall also be investigated under the provisions of section A.

E. Refunds

14. Notwithstanding section A, an importer may request reimbursement of duties collected where it is shown that the amount of countervailable subsidies, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force.

15. In order to request a refund of countervailing duties, the importer shall submit an application to the Commission. The application shall be submitted via the Member State in the territory of which the products were released for free circulation and within six months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty. Member States shall forward the request to the Commission forthwith.

16. An application for refund shall only be considered to be duly supported by evidence where it contains precise information on the amount of refund of countervailing duties claimed and all customs documentation relating to the calculation and payment of such amount. It shall also include evidence, for a representative period, on the amount of countervailable subsidies for the exporter or producer to which the duty applies. In cases where the importer is not associated to the exporter or producer concerned and such

information is not immediately available or the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the amount of countervailable subsidies has been reduced or eliminated, as specified in this Article, and that the relevant supporting evidence shall be provided to the Commission. It shall be understood that where such evidence is not forthcoming from the exporter or producer, within a reasonable period of time, the application shall be rejected.

17. The Commission shall, after consultation of the Advisory Committee, decide whether and to what extent the application should be granted or it may decide at any time to initiate an interim review and the information and findings from such review, carried out in accordance with the provisions applicable for such reviews, shall be used to determine whether and to what extent a refund is justified. Refunds of duties shall normally take place within 12 months, and in no case more than 18 months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the countervailing duty. The payment of any refund authorised should normally be made by Member States within 90 days of the above-noted decision.

F. Final provision

18. In all review or refund investigations carried out under this Article, the Commission shall apply, in so far as circumstances have not changed, the same methodology as in the investigation which led to the duty, with due account taken of the provisions set out in Article 4 and Article 18 of this Regulation.

Article 14

Circumvention

1. Countervailing duties imposed under this Regulation may be extended to apply to imports from third countries of like products, or parts thereof, when circumvention of the measures in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and the Community which stems from a practice, process or work for which there is insufficient due cause or economic justification, other than the imposition of the duty, and there is evidence that the remedial effects of the duty are being undermined, in terms of the prices and/or quantities of the assembled like product, and the imported like product and/or parts thereof still benefit from the subsidy.

2. Investigations shall be initiated under this Article where the request contains sufficient evidence on the factors set out in paragraph 1. Initiations shall be made, after consultation of the Advisory Committee, by Commission Regulation which shall also instruct the customs authorities to make imports subject to registration in accordance with Paragraph 5 of Article 15 or request guarantees.. Investigations shall be carried out by the Commission, which may be assisted by customs authorities, and shall be concluded within nine months. When the facts, as finally ascertained, justify the extension of measures, this shall be done by the Council, acting by simple majority and on a proposal from the Commission, from the date that registration was imposed under Paragraph 5 of Article 15 or guarantees were requested. The relevant procedural provisions of this Regulation with regard to initiations and the conduct of investigations shall apply under this Article.

3. Products shall not be subject to registration under Paragraph 5 of Article 15 or measures where they are accompanied by a customs certificate declaring that the importation of the goods does not constitute circumvention. These certificates may be issued to importers, upon written application, by the authorities following authorisation by a decision of the Commission after consultation of the Advisory Committee or the decision of the Council imposing measures and they shall remain valid for the period, and under the conditions, set down therein.

4. Nothing in this Article shall preclude the normal application of the provisions in force concerning customs duties.

Article 15

General provisions

1. Provisional or definitive countervailing duties shall be imposed by Regulation, and collected by Member States in the form, at the rate specified and according to the other criteria laid down in the Regulation imposing such duties. Such duties shall also be collected independently of the customs duties, taxes and other charges normally imposed on imports. No product shall be subject to both anti-dumping and countervailing duties to compensate for the same situation arising from dumping or export subsidisation.

2. Regulations imposing provisional or definitive countervailing duties, or Regulations or Decisions accepting undertakings or terminating investigations or proceedings, shall be published in the *Official Journal of the European Communities*. Such Regulations or Decisions shall contain, in particular, and with due regard to the protection of confidential information the names of the exporters, if practical, or countries involved, a description of the product and a summary the facts and considerations relevant to the countervailable subsidies and injury determinations. In each case, a copy of the Regulation or Decision shall be sent to known interested parties. The provisions of this paragraph shall apply *mutatis mutandis* to reviews.

3. Special provisions, in particular with regard to the common definition of the concept of origin, as contained in Council Regulation (EEC) No 2913/92 of 12 October 1992, may be adopted in, or under, this Regulation.

4. In the Community interest, measures imposed under this Regulation may, after consultation of the Advisory Committee, be suspended by a decision of the Commission for a period of up to one year because of a change in market conditions in the Community which

makes the application of such measures temporarily inappropriate, provided that the Community industry has been given an opportunity to comment. The suspension may be extended for a further period if the Council so decides, by simple majority, on a proposal from the Commission. Measures may, at any time and after consultation, be re-instated if the reason for suspension is no longer applicable.

5. The Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against these imports from the date of such registration. Imports may be made subject to registration following a request from the Community industry which contains sufficient evidence to justify such action. Registration shall be introduced by Regulation which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports may not be made subject to registration for a period longer than nine months.

6. Member States shall report to the Commission, on a monthly basis, the import trade of products subject to investigation and subject to measures, and the amount of duties collected under this Regulation.

Article 16

Consultations

1. Any consultations provided for in this Regulation shall take place within an Advisory Committee, which shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately on request by a Member State or on the initiative of the Commission, and in any event within a time frame which allows the time limits set by this Regulation to be respected.

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

3. Where necessary, consultation may be in writing only; in such case the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation, which the chairman shall arrange, provided that such oral consultation can be held within a time frame which allows the time limits set by this Regulation to be respected.

4. Consultation shall in particular cover:

(i) the existence of countervailable subsidies and the methods of establishing their amount;

(ii) the existence and extent of injury;

(iii) the causal link between the subsidised or dumped imports and injury;

(iv) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by the countervailable subsidies or the dumping and the ways and means for putting such measures into effect.

Article 17

Verification visits

1. The Commission shall, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations, to verify information provided on subsidisation and injury. In the absence of a proper and timely reply, a verification visit may not be carried out.

2. The Commission may carry out investigations in third countries as required, provided it obtains the agreement of the firms concerned, it notifies the representatives of the government of the country in question and the latter does not object to the investigation. As soon as the agreement of the firms concerned has been obtained the Commission should notify the authorities of the country of origin and/or export of the names and addresses of the firms to be visited and the dates agreed.

3. The firms concerned shall be advised on the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, though this should not preclude requests to be made during the verification for further details to be provided in the light of information obtained.

4. In investigations carried out under this paragraph, the Commission shall be assisted by officials of those Member States who so request.

Article 18

Sampling

1. In cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available to it at the time of the selection, or to the largest representative volume of the production, sales or exports which can reasonably be investigated within the time limit available.

2. The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided such parties make themselves known and make sufficient information available, within three weeks of initiation, to enable a representative sample to be chosen.

3. In cases where the examination has been limited in accordance with this Article, an individual amount of countervailable subsidisation shall, nevertheless, be calculated for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in this Regulation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and prevent the timely completion of the investigation.

4. Where it is decided to sample and there is a degree of non-co-operation by some or all of the parties selected which is likely to materially affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-co-operation persists or there is insufficient time to select a new sample, the relevant provisions of Article 19 shall apply.

Article 19

Non-co-operation

1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits as provided for in this Regulation, or significantly impedes the investigation, preliminary or final findings, affirmative or negative, may be made on the basis of the facts available. Where the it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of the facts available. Interested parties should be made aware of the consequences of non-co-operation.

2. A lack of a computerised response shall not be deemed to constitute non-co-operation provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost.

3. Where the information presented by an interested party may not be ideal in all respects it should not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and provided the information is appropriately submitted in timely fashion, it is verifiable and the party has acted to the best of its ability.

4. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons thereof and have an opportunity to provide further explanations within the time limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information should be disclosed and given in any published findings.

5. If determinations, including those with respect to the amount of countervailable subsidies , are based on the provisions of paragraph 1 of this Article, including the information supplied in the complaint, it should, where practicable and with due regard to the time limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation.

6. If an interested party does not co-operate, or only co-operates partially, and thus relevant information is being withheld, the result could be less favourable to the party than if it had co-operated.

Article 20

Confidentiality

1. Any information which is by nature confidential, (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities.

2. Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarisation is not possible must be provided.

3. If it is considered that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information available or to authorise its disclosure in generalised or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct. Requests for confidentiality should not be arbitrarily rejected.

4. This Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken pursuant to this Regulation are based, or disclosure of the evidence relied on by the Community authorities is so far as necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interest of the parties concerned that their business or Governmental secrets should not be divulged.

5. The Council, the Commission and the Member States, or the officials of any of these, shall not reveal any information received pursuant to this Regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier. Exchanges of information between the Commission and Member States, any information relating to consultations made pursuant to Article 16 or consultations described in Paragraph 9 of Article 7 and Paragraph 10 of Article 8, or any internal documents prepared by the authorities of the Community or its Member States, shall be not be divulged except as specifically provided for in this Regulation.

6. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

Article 21

Disclosure

1. The complainants, importers, exporters and representatives of the country or origin and/or export may request disclosure of the details underlying the essential facts and considerations, on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures and the disclosure shall be made in writing as soon as possible thereafter.

2. The parties mentioned in paragraph 1, may request final disclosure of the essential facts and considerations, on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures, with particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures.

3. Requests for final disclosure, as defined in paragraph 2, shall be addressed to the Commission in writing and be received, in cases where a provisional duty has been applied, not later than one month after publication of the imposition of that duty. Where a provisional duty has not been applied, parties shall be provided with an opportunity to request final disclosure within time limits set by the Commission.

4. Final disclosure shall be given in writing. It shall be made, with due regard paid to the protection of business or Governmental secrets, as soon as possible, and normally, not later than one month prior to a definitive decision or the submission by the Commission of any proposal for final action pursuant to Article 11. Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision which may be taken by the Commission or the Council, but where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

5. Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

Article 22

Community interest

1. Under this Regulation, a determination as to whether the Community interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers, and a determination under this Article shall only be made where all parties have been given the opportunity to make their views known under paragraph 2. In such an examination, the need to eliminate the trade distorting effects of injurious subsidisation and to restore effective competition shall be given special consideration. Measures, as determined on the basis of subsidization and injury found, may not be applied where the authorities, on the basis of all the information submitted, can safely conclude that it is not in the Community interest to apply such measures.

2. In order to provide a sound basis on which the authorities can take account of all views and information in the decision on whether, or not, the imposition of measures is in the Community interest, the complainants, importers, representative users and representative consumer organisations may, within the time limits specified in the notice of initiation of the countervailing duty investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this Article, and they shall be entitled to respond to such information.

3. The parties which have acted in conformity with paragraph 2 may request a hearing. Such requests shall be made in writing, within the time limits set in paragraph 2, and shall set out the particular reasons, in terms of the Community interest, why they should be heard.

4. The parties which have acted in conformity with paragraph 2 may provide comments on the application of any provisional duties imposed. Such comments shall be received within one month of the application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.

5. The Commission shall examine the information which is properly submitted, and the extent to which it is representative, and the results of such analysis, together with an opinion on its merits, shall be transmitted to the Advisory Committee. The balance of views expressed in the Committee shall be taken into account by the Commission in any proposal made under Article 11.

6. The parties which have acted in conformity with paragraph 2, may request the facts and considerations on which final decisions are likely to be taken to be made available to them. Such information shall be made available to the extent possible and without prejudice to any subsequent decision taken by the Commission or the Council.

7. Under this Article, information shall only be taken into account where it is supported by actual evidence which substantiates its validity.

Article 23

Relationships between countervailing duty measures and multilateral remedies

If an imported product is made subject to any countermeasures imposed following recourse to the dispute settlement procedures of the Subsidies Agreement, and such measures are appropriate to remove the injury caused by the countervailable subsidies, any countervailing duty imposed with regard to that product shall immediately be suspended, or repealed, as appropriate.

Article 24

Final provisions

This Regulation shall not preclude the application of:

(i) any special rules laid down in agreements concluded between the Community and third countries;

(ii) the Community Regulations in the agricultural sector and of Regulation (EEC) No 1059/69[4] , (EEC) No 2730/75[5] ; and (EEC) No 2783/75[6] ; this Regulation shall operate by way of complement to those Regulations and in derogation from any provisions thereof which preclude the application of anti-dumping or countervailing duties;

(iii) special measures, provided that such action does not run counter to obligations under the GATT.

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[4] OJ No L 141, 12.06.1969, p. 1.
[5] OJ No L 281, 01.11.1975, p. 20.
[6] OJ No L 282, 01.11.1975, p. 104.

Article 25

Repeal of existing legislation

Regulation (EEC) No 2423/88, as amended by Regulation (EC) No 521/94 and Regulation (EC) No 522/94, is hereby repealed. References to the repealed Regulation shall be construed as references to this Regulation.

Article 26

Entry into force

This Regulation shall enter into force on the date determined by a decision governing the entry into force of the acts implementing the results of the Uruguay Round. It shall apply to proceedings already initiated. However, the references to time limits for the initiation of proceedings and the imposition of provisional duties shall only apply after a date which the Council shall specify in a Decision to be adopted by a qualified majority no later than 1 April 1995 on the basis of a Commission proposal to be submitted to the Council once the necessary budgetary resources have been made available.

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

Done at Brussels,

ANNEX I

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

(b) Currency retention schemes or any similar practices which involve a bonus on exports.

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

(d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourably than those commercially available(1) on world markets to their exporters.

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(1) The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

(e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes[2] or social welfare charges paid or payable by industrial or commercial enterprises[3] .

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect of production for domestic consumption, in the calculation of the base on which direct taxes are charged.

(g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes(2) in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

(h) The exemption, remission or deferral of prior-stage cumulative indirect taxes (2) on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste)[4] . This item shall be interpreted in

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[2] For the purpose of this Regulation and its annexes:

The term "direct taxes" shall mean tax on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;

The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated that are levied on imports;

The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;

"Prior-stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;

"Cumulative" indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding state of production;

"Remission" of taxes includes the refund or rebate of taxes;

"Remission of drawback" includes the full or partial exemption or deferral of import charges.

[3] Deferral may not amount to an export subsidy where, for example, appropriate interest charges are collected.

[4] Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).

accordance with the guidelines on consumption of inputs in the production process contained in Annex II.

(i) The remission or drawback of import charges(2) in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided , however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III.

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

(2) See previous reference.

(k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency at the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a Member of the WTO is a party to an international undertaking on official export credits to which at least twelve original such Members are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a Member of the WTO applied the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy.

(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.

ANNEX II

GUIDELINES ON CONSUMPTION OF INPUTS IN THE PRODUCTION PROCESS[5]

I

1. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).

2. The Illustrative List of Export Subsidies in Annex I makes reference to the term "inputs that are consumed in the production of the exported product" in paragraphs (h) and (i). Pursuant to paragraph (h), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption , remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of the exported product. Pursuant to paragraph (i), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of the exported product. Paragraph (i) also provides for substitution, where appropriate.

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[5] Inputs consumed in the production processes are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the exported product.

II

3. In examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation, the Commission shall normally proceed on the following basis:

4. Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the Commission shall normally first determine whether the government of the exporting country has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. Where such a system or procedure is determined to be applied, the Commission shall normally then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The Commission may deem it necessary to carry out, in accordance with paragraph 2 of Article 17, certain practical tests in order to verify information or to satisfy itself that the system or procedure is being effectively applied.

5. Where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not be applied effectively, a further examination by the exporting country based on the actual inputs involved will normally need to be carried out in the context of determining whether an excess payment occurred. If the Commission deems it necessary, a further examination may be carried out in accordance with paragraph 4.

6. The Commission shall normally treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. An input need not be present in the final product in the same form in which it entered the production process.

7. In determining the amount of a particular input that is consumed in the production of the exported product, a "normal allowance for waste" shall normally be taken into account, and such waste shall normally be treated as consumed in the production of the exported product. The term "waste" refers to that portion of a given input which does not serve an independent function in the production process, is not consumed in the production of the exported product (for reasons such as inefficiencies) and is not recovered, used or sold by the same manufacturer.

8. The Commission's determination of whether the claimed allowance for waste is "normal" shall normally take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate. The Commission shall bear in mind that an important question is whether the authorities in the exporting country have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission.

ANNEX III

GUIDELINES IN THE DETERMINATION OF SUBSTITUTION DRAWBACK SYSTEMS AS EXPORT SUBSIDIES

I

1. Drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product and where the export of this latter product contains domestic inputs having the same quality and characteristics as those submitted for the imported inputs. Pursuant to paragraph (i) of the Illustrative List of Export Subsidies in Annex I, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed.

II

2. In examining any substitution drawback system as part of a countervailing duty investigation pursuant to this Regulation, the Commission shall normally proceed on the following basis:

3. Paragraph (i) of the Illustrative List stipulates that home market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported inputs being substituted. The existence of a verification system or procedure is important because it enables the government of the exporting country to ensure and demonstrate that the quantity on inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported inputs in question.

4. Where it is alleged that a substitution drawback system conveys a subsidy, the Commission shall normally first proceed to determine whether the government of the exporting country has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the Commission shall normally then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that the procedures are determined to meet this test and are effectively applied, no subsidy will be presumed to exist. It may be deemed necessary by the Commission to carry out, in accordance with paragraph 2 of Article 17, certain practical tests in order to verify information or to satisfy itself that the verification procedures are being effectively applied.

5. Where there are no verification procedures, where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not be applied effectively, there may be a subsidy. In such cases, further examination by the exporting country based on the actual transactions involved would need to be carried out to determinate whether an excess payment occurred. If the Commission deems it necessary, a further examination would be carried out in accordance with paragraph 4.

6. The existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy.

7. An excess drawback of import charges in the sense of paragraph (i) would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.

ANNEX IV

(This Annex reproduces Annex 2 to the Agreement on Agriculture. Any terms or expression which are not explained herein or which are not self-explanatory are to be interpreted in the context of that Agreement)

DOMESTIC SUPPORT : THE BASIS OF EXEMPTION FROM THE REDUCTION COMMITMENTS

1. Domestic support measures for which exemption from the reduction commitments is claimed shall meet the fundamental requirement that they have no, or at most minimal, trade-distorting effects of effects on production. Accordingly, all measures for which exemption is claimed shall conform to the following basic criteria:

(a) the support in question shall be provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers; and,

(b) the support in question shall not have the effect of providing price support to producers;

plus policy-specific criteria and conditions as set out below.

Government Service Programmes

2. General Services

Policies in this category involve expenditures (or revenue foregone) in relation to programmes which provide services or benefits to agriculture or the rural community. They shall not involve direct payments to producers or processors. Such programmes, which include but are not restricted to the following list, shall meet the general criteria in paragraph 1 above and policy-specific conditions where set out below:

(a) research, including general research, research in connection with environmental programmes, and research programmes relating to particular products;

(b) pest and disease control, including general and product-specific pest and disease control measures, such as early-warning systems, quarantine and eradication;

(c) training services, including both general and specific training facilities;

(d) extension and advisory services, including the provision of means to facilitate the transfer of information and the results of research to producers and consumers;

(e) inspection services, including general inspection services and the inspection of particular products for health, safety, grading or standardization purposes;

(f) marketing and promotion services, including market information, advice and promotion relating to particular products but excluding expenditure for unspecified purposes that could be used by sellers to reduce their selling price or confer a direct economic benefit to purchasers; and

(g) infrastructural services, including: electricity reticulation, roads and other means of transport, market and port facilities, water supply facilities, dams and drainage schemes, and infrastructural works associated with environmental programmes. In all cases the expenditure shall be directed to the provision or construction of capital works only, and shall exclude the subsidized provision of on-farm facilities other than for the reticulation of generally available public utilities. It shall not include subsidies to inputs or operating costs, or preferential user charges.

3. Public stockholding for food security purposes[6]

Expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral part of a food security programme identified in national legislation. This may include government aid to private storage of products as part of such a programme.

The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security. The process of stock accumulation and disposal shall be financially transparent. Food purchases by the government shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question.

4. Domestic food aid[7]

Expenditures (or revenue foregone) in relation to the provision of domestic food aid to sections of the population in need.

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[6] For the purpose of paragraph 3 of this Annex, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS.

[7] For the purposes of paragraphs 3 and 4 of this Annex, the provision of foodstuffs at subsidized prices with the objective of meeting food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the provisions of this paragraph.

Eligibility to receive the food aid shall be subject to clearly-defined criteria related to nutritional objectives. Such aid shall be in the form of direct provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or a subsidized prices. Food purchases by the government shall be made at current market prices and the financing and administration of the aid shall be transparent.

5. Direct payments to producers

Support provided through direct payments (or revenue foregone, including payments in kind) to producers for which exemption from reduction commitments is claimed shall meet the basic criteria set out in paragraph 1 above, plus specific criteria applying to individual types of direct payment as set out in paragraphs 6 through 13 below. Where exemption from reduction is claimed for any existing or new type of direct payment other than those specified in paragraphs 6 through 13, it shall conform to criteria (b) through (e) in paragraph 6, in addition to the general criteria set out in paragraph 1.

6. Decoupled income support

(a) Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period.

(b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period.

(c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.

(d) The amount of such payments in any given years shall not be related to, or based on, the factors of production employed in any year after the base period.

(e) No production shall be required in order to receive such payments.

7. Government financial participation in income insurance and income safety-net programmes

(a) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds 30 per cent of average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments.

(b) The amount of such payments shall compensate for less than 70 per cent of the producer's income loss in the year the producer becomes eligible to receive this assistance.

(c) The amount of any such payments shall relate solely to income; it shall not relate to the type or volume of production (including livestock units) undertaken by the producer; or to the prices, domestic or international, applying to such production; or to the factors of production employed.

(d) Where a producer receives in the same year payments under this paragraph and under paragraph 8 (relief from natural disasters), the total of such payments shall be less than 100 per cent of the producer's total loss.

8. Payments (made either directly or by way of a government financial participation in crop insurance schemes) for relief from natural disasters

(a) Eligibility for such payments shall arise only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 per cent of the average of production in the preceding three-year period or a three-year average based on the preceding five year period, excluding the highest and the lowest entry.

(b) Payments made following a disaster shall be applied only in respect of losses of income, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster in question.

(c) Payments shall compensate for not more than the total cost of replacing such losses and shall not require or specify the type or quantity of future production.

(d) Payments made during a disaster shall not exceed the level required to prevent or alleviate further loss as defined in criterion (b) above.

(e) Where a producer receives in the same year payments under this paragraph and under paragraph 7(income insurance and income safety-net programmes), the total of such payments shall be less than 100 per cent of the producer's total loss.

9. Structural adjustment assistance provided through producer retirement programmes

(a) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to facilitate the retirement of persons engaged in marketable agricultural production, or their movement to non-agricultural activities.

(b) Payments shall be conditional upon the total and permanent retirement of the recipients from marketable agricultural production.

10. Structural adjustment assistance provided through resource retirement programmes.

(a) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to remove land or other resources, including livestock, from marketable agricultural production.

(b) Payments shall be conditional upon the retirement of land from marketable agricultural production for a minimum of three years, and in the case of livestock on its slaughter or definitive permanent disposal.

(c) Payments shall not require or specify any alternative use for such land or other resources which involves the production of marketable agricultural products.

(d) Payments shall not be related to either type or quantity of production or to the prices, domestic or international, applying to production undertaken using the land or other resources remaining in production.

11. Structural adjustment assistance provided through investment aids

(a) Eligibility for such payments shall be determined by reference to clearly-defined criteria in government programmes designed to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages. Eligibility for such programmes may also be based on a clearly-defined government programme for the reprivatization of agricultural land.

(b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than as provided for under criterion (e) below.

(c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.

(d) The payments shall be given only for the period of time necessary for the realisation of the investment in respect of which they are provided.

(e) The payments shall not mandate or in any way designate the agricultural products to be produced by the recipients except to require them not to produce a particular product.

(f) The payments shall be limited to the amount required to compensate for the structural disadvantage.

12. Payments under environmental programmes

(a) Eligibility for such payments shall be determined as part of a clearly-defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs.

(b) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme.

13. Payments under regional assistance programmes

(a) Eligibility for such payments shall be limited to producers in disadvantaged regions. Each such region must be a clearly designated contiguous geographical area with a definable economic and administrative identity, considered as disadvantaged on the basis of neutral and objective criteria clearly spelt out in a law or regulation and indicating that the region's difficulties arise out of more than temporary circumstances.

(b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than to reduce that production.

(c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.

(d) Payments shall be available only to producers in eligible regions, but generally available to all producers within such regions.

(e) Where related to production factors, payments shall be made at a degressive rate above a threshold level of the factor concerned.

(f) The payments shall be limited to the extra costs of loss of income involved in undertaking agricultural production in the prescribed area.

Commercial defence:

Safeguards

Explanatory memorandum

The Uruguay Round Safeguards Agreement clarifies and strengthens the disciplines of GATT 1994, specifically those regarding the implementation of Article XIX.

The Agreement restores multilateral control over safeguards and requires the elimination of any measures which escape such control.

Safeguard measures may be applied only in the circumstances and in the manner specified in the Agreement. As a result, all grey area measures, i.e. arrangements for limiting imports or exports, orderly-marketing arrangements or other similar arrangements, will be prohibited and must be eliminated.

The only exception made is for the EC-Japan arrangement relating to certain types of motor vehicle, which expires on 31 December 1999.

In the Community's case, adherence to the obligations stemming from the Safeguards Agreement entails denouncing all grey-area measures by the deadline given in the Agreement (180 days following the entry into force of the Agreement Establishing the MTO) and reviewing or amending (where necessary) the common rules for imports established by Council Regulation (EC) No 518/94, particularly in connection with safeguards.

The attached draft Regulation is the product of such a review.

It should be pointed out, however, that Community legislation already contains precise rules that often go beyond the more general provisions of the Safeguards Agreement. This is the case, for example, with the strict investigation deadlines and the more detailed list of factors to be considered in determining serious injury and the causal link between such injury and imports.

The main amendments to Council Regulation (EC) No 518/94 are therefore as follows:

(a) Incorporation of definitions

Definitions of the terms "threat of serious injury", "serious injury" and "Community producers".

Article 5(3); Agreement on Safeguards Article 4(1)

(b) Causal link: other factors

The Article dealing with the factors to be considered in an investigation will have added to it an extra paragraph on determining the presence of a causal link.

Article 10(1)(d); Agreement on Safeguards Article 4(2)

(c) Rights of the interested parties

Explicitly expressed right of reply to other parties' arguments for the interested parties.

End of Article 6(2); Agreement on Safeguards Article 3(1)

(d) Taking of provisional safeguard measures in critical circumstances

Adoption of the Safeguards Agreement's clauses on provisional measures (conditions, duration and nature).

Article 8; Agreement on Safeguards Article 6

(e) Quota levels

Explicit provision on the setting of a quota at a level, in principle, no lower than average imports over the last three representative years.

Article 16(2)(b); Agreement on Safeguards Article 5(1)

(f) Allocation of quotas among supplier countries

Arrangements for allocating quotas among supplier countries are now included (agreement, share of previous imports, modulation).

Article 16(3); Agreement on Safeguards Article 5(2)

(g) Duration of safeguard measures

No safeguard measure may now remain in force for longer than four years unless extended after a further investigation. The extension may not be for longer than four years.

Article 20; Agreement on Safeguards Article 7(1) to 7(3)

(h) Progressive liberalization and mid-term review

Any measure applying for longer than one year will have to be liberalized at regular intervals and any measure applying for longer than three years will be subject to a mid-term review.

Articles 20(4) and 21(1); Agreement on Safeguards Article 7(4)

(i) Reimposition of safeguard measures

There can now be no reimposition of safeguard measures on a particular product for at least two years from the expiry of the previous such measure.

Article 22; Agreement on Safeguards Article 7(5) and 7(6)

(j) Developing countries

Adoption of the Safeguards Agreement's provisions prohibiting the imposition of safeguard measures on products from developing country WTO Members if imports of those products are below a certain level.

Article 19; Agreement on Safeguards Article 9(1)

COUNCIL REGULATION (EC) No .../94
of 1994
on common rules for imports and repealing Regulation (EC) No 518/94

94/ 0232(ACC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the instruments establishing common organization of agricultural markets and the instruments concerning processed agricultural products, in particular insofar as they provide for derogation from the general principle that quantitative restrictions or measures having equivalent effect may be replaced solely by the measures provided for in the said instruments,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the common commercial policy should be based on uniform principles; whereas Council Regulation (EC) No 518/94[1] of 7 March 1994 on common rules for imports and repealing Regulation (EEC) No 288/82[2] is an important part of the policy;

Whereas due account was taken when Regulation (EC) No 518/94 was adopted of the Community's international obligations, particularly those deriving from Article XIX of the General Agreement on Tariffs and Trade (GATT);

Whereas the completion of the Uruguay Round has led to the foundation of the World Trade Organization (WTO); whereas Annex 1A to the Agreement establishing the WTO contains *inter alia* the General Agreement on Tariffs and Trade 1994 (GATT 1994) and an Agreement on Safeguards;

Whereas the Agreement on Safeguards meets the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of Article XIX; whereas that Agreement requires the elimination of safeguard measures which escape those rules, such as voluntary export restraints, orderly marketing arrangements and any other similar import or export arrangements;

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1 OJ L 67, 10.3.1994, p.77.
2 OJ L 35, 9.2.1982, p.1.

Whereas in the light of these new multilateral rules the common rules for imports should be made clearer and if necessary amended, particularly where the application of safeguard measures is concerned;

Whereas the starting point for the common rules for imports is liberalization of imports, namely the absence of any quantitative restrictions;

Whereas the Commission should be informed by the Member States of any danger created by trends in imports which might call for Community surveillance or the application of safeguard measures;

Whereas in such instances the Commission should examine the terms and conditions under which imports occur, the trend in imports, the various aspects of the economic and trade situations and, where appropriate, the measures to be applied;

Whereas if Community surveillance is applied, release for free circulation of the products concerned should be made subject to presentation of an import document meeting uniform criteria; whereas that document should, on simple application by the importer, be endorsed by the authorities of the Member States within a certain period but without the importer thereby acquiring any right to import; whereas the document should therefore be valid only during such period as the import rules remain unchanged;

Whereas the Member States and the Commission should exchange the information resulting from Community surveillance as fully as possible;

Whereas it falls to the Commission and the Council to adopt the safeguard measures required by the interests of the Community; whereas those interests should be considered as a whole and should in particular encompass the interest of Community producers, users and consumers;

Whereas safeguard measures against a Member of the WTO may be considered only if the product in question is imported into the Community in such greatly increased quantities and on such terms or conditions as to cause, or threaten to cause, serious injury to Community producers of like or directly competing products, unless international obligations permit derogation from this rule;

Whereas the terms "serious injury", "threat of serious injury" and "Community producers" should be defined and more precise criteria for determining injury be established;

Whereas an investigation must precede the application of any safeguard measure, subject to the reservation that the Commission be allowed in urgent cases to apply provisional measures;

Whereas there should be more detailed provisions on the opening of investigations, the checks and inspections required, access by exporter countries and interested parties to the information gathered, hearings for the parties involved and the opportunities for those parties to submit their views;

Whereas the provisions on investigations introduced by this Regulation are without prejudice to Community or national rules concerning professional secrecy;

Whereas it is also necessary to set time limits for the initiation of investigations and for determinations as to whether or not measures are appropriate, with a view to ensuring that such determinations are made quickly, in order to increase legal certainty for the economic operators concerned;

Whereas in cases in which safeguard measures take the form of a quota the level of the latter should be set in principle no lower than the average level of imports over a representative period of at least three years;

Whereas in cases in which a quota is allocated among supplier countries each country's quota may be determined by agreement with the countries themselves or by taking as a reference the level of imports over a representative period; whereas derogations from these rules should nevertheless be possible where there is a disproportionate increase in imports, provided that due consultation under the auspices of the WTO Committee on Safeguards takes place;

Whereas the maximum duration of safeguard measures should be determined and specific provisions regarding extension, progressive liberalization and reviews of such measures be laid down;

Whereas the circumstances in which products originating in a developing country Member of the WTO should be exempt from safeguard measures should be established;

Whereas surveillance or safeguard measures confined to one or more regions of the Community may prove more suitable than measures applying to the whole Community; whereas, however, such measures should be authorized only exceptionally and where no alternative exists; whereas it is necessary to ensure that such measures are temporary and cause the minimum of disruption to the operation of the internal market;

Whereas in the interests of uniformity in rules for imports, the formalities to be carried out by importers should be simplified and made identical regardless of the place where the goods clear customs; whereas it is therefore desirable to provide that any formalities should be carried out using forms corresponding to the specimen annexed to the Regulation;

Whereas import documents issued in connection with Community surveillance measures should be valid throughout the Community irrespective of the Member State of issue;

Whereas the textile products covered by Regulation (EC) No 517/94 of 7 March 1994 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements or by other specific Community import rules are subject to special treatment at Community and international level; whereas they should therefore be completely excluded from the scope of this Regulation;

Whereas the provisions of this Regulation are applicable without prejudice to Articles 77, 81, 244, 249 and 280 of the Act of Accession of Spain and Portugal;

Whereas Regulation (EC) No 518/94 should consequently be repealed,

HAS ADOPTED THIS REGULATION:

TITLE I
General principles

Article 1

1. This Regulation applies to imports of products covered by the Treaty originating in third countries, except for:

   - textile products covered by Regulation (EC) No 517/94,
   - the products originating in certain third countries listed in Regulation (EC) No 519/94 on common rules for imports from certain third countries,

2. The products referred to in paragraph 1 shall be freely imported into the Community and accordingly, without prejudice to the safeguard measures which may be taken under Title V, shall not be subject to any quantitative restrictions.

TITLE II
Community information and consultation procedure

Article 2

The Commission shall be informed by the Member States should trends in imports appear to call for surveillance or safeguard measures. This information shall contain the evidence available, as determined on the basis of the criteria laid down in Article 10. The Commission shall immediately pass this information on to all the Member States.

Article 3

Consultations may be held either at the request of a Member State or on the initiative of the Commission. They shall take place within eight working days of the Commission receiving the information provided for in Article 2 and, in any event, before the introduction of any Community surveillance or safeguard measure.

Article 4

1. Consultation shall take place within an advisory committee, hereinafter called 'the Committee', made up of representatives of each Member State with a representative of the Commission as chairman.

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

3. Consultations shall cover in particular:

   - terms and conditions of import, import trends and the various aspects of the economic and trade situation with regard to the product in question;

   - the measures, if any, to be taken.

4. Consultations may be conducted in writing if necessary. The Commission shall in this event inform the Member States, which may express their opinion or request oral consultations within a period of five to eight working days, to be decided by the Commission.

TITLE III
Community investigation procedure

Article 5

1. Without prejudice to Article 8, the Community investigation procedure shall be implemented before any safeguard measure is applied.

2. Using as a basis the factors described in Article 10, the investigation shall seek to determine whether imports of the product in question are causing or threatening to cause serious injury to the Community producers concerned.

3. The following definitions shall apply:

   (a) "serious injury" means a significant overall impairment in the position of Community producers,

(b) "threat of serious injury" means serious injury that is clearly imminent;

(c) "Community producers" means the producers as a whole of the like or directly competing products operating within the territory of the Community, or those whose collective output of the like or directly competing products constitutes a major proportion of the total Community production of those products.

Article 6

1. Where after consultations referred to in Article 3, it is apparent to the Commission that there is sufficient evidence to justify the initiation of an investigation, the Commission shall:

(a) initiate an investigation within one month of receipt of information from a Member State and publish a notice in the *Official Journal of the European Communities*; such notice shall give a summary of the information received, and stipulate that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may make known their views in writing and submit information, if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 4;

(b) commence the investigation, acting in cooperation with the Member States.

2. The Commission shall seek all information it deems to be necessary and, where it considers it appropriate, after consulting the Committee, endeavour to check this information with importers, traders, agents, producers, trade associations and organizations.

The Commission shall be assisted in this task by staff of the Member State on whose territory these checks are being carried out, provided that Member State so wishes.

Interested parties which have come forward under paragraph (1)(a) and representatives of the exporting country may, upon written request, inspect all information made available to the Commission in connection with the investigation other than internal documents prepared by the authorities of the Community or its Member States, provided that that information is relevant to the presentation of their case and not confidential within the meaning of Article 9, and that it is used by the Commission in the investigation.

Interested parties which have come forward may communicate their views on the information in question to the Commission; those views may be taken into consideration where they are backed by sufficient evidence.

3. The Member States shall supply the Commission, at its request and following procedures laid down by it, with the information at their disposal on developments in the market of the product being investigated.

4. The Commission may hear the interested parties. Such parties must be heard where they have made a written application within the period laid down in the notice published in the *Official Journal of the European Communities*, showing that they are actually likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

5. When information is not supplied within the time limits set by this Regulation or by the Commission under this Regulation, or the investigation is significantly impeded, findings may be made on the basis of the facts available. Where the Commission finds that any interested party or third party has supplied it which false or misleading information, it shall disregard the information and may make use of facts available.

6. Where it appears to the Commission, after the consultation referred to in Article 3, that there is insufficient evidence to justify an investigation, it shall inform the Member States of its decision within one month of receipt of the information from the Member States.

Article 7

1. At the end of the investigation, the Commission shall submit a report on the results to the Committee.

2. Where the Commission considers, within nine months of the initiation of the investigation, that no Community surveillance or safeguard measures are necessary, the investigation shall be terminated within a month, the Committee having first been consulted. The decision to terminate the investigation, stating the main conclusions of the investigation and a summary of the reasons therefor, shall be published in the *Official Journal of the European Communities*.

3. If the Commission considers that Community surveillance or safeguard measures are necessary, it shall take the necessary decisions in accordance with Titles IV and V, no later than nine months from the initiation of the investigation. In exceptional circumstances, this time limit may be extended by a further maximum period of two months; the Commission shall then publish a notice in the *Official Journal of the European Communities* setting forth the duration of the extension and a summary of the reasons therefor.

Article 8

1. The provisions of this Title shall not preclude the use, at any time, of surveillance measures in accordance with Articles 11 to 15 or provisional safeguard measures in accordance with Articles 16, 17 and 18.

Provisional safeguard measures shall be applied:

- in critical circumstances where delay would cause damage which it would be difficult to repair, making immediate action necessary;

- where a preliminary determination provides clear evidence that increased imports have caused or are threatening to cause serious injury.

2. The duration of such measures shall not exceed 200 days.

3. Provisional safeguard measures should take the form of an increase in the existing level of customs duty (whether the latter is zero or higher) if such action is likely to prevent or repair the serious injury.

4. The Commission shall immediately conduct whatever investigation measures are still necessary.

5. Should the provisional safeguard measures be repealed because no serious injury or threat of serious injury exists, the customs duties collected as a result of the provisional measures shall be automatically refunded as soon as possible. The procedure laid down in Article 235 *et seq* of Council Regulation (EEC) No 2913/92 of 12 October 1992 shall apply.

Article 9

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

2. (a) Neither the Council, nor the Commission, nor the Member States, nor the officials of any of these shall reveal any information of a confidential nature received pursuant to this Regulation, or any information provided on a confidential basis without specific permission from the supplier of such information.

(b) Each request for confidentiality shall state the reasons why the information is confidential.

However, if it appears that a request for confidentiality is unjustified and if the supplier of the information wishes neither to make it public nor to authorize its disclosure in general terms or in the form of a summary, the information concerned may be disregarded.

3. Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

4. The preceding paragraphs shall not preclude reference by the Community authorities to general information and in particular to reasons on which decisions taken under this Regulation are based. The said authorities shall, however, take into account the legitimate interest of the legal and natural persons concerned that their business secrets should not be divulged.

Article 10

1. Examination of the trend of imports, of the conditions in which they take place and of serious injury or threat of serious injury to Community producers resulting from such imports shall cover in particular the following factors:

(a) the volume of imports, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in the Community;

(b) the price of the imports, in particular where there has been a significant price undercutting as compared with the price of a like product in the Community;

(c) the consequent impact on the Community producers as indicated by trends in certain economic factors such as:

- production,
- capacity utilization,
- stocks,
- sales,
- market share,
- prices (i.e. depression of prices or prevention of price increases which would normally have occurred),
- profits,
- return on capital employed,
- cash flow,
- employment.

(d) factors other than trends in imports which are causing or may have caused injury to the Community producers concerned.

2. Where a threat of serious injury is alleged, the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury. In this regard account may be taken of factors such as:

(a) the rate of increase of the exports to the Community;

(b) export capacity in the country of origin or export, as it stands or is likely to be in the foreseeable future, and the likelihood that that capacity will be used to export to the Community.

TITLE IV

Surveillance

Article 11

1. Where the trend in imports of a product originating in a third country covered by this Regulation threatens to cause injury to Community producers, and where the interests of the Community so require, import of that product may be subject, as appropriate, to:

   (a) retrospective Community surveillance carried out in accordance with the provisions laid down in the decision referred to in paragraph 2,
   or
   (b) prior Community surveillance carried out in accordance with Article 12.

2. The decision to impose surveillance shall be taken by the Commission according to the procedure laid down in Article 16 (5) and (6).

3. The surveillance measures shall have a limited period of validity. Unless otherwise provided, they shall cease to be valid at the end of the second six-month period following the six months in which the measures were introduced.

Article 12

1. Products under prior Community surveillance may be put into free circulation only on production of an import document. Such document shall be endorsed by the competent authority designated by Member States, free of charge, for any quantity requested and within a maximum of five working days of receipt by the national competent authority of a declaration by any Community importer, regardless of his place of business in the Community. This declaration shall be deemed to have been received by the national competent authority no later than three working days after submission, unless it is proven otherwise.

2. The import document and the declaration by the importer shall be made out on a form corresponding to the model in the Annex.

Additional information to that provided for in the aforementioned form may be required. Such information shall be specified in the decision to impose surveillance.

3. The import document shall be valid throughout the Community, regardless of the Member State of issue.

4. A finding that the unit price at which the transaction is effected exceeds that indicated in the import document by less than 5 % or that the total value or quantity of the products presented for import exceeds the value or quantity given in the import document by less than 5 % shall not preclude the release for free circulation of the product in question. The Commission, having heard the opinions expressed in the Committee and taking account of the nature of the products and other special features of the transactions concerned, may fix a different percentage, which, however, should not normally exceed 10 %.

5. Import documents may be used only for such time as arrangements for liberalization of imports remain in force in respect of the transactions concerned. Such import documents may not in any event be used beyond the expiry of a period which shall be laid down at the same time and by means of the same procedure as the imposition of surveillance, and shall take account of the nature of the products and other special features of the transactions.

6. Where the decision taken under Article 11 so requires, the origin of products under Community surveillance must be proved by a certificate of origin. This paragraph shall not affect other provisions concerning the production of any such certificate.

7. Where the product under prior Community surveillance is subject to regional safeguard measures in a Member State, the import authorization granted by that Member State may replace the import document.

Article 11

Where import of a product has not been made subject to prior Community surveillance within eight working days of the end of consultations, the Commission, in accordance with Article 18, may introduce surveillance confined to imports into one or more regions of the Community.

Article 14

1. Products under regional surveillance may be put into free circulation in the region concerned only on production of an import document. Such document shall be endorsed by the competent authority designated by the Member State(s) concerned, free of charge, for any quantity requested and within a maximum of five working days of receipt by the national competent authority of a declaration by any Community importer, regardless of his place of business in the Community. This declaration shall be deemed to have been received by the national competent authority no later than three working days after submission, unless it is proven otherwise. Import documents may be used only for such time as arrangements for imports remain liberalized in respect of the transactions concerned.

2. The import document and the declaration by the importer shall be made out on a form corresponding to the model in the Annex.

Additional information to that provided in the aforementioned form may be required. Such particulars shall be specified in the decision to impose surveillance.

Article 15

1. Member States shall communicate to the Commission within the first ten days of each month in the case of Community or regional surveillance :

(a) in the case of prior surveillance, details of the sums of money (calculated on the basis of cif prices) and quantities of goods in respect of which import documents were issued or endorsed during the preceding period;

(b) in every case, details of imports during the period preceding the period referred to in subparagraph (a).

The information supplied by Member States shall be broken down by product and by country.

Different provisions may be laid down at the same time and by the same procedure as the surveillance arrangements.

2. Where the nature of the products or special circumstances so require, the Commission may, at the request of a Member State or on its own initiative, amend the timetables for submitting this information.

3. The Commission shall inform the Member States accordingly.

TITLE V

Safeguard measures

Article 16

1. Where a product is imported into the Community in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, serious injury to Community producers, the Commission, in order to safeguard the interests of the Community, may, acting at the request of a Member State or on its own initiative:

(a) limit the period of validity of import documents within the meaning of Article 12 to be endorsed after the entry into force of this measure;

(b) alter the import rules for the product in question by making its release for free circulation conditional on production of an import authorization, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down.

The measures referred to in (a) and (b) shall take effect immediately.

2. (a) When establishing a quota, account shall be taken in particular of:

- the desirability of maintaining, as far as possible, traditional trade flows,
- the volume of goods exported under contracts concluded on normal terms and conditions before the entry into force of a safeguard measure within the meaning of this Title, where such contracts have been notified to the Commission by the Member State concerned,
- the need to avoid jeopardizing achievement of the aim pursued in establishing the quota.

(b) The quota shall not be set lower than the average level of imports over the last three representative years for which statistics are available unless a different level is necessary to prevent or remedy serious injury.

3. (a) In cases in which a quota is allocated among supplier countries, allocation may be agreed with those of them having a substantial interest in supplying the product concerned for import into the Community.

Failing this, the quota shall be allocated among the supplier countries in proportion to their share of imports into the Community of the product concerned during a previous representative period, due account being taken of any specific factors which may have affected or may be affecting the trade in the product.

(b) Provided that its obligation to see that consultations are conducted under the auspices of the WTO Committee on Safeguards is not disregarded, the Community may nevertheless depart from this method of allocation if imports originating in one or more supplier countries have increased in disproportionate percentage in relation to the total increase of imports of the product concerned over a previous representative period.

4. (a) The measures referred to in this Article shall apply to every product which is put into free circulation after their entry into force. In accordance with Article 18 they may be confined to one or more regions of the Community.

(b) However, such measures shall not prevent the release for free circulation of products already on their way to the Community provided that the destination of such products cannot be changed and that those products which, under Articles 11 and 12, may be put into free circulation only on production of an import document are in fact accompanied by such a document.

5. Where intervention by the Commission has been requested by a Member State, the Commission shall take a decision within a maximum of five working days of receipt of such a request.

6. Any decision taken by the Commission under this Article shall be communicated to the Council and to the Member States. Any Member State may, within one month following the day of such communication, refer the decision to the Council.

7. If a Member State refers the Commission's decision to the Council, the Council, acting by a qualified majority, may confirm, amend or revoke that decision.

If, within three months of the referral of the matter to the Council, the Council has not taken a decision, the decision taken by the Commission shall be deemed revoked.

Article 17

Where the interests of the Community so require, the Council, acting by a qualified majority on a proposal from the Commission drawn up in accordance with the terms of Title III, may adopt appropriate measures to prevent a product being imported into the Community in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, serious injury to Community producers of like or directly competing products.

Article 16 (2), (3) and (4) shall apply.

Article 18

Where it emerges, primarily on the basis of the factors referred to in Article 10, that the conditions laid down for the adoption of measures under Articles 11 and 16 are met in one or more regions of the Community, the Commission, after having examined alternative solutions, may exceptionally authorize the application of surveillance or safeguard measures limited to the region(s) concerned if it considers that such measures applied at that level are more appropriate than measures applied throughout the Community.

These measures must be temporary and must disrupt the operation of the internal market as little as possible.

The measures shall be adopted in accordance with the provisions laid down in Articles 11 and 16 respectively.

Article 19

No safeguard measure may be applied to a product originating in a developing country Member of the WTO as long as that country's share of Community imports of the product concerned does not exceed 3%, provided that developing country Members with less than a 3% import share collectively account for not more than 9% of total Community imports of the product concerned.

Article 20

1. The duration of safeguard measures must be limited to the period of time necessary to prevent or remedy serious injury and to facilitate adjustment on the part of Community producers. The period should not exceed four years, including the duration of any provisional measure.

2. Such initial period may be extended, except in the case of the measures referred to in Article 16(3)(b), provided it is determined that:

   - the safeguard measure continues to be necessary to prevent or remedy serious injury,
   - and there is evidence that Community producers are adjusting.

3. Extensions shall be adopted in accordance with the terms of Title III and using the same procedures as the initial measures. A measures so extended shall not be no more restrictive than it was at the end of the initial period.

4. If the duration of the measure exceeds one year, the measure must be progressively liberalized at regular intervals during the period of application, including the period of extension.

5. The total period of application of a safeguard measure shall not exceed eight years.

Article 21

1. While any surveillance or safeguard measure applied in accordance with Titles IV and V is in operation, consultations shall be held within the Committee, either at the request of a Member State or on the initiative of the Commission. If the duration of a safeguard measure exceeds three years, the Commission shall seek such consultations no later than the mid-point of the period of application of that measure.

   The purpose of such consultations shall be:
   (a) to examine the effects of the measure;
   (b) to determine whether and in what manner it is appropriate to accelerate the pace of liberalization;
   (c) to ascertain whether its application is still necessary.

2. Where, as a result of the consultations referred to in paragraph 1, the Commission considers that any surveillance or safeguard measure referred to in Articles 11, 13, 16, 17 and 18 should be revoked or amended, it shall proceed as follows:

(a) where the measure was enacted by the Council, the Commission shall propose to the Council that it be revoked or amended. The Council shall act by a qualified majority.

(b) in all other cases, the Commission shall amend or revoke Community safeguard and surveillance measures.

Where the decision relates to regional surveillance measures, it shall apply from the sixth day following that of its publication in the *Official Journal of the European Communities*.

Article 22

1. Where imports of a product have already been subject to a safeguard measure no further such measure shall be applied to that product until a period equal to the duration of the previous measure has elapsed. Such period shall not be less than two years.

2. Notwithstanding paragraph 1, a safeguard measure of 180 days or less may be reimposed for a product if:

(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product, and

(b) such a safeguard measure has not been applied to the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

TITLE VI
Final provisions

Article 23

Where the interests of the Community so require, the Council, acting by a qualified majority on a proposal from the Commission, may adopt appropriate measures to allow the rights and obligations of the Community or of all its Member States, in particular those relating to trade in commodities, to be exercised and fulfilled at international level.

Article 24

1 This Regulation shall not preclude the fulfilment of obligations arising from special rules contained in agreements concluded between the Community and third countries.

2. (a) Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by Member States:

(i) of prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property;

(ii) of special formalities concerning foreign exchange;

(iii) of formalities introduced pursuant to international agreements in accordance with the Treaty.

(b) The Member States shall inform the Commission of the measures or formalities they intend to introduce or amend in accordance with this paragraph. In the event of extreme urgency, the national measures or formalities in question shall be communicated to the Commission immediately upon their adoption.

Article 25

1. This Regulation shall be without prejudice to the operation of the instruments establishing the common organization of agricultural markets or of Community or national administrative provisions derived therefrom or of the specific instruments applicable to goods resulting from the processing of agricultural products; it shall operate by way of complement to those instruments.

2. However, in the case of products covered by the instruments referred to in paragraph 1, Articles 11 to 15 and 22 shall not apply to those in respect of which the Community rules on trade with third countries require the production of a licence or other import document.

   Articles 16, 18 and 21 to 24 shall not apply to those products in respect of which such rules provide for the application of quantitative import restrictions.

Article 26

Until 31 December 1995, Spain and Portugal may maintain the quantitative restrictions on agricultural products referred to in Articles 77, 81, 244, 249 and 280 of the Act of Accession.

Article 27

Regulation (EC) No 518/94 is hereby repealed. References to the repealed Regulation shall be understood as referring to this Regulation.

Article 28

This Regulation shall enter into force on a date determined by a decision on the entry into force of the acts implementing the results of the Uruguay Round.

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

ANNEX

List of particulars to be given in the boxes of the surveillance document

SURVEILLANCE DOCUMENT

1. Applicant
   (name, full address, country)
2. Registration No
3. Consignor (name, address, country)
4. Competent authorities of issue
   (name and address)
5. Declarant (name and address)
6. Last day of validity
7. Country of origin
8. Country of consignment
9. Proposed place and date of importation
10. Reference to Regulation (EC) which imposed surveillance
11. Description of goods, marks and numbers, number and kind of packages
12. Goods code (CN)
13. Gross mass (kg)
14. Net mass (kg)
15. Additional units
16. cif value EC frontier in ecu
17. Further particulars
18. Certification by the applicant:
    I, the undersigned, certify that the information provided in this application is true and given in good faith.

    Date and place

    (signature) (stamp)
19. Stamp of the competent authorities
    Date

    (signature) (stamp)

Original for the applicant

Copy for the competent authorities

EUROPEAN COMMUNITIES **SURVEILLANCE DOCUMENT**

1

Original for the applicant

1. Applicant (name, full address, country)	2. Registration No
3. Consignor (name, address, country)	4. Competent authorities of issue (name and address)
5. Declarant (name and address)	6. Last day of validity
	7. Country of origin / 8. Country of consignment
9. Proposed place and date of importation	10. Reference to Regulation (EC) which imposed surveillance
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17. Further particulars	
18. Certification by the applicant: I, undersigned, certify that the information provided in this application is true and given in good faith	
19. Stamp of the competent authorities Date : (signature) (stamp)	Place and date (signature) (stamp)

EUROPEAN COMMUNITIES **SURVEILLANCE DOCUMENT**

2

Copy for the competent authorities

1. Applicant (name, full address, country)	2. Registration No
3. Consignor (name, address, country)	4. Competent authorities of issue (name and address)
5. Declarant (name and address)	6. Last day of validity
	7. Country of origin / 8. Country of consignment
9. Proposed place and date of importation	10. Reference to Regulation (EC) which imposed surveillance
11. Description of goods, marks and numbers, number and kind of packages	12. Goods code (CN)
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	14. Net mass (kg)
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17. Further particulars	
18. Certification by the applicant: I, undersigned, certify that the information provided in this application is true and given in good faith	
19. Stamp of the competent authorities Date : (signature) (stamp)	Place and date (signature) (stamp)

Commercial defence:

New Instrument

EXPLANATORY MEMORANDUM

This proposal amends Regulation 2641/84 on the strengthening of the common commercial policy with regard in particular to protection against illicit commercial practices. The Council has already amended this Regulation (with Regulation 522/94) in order to strengthen the link between this instrument of commercial defence and the improved dispute settlement mechanism of the WTO. This purpose has been achieved at the procedural level: resort to Regulation 2641/84 (as already amended) will enable Community industries and Member States to activate the Community institutions (Commission and Council) for the purpose of WTO dispute settlement with all the necessary guarantees of transparency and due process, and subject to the control of the Court of Justice.

This new proposal is aimed at pursuing this process further, by making the instrument better adapted to the changed nature of WTO dispute settlement (including, but not limited to, its applicability to the GATS[1] and TRIPs Agreements). In particular, the proposed amendments are aimed at dealing with problems created by third country illicit commercial practices for Community exporters on foreign markets. A brief explanation of the rationale for the proposed changes follows below, together with a table summarising the possibilities of action which would exist under this proposed Regulation if it were adopted.

No change is being proposed to the decision-making procedures resulting from the amendments already adopted in 1994, except for re-grouping the relevant provisions in a more logical order. Thus, this proposal would not result in any modification of the respective roles of the Community institutions involved (Commission and Council) and of the majority required for the Council to decide on these matters.

1. Reg. 2641/84 is currently based on two "tracks" : the first gives a Community industry the right to complain against foreign "illicit practices" if it suffers material injury; the second gives Member States the right to prompt the Community to act in all cases (including, but not limited to, illicit practices) in which the Community has rights under international rules.

2. The second "track" (i.e. referral of a matter by one or more Member States invoking the defense of the Community's international rights) appears now satisfactory, after the 1994 amendments. Any further changes should only be

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[1] In particular, the notion of "providers of services" has been introduced within the concept of "Community industry", to take into account the new rules of the GATS

envisaged after its effectiveness has been tested in practice (which will only happen after the WTO has entered into force). The first "track" (complaint by a Community industry against an "illicit practice"), instead, continues to suffer from serious shortcomings, and the renewed interest that many sectors of European industry are showing for the WTO and the new rules has highlighted these shortcomings.

3. The first problem lies with the concepts of "Community industry" and of "material injury". These were borrowed from existing commercial defence instruments, and it continues to make sense to use them in the context of any instrument of protection of the Community's domestic market, even though they are stricter than what WTO/GATT requires from us. However, most GATT rules are based on a test of "adverse effects on trade" which often does not coincide with "injury": in general, GATT employs the concept of "nullification or impairment" of benefits, which is even presumed (and the presumption is practically irrefutable) in cases of violation of GATT rules. Some agreements go even further: the new Subsidies Agreement, for instance, expressly provides that "material injury" is only one of three possible types of "adverse effects on trade", the other ones being "nullification or impairment" in the general GATT sense, and "serious prejudice" to a country's interests (cf. Article 5 new Subsidies Agreement).

4. Furthermore, if we consider the effect of foreign trade practices on Community exports to third countries (whether to the country applying or maintaining the practices in question or to another country), as opposed to imports into the Community, very rarely the whole of a Community industry (or a major proportion thereof) is concerned. Yet, this does not make the practices in question any less objectionable or even illicit. Moreover, the effect of trade barriers is often first and foremost to prevent trade from taking place (by discouraging potential exporters), even before a trade distortion takes place.

5. In these circumstances, it makes sense to add a "third track", under which Community exporters could prompt the Community to react against objectionable or illicit foreign trade practice that affect them in third country markets, while leaving untouched the existing "tracks" (the first one, notwithstanding its strict limitations, could still be useful for Community industries as regards the Community's domestic market; the second "track" contains, of course, the general "right of action" for Member States).

6. The objective of this exercice is not to create an easier way way of applying the instrument, but a different one, better suited to a market opening strategy in favour of our exporters. Thus, the question is not to relax the conditions for standing of the complainant and for the trade effects suffered, but to adapt them to an instrument for the opening of third country market (as opposed to yet another instrument for the defence of the Community market, which does not appear appropriate in this context).

7. Thus, while "Community enterprises", even individually, should have the right to lodge a complaint under this new third "track", they would have to show that the reasons for the Community to act go beyond the narrow advantage that the complaining firm(s) could draw from the Community's international action.

8. Moreover, the concept of "material injury" can only be replaced (in respect of Community exports) with another concept which also has in-built limitations, so that not just any kind of effects would justify the Community's intervention. The solution proposed here is to introduce the notion of "adverse trade effects", which is strictly linked to how these effects are (or will) be defined through the WTO (including through dispute settlement cases), in order to offer a sufficient guarantee against "open-ended" actions. A requirement of "material impact" has also been added, to enable the Community institutions to weed out frivolous actions, and to concentrate on actions which benefit the Community and/or Member States beyond the advantages they would bring to the complainant.

9. The considerations set out in points 6 through 8 above, together with the Community's traditional and well-founded position that market opening and trade liberalisation must be pursued within the context of the multilateral trading system (as well as with the need to differentiate this instrument, in terms of international legality, from section 301) strongly militate in favour of strengthening even further the link between this commercial policy instrument and international (essentially WTO) trade rules and dispute settlement.

22 September 1994

TABLE

Actions possible under the proposed commercial practices Regulation

	Complainant	**Practice complained of**	**Effects to be shown**	**Market where the effects take place**
1st track (complaint Art. 3)	**Community industry** (or major proportion thereof) it now includes providers of services, as well as producers of goods	**illicit practices** (includes violations of GATT/WTO rules)	**material injury**	**Community market or a third country market**
2nd track (referral Art. 4)	**Member States**	**exercise of the Community's international rights** (includes any commercial practice by a third country)	**only those necessary for the action being requested** (e.g. "nullification or impairment" or other adverse trade effects in GATT "non-violation" cases)	**Community market or a third country market**
3rd track (complaint Art. 3bis)	**Community enterprises** (it includes *a fortiori* the Community industry as a whole) whether producers of goods or providers of services	**any commercial practice by a third country**	**adverse trade effects** (defined by the international rules being invoked: in GATT/WTO terms it includes both "violation" and "non-violation" cases) includes a requirement of "material impact" on the Community	**market of a third country** (including that of the country applying or maintaining the practice complained of)

ANNEX

Description of the changes Article by Article

Article 1: Aims

The notion of "adverse trade effects" resulting from any commercial practice has been introduced, alongside those of "injury" resulting from an illicit commercial practice and of "exercise of Community's rights". The notion of "adverse trade effects" is defined later on, in Article 2.

Article 2: Definitions

1. The notion of "providers of services" has been introduced within the concept of "Community industry", to take into account the new rules of the GATS.

2. The concept of "regional injury" (paragraph 4 (b)) has been reduced to the case of imports into a region of the Community because, apart from the fact that the case of injury caused to a "regional exporting industry" is at best marginal, it would in any event be taken care of by the new "track".

3. The notion of adverse trade effects" is defined (in paragraph 5), and strictly linked to a "right of action" under international trade law (essentially WTO, therefore) in respect of trade in goods and/or services. The fact that the effects complained of must be "typified" under international rules offers a sufficient guarantee against "open-ended" actions, and can therefore permit this right to complain to encompass both "violation" cases ("illicit practices") and "non-violation" cases (trade practices which are not "illicit" but which can nevertheless be attacked through GATT/WTO dispute settlement on the basis of their trade effects: a typical example are domestic subsidies).

   The notion also includes a requirement of "material impact", which would enable the Community institutions to weed out frivolous actions, and to concentrate on actions which benefit the Community and/or Member States beyond the advantages they would bring to the complainant.

4. The notion of "Community enterprises", as those who have a right to lodge a complaint under this "third track" when they have suffered from "adverse trade effects", has been introduced (in paragraph 6). The actual language of this provision may need to be reviewed in consultation with the Legal Service, to make sure that it is consistent with the same concept as used in other areas of Community law.

Article 3: Complaint

This Article has been split, in fact, into three separate provisions :

- Article 3 confirms the right of a Community industry to complain against illicit practices which have caused it to suffer material injury ("first track").

- Article 3bis introduces the right of Community enterprises to complain when they have suffered from adverse trade effects in the two cases mentioned above ("third track").

- Article 3ter lays down the procedures to be followed in respect of either of such complaints when they are lodged with the Commission. The provision on the deadline for a decision on whether to open an examination procedure or not has been moved here (from the end of Article 6), and amended to shorten the deadline to 45 days in all cases, except where the complainant itself prefers to integrate the complaint with more information rather than risk a negative decision.

Article 4: Referral by a Member State

1. This Article maintains the general right of complaint for Member States in all circumstances ("second track") and clarifies that it includes the case of "adverse trade effects".

2. It further clarifies that Member States must only supply "sufficient" evidence (since this is a pre-initiation stage of the procedure), and that such evidence must refer to all the elements of the referral: the commercial practice complained of (whether or not it is an illicit one) and any resulting effects which may be necessary to allege in an international action, e.g. under WTO dispute settlement procedures.

3. Finally, a provision introducing a firm 45 days deadline (modelled on that provided for complaints by the Community industry or Community enterprises) has been added, to guarantee Member States prompt examination of their requests.

Article 5: Consultation procedure (unchanged)

Article 6: Community examination procedure

Paragraph 8 has been deleted, and corresponding provisions have been inserted in Articles 3 ter and 4.

Article 7: Confidentiality (unchanged)

Article 8: Evidence

1. The existing provisions of the Article have been amended to conform to the changes described above.

2. The meaning of "adverse trade effects", in terms of the economic impact of a foreign trade practice, is further clarified (in paragraph 4).

3. The link between adverse trade effects and a GATT/WTO right of action is also further clarified, in terms of evidence which has to be provided by the parties and examined by the Commission (in paragraph 5). In particular, this provisions is meant to ensure that when no evidence of adverse trade effects is necessary for an international action (e.g. in a GATT/WTO "violation" case, where such effects are presumed according to consolidated GATT "jurisprudence"), the Commission can take this into account when evaluating the evidence, either at the stage of a complaint/referral, or of the investigation.

4. The non-exhaustive nature of any evidentiary requirements listed in this Article has been further clarified (in paragraph 6). The formula employed comes from the provisions on injury in AD and CVD (under both the existing Codes and the New Agreements).

5. The title has been changed to reflect the above;

Article 9: Termination of the procedure

1. Paragraph 2(a) has been amended to make it clear that this type of termination of the procedure does not require any Community action. The reference to Article 11 was confusing because, in fact, Article 11 provided for the application of Article 12 to decisions under Article 9, paragraph 2(a).

2. The amendment to paragraph 2(c) is purely stylistical.

Article 10: Adoption of commercial policy measures

1. A reference to the "third track" has been included (paragraph 1).

2. A link between the measures that the Commission would eventually propose to the Council (if necessary) and those which can be authorised by the WTO dispute settlement body ("DSB") in case of non-implementation of a panel's report has been made more explicit (in paragraph 2).

Article 11: Decision-making procedures

The text of this Article is that which results from Regulation 522/94, and the changes proposed here are meant to clarify the language, but not to modify the substance of the 1994 amendment. The title of the Article has also been modified for the same reason.

Article 12: Committee procedure

A title has been introduced for case of reference to this Article. (The same has been done for Articles 13 and 14).

Article 13: General provisions

Beside the introduction of a title, a provision has been added repealing the original Regulation 2641/84 and its 1994 amendment (Reg. 522/94) and replacing them entirely with this new Regulation.

Article 14: Entry into force

The formula employed here has been suggested by the Legal Service for all the elements of the U.R. Implementing package.

Proposal for a

94/ 0233(ACC)

Council Regulation (EC) No. ( )

on the strengthening of the common commercial policy, in particular with regard to protection against illicit commercial practices and adverse trade effects suffered by Community enterprises, and to the exercise of the Community's rights under international trade rules;

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the rules establishing the common organisation of agricultural markets and the rules adopted under Article 235 of the Treaty, applicable to goods processed from agricultural products, and in particular those provisions thereof, which allow for derogation from the general principle that any quantitative restriction or measure having equivalent effect may be replaced solely by the measures provided for in those instruments,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the common commercial policy must be based on uniform principles, notably with regard to commercial defence;

Whereas Council Regulation (EC) No ( ) on protection against dumped imports from countries not members of the European Community, Council Regulation (EC) No ( ) on protection against subsidised imports from countries not members of the European Community, Council Regulation (EC) No 518/94 on common rules for imports, and Council Regulation (EC) No 519/94 on common rules for imports from certain third countries constitute important components of the Community's system of commercial defence;

Whereas such instruments are based on common concepts, notably the injury caused to a Community industry, and this concept appears appropriate in the context of any instrument of legitimate protection of the Community's domestic market;

Whereas the Council Regulation (EEC) No 2641/84 had provided the Community with procedures enabling it :

- to respond to any illicit commercial practice with a view to removing the injury resulting therefrom, and

- to ensure full exercise of the Community's rights with regard to the commercial practices of third countries;

Whereas, following conclusion of the Uruguay Round Multilateral Trade Negotiations and the perspective creation of a World Trade Organisation ("WTO") which lays down new and improved procedures for the settlement of trade disputes among countries Members of the WTO, Council Regulation (EC) No 522/94 had made it clear that the procedures laid down in Regulation 2641/94 were the most appropriate for the Community industry and for Member States to prompt Community action under the WTO dispute settlement mechanism in order to respond to illicit commercial practices and/or to ensure full exercise of the Community's rights (as appropriate);

Whereas the experience in the application of Regulation 2641/84 has shown that the concepts of Community industry and of injury appear inadequate to enable the Community, its Member States and its enterprises to react to commercial practices (whether or not illicit) of third countries when the effects of such practices are felt on the market of any third country not member of the European Community (which may be the market of the country applying or maintaining the practice in question or the market of another country);

Whereas the Uruguay Round Agreement establishing the WTO ("WTO Agreement") not only improves and develops international rules concerning trade in goods, but establishes a General Agreement on Trade in Services ("GATS") and an Agreement on Trade-Related Intellectual property matters ("TRIPs Agreement"), and that such Agreements also fall within the scope of the WTO dispute settlement mechanism;

Whereas for those reasons it appears appropriate to maintain and improve the procedures laid down in Regulation 2641/84, as amended by Regulation 522/94;

Whereas in this context protection in relation to the Community's domestic market should continue to be granted to a Community industry suffering from material injury caused by illicit commercial practices;

Whereas it is nevertheless appropriate to clarify that a Community industry can also be comprised of providers of services, as well as producers of goods;

Whereas Member States should continue to have access to these procedures in respect of all matters concerning commercial policy and the trade practices (whether or not illicit) of third countries, in order to ensure full exercise of the Community's rights;

Whereas it is desirable to provide the Community with the means to operate effectively in the direction of further trade liberalisation through the application of international trade rules, in particular those laid down in the Annexes to the WTO Agreement;

Whereas, to this end, it is advisable to provide Community enterprises with the means to react to trade practices which prevent them (wholly or partially) from trading with countries outside the Community, provided that such practices give rise to the Community's right to action under applicable international trade rules;

Whereas it appears therefore appropriate to further amend Regulation 2641/84 accordingly;

Whereas it is also appropriate to confirm that the Community must act in compliance with its international obligations and, where such obligations result from agreements, maintain the balance of rights and obligations which it is the purpose of those agreements to establish;

Whereas it is also appropriate to confirm that any measures taken under the procedures in question should also be in conformity with the Community's international obligations, as well as being without prejudice to other measures in cases not covered by this Regulation which might be adopted directly pursuant to Article 113 of the Treaty;

Whereas it should be confirmed that, for the purposes of implementing this Regulation, there should be close co-operation between the Member States and the Commission, in particular through consultations within the advisory committee, as well as through the information of the Committee established by Article 113 of the Treaty;

Whereas the rules of procedures to be followed during the examination procedure provided for in this Regulation should also be confirmed, in particular as regards the rights and obligations of the Community authorities and the parties involved, and the conditions under which interested parties may have access to information and may ask to be informed of the essential facts and considerations resulting from the examination procedure;

Whereas in acting under this Regulation the Community has to bear in mind the need for rapid and effective action, through the application of the decision-making procedures provided for in the Regulation;

HAS ADOPTED THIS REGULATION :

Article 1

Aims

This Regulation establishes procedures in the matter of commercial policy which, subject to compliance with existing international obligations and procedures, are aimed at:

(a) responding to any illicit commercial practice with a view to removing the injury resulting therefrom;

(b) responding to any commercial practice (whether or not illicit) with a view to removing the adverse trade effects resulting therefrom;

(c) ensuring full exercise of the Community's rights with regard to the commercial practices of third countries.

It shall be applied in particular to the initiation and subsequent conduct and termination of international dispute settlement procedures in the area of common commercial policy.

Article 2

Definitions

1. For the purposes of this Regulation, illicit commercial practices shall be any international trade practice attributable to third countries which are incompatible with international law or with the generally accepted rules.

2. For the purposes of this Regulation, the Community's rights shall be those international trade rights of which it may avail itself either under international law or under generally accepted rules.

3. For the purposes of this Regulation, injury shall be any material injury caused or threatened to Community industry.

4. The term 'Community industry' shall be taken to mean all Community producers or providers, respectively:

- of products or services identical or similar to the product or service which is the subject of illicit practices or
- of products or services competing directly with that product or service, or
- who are consumers or processors of the product or consumers or users of the service which is the subject of illicit practices,

or all those producers or providers whose combined output constitutes a major proportion of total Community production of the products or services in question; however:

(a) when producers or providers are related to the exporters or importers or are themselves importers of the product or service alleged to be the subject of illicit practices, the term 'Community industry' may be interpreted as referring to the rest of the producers or providers;

(b) in particular circumstances, the producers or providers within a region of the Community may be regarded as the Community industry if their collective output constitutes the major proportion of the output of the product or service in question in the Member State or Member State within which the region is located provided that where the illicit practice concerns imports into the Community, their effect is concentrated in that Member State or those Member States.

5. For the purposes of this Regulation, adverse trade effects shall be those

- which are felt, in respect of a product or service, on the market of any country non Member of the European Community, and
- which could give rise to actions under relevant international rules, whether as a result of an illicit commercial practice or otherwise,
- and which have a material impact, actual or potential, on the economy of the Community or of a region of the Community, or on a sector of economic activity therein.

Adverse trade effects shall also include cases where trade flows, concerning a product or service, are prevented, impeded or diverted as a result of any commercial practice, as well as cases where any commercial practice has materially affected the supply or inputs (e.g. parts and components or raw materials) to Community enterprises. Adverse trade effects shall also include threat of such effects.

6. The term "Community enterprise" shall be taken to mean any natural or legal person having an established presence within the Community for the purpose of carrying out an economic activity concerning the production of goods or the provision of services.

Article 3

Complaint on behalf of the Community industry

1. Any natural or legal person, or any association not having legal personality, acting on behalf of a Community industry which considers that it has suffered injury as a result of illicit commercial practices may lodge a written complaint.

2. The complaint must contain sufficient evidence of the existence of illicit commercial practices and the injury resulting therefrom. Evidence of injury must be given on the basis of the factors indicated in Article 8.

Article 3 bis

Complaint on behalf of Community enterprises

1. Any Community enterprise, or any association, having or not legal personality, acting on behalf of one or more Community enterprises, which considers that such Community enterprises have been materially affected by adverse trade effects within the meaning of paragraph 5 of Article 2 of this Regulation, may lodge a written complaint.

2. The complaint must contain sufficient evidence of the existence of commercial practices (whether or not illicit) and of adverse trade effects, resulting therefrom. Evidence of adverse trade effects must be given on the basis of the factors indicated in Article 8.

Article 3 ter

Complaint procedures

1. The complaint shall be submitted to the Commission, which shall send a copy thereof to the Member States.

2 The complaint may be withdrawn, in which case the procedure may be terminated unless such termination would not be in the interests of the Community.

3. Where it becomes apparent after consultation that the complaint does not provide sufficient evidence to justify initiating an investigation, then the complainant shall be so informed.

4. The Commission shall take a decision as soon as possible on the opening of a Community examination procedure following any complaint made in accordance with Articles 3 or 3 bis; the decision shall normally be taken within 45 days of the lodging of the complaint; this period may be suspended at the request, or with the agreement, of the complainant, in order to allow the provision of complementary information which may be needed to fully assess the validity of the complainant's case.

Article 4

Referral by a Member State

1. Any Member State may ask the Commission to initiate the procedures referred to in Article 1.

2. It shall supply the Commission with sufficient evidence to support its request, as regards commercial practices of third countries and, where appropriate, of any effects resulting therefrom. Where evidence of injury or of adverse trade effects is appropriate, it must be given on the basis of the factors indicated in Article 8.

3. The Commission shall notify the other Member States of the requests without delay.

4. Where it becomes apparent after consultation that the request does not provide sufficient evidence to justify initiating an investigation, then the Member State shall be so informed.

5. The Commission shall take a decision as soon as possible on the opening of a Community examination procedure following any referral by a Member State made in accordance with Article 4; the decision shall normally be taken within 45 days of the referral; this period may be suspended at the request, or with the agreement, of the referring Member State, in order to allow the provision of complementary information which may be needed to fully assess the validity of the case presented by the referring Member State.

Article 5

Consultation procedure

1. For the purpose of consultations pursuant to this Regulation, an advisory committee, hereinafter referred to as 'the Committee', is hereby set up and shall consist of representatives of each Member State, with a representative of the Commission as chairman.

2. Consultations shall be initiated at the request of a Member State or on the initiative of the Commission. The chairman of the Committee shall provide the Member States, as promptly as possible, with all relevant information in his possession. *He shall also inform the Article 113 Special Committee thereof.*

3. The Committee shall meet when convened by its chairman.

4. Where necessary, consultations may be in writing. In such case the Commission shall notify in writing the Member States who, within a period of eight working days from such notification, shall be entitled to express their opinions in writing or to request oral consultations.

Article 6

Community examination procedure

1. Where, after consultation, it is apparent to the Commission that there is sufficient evidence to justify initiating an examination procedure and that it is necessary in the interest of the Community, the Commission shall act as follows:

(a) it shall announce the initiation of an examination procedure in the *Official Journal of the European Communities*; such announcement shall indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 5;

(b) it shall so officially notify the representatives of the country or countries which are the subject of the procedure, with whom, where appropriate, consultations may be held;

(c) it shall conduct the examination at Community level, acting in co-operation with the Member States.

2. (a) If necessary, and notably in cases of allegations of illicit commercial practices, the Commission shall seek all the information it deems necessary and attempt to check this information with the importers, traders, agents, producers, trade associations and organisations, provided that the undertakings or organisations concerned give their consent.

(b) Where necessary, the Commission shall carry out investigations in the territory of third countries, provided that the governments of the countries concerned have been officially notified and raise no objection within a reasonable period.

(c) The Commission shall be assisted in its investigation by officials of the Member State in whose territory the checks are carried out, provided that the Member State in question so requests.

3. Member States shall supply the Commission, upon request, with all information necessary for the examination, in accordance with the detailed arrangements laid down by the Commission.

4. (a) The complainants and the exporters and importers concerned, as well as the representatives of the principal exporting or importing country or countries concerned, may inspect all information made available to the Commission except for internal documents for the use of the Commission and the administrations, provided that such information is relevant to the protection of their interests and not confidential within the meaning of Article 7 and that it is used by the Commission in its examination procedure. The persons concerned shall address a reasoned request in writing to the Commission, indicating the information required.

(b) The complainants and the exporters and importers concerned and the representatives of the principal exporting of importing country or countries concerned may ask to be informed of the principal facts and considerations resulting from the examination procedure.

5. The Commission may hear the parties concerned. It shall hear them if they have, within the period prescribed in the notice published in the *Official Journal of the European Communities*, made a written request for a hearing showing that they are a party primarily concerned by the result of the procedure.

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

7. When the information requested by the Commission is not supplied within a reasonable time or where the investigation is significantly impeded, findings may be made on the basis of the facts available.

8. When it has concluded its examination the Commission shall report to the Committee. The report should normally be presented within five months of the announcement of initiation of the procedure, unless the complexity of the examination is such that the Commission extends the period to seven months.

Article 7

Confidentiality

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

2. (a) Neither the Council, nor the Commission, nor Member States, nor the officials of any of these, shall reveal any information of a confidential nature received pursuant to this Regulation, or any information provided on a confidential basis by a party to an examination procedure, without specific permission from the party submitting such information.

(b) Each request for confidential treatment shall indicate why the information is confidential and shall be accompanied by a non-confidential summary of the information or a statement of the reasons why the information in not susceptible of such summary.

3. Information will normally be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

4. However, if it appears that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the information in question may be disregarded.

5. This Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken pursuant to this Regulation are based. Such disclosure must take into account the legitimate interest of the parties concerned that their business secrets should not be divulged.

Article 8

Evidence

1. An examination of injury shall involve in particular the following factors:

(a) the volume of Community imports or exports concerned, notably where there has been a significant increase or decrease, either in absolute terms or relative to production or consumption on the market in question;

(b) the prices of the Community industry's competitors, in particular in order to determine whether there has been, either in the Community or on third country markets, significant undercutting of the prices of the Community industry;

(c) the consequent impact on the Community industry and as indicated by trends in certain economic factors such as:

- production,
- utilisation of capacity,
- stocks,
- sales,
- market share,
- prices (that is, depression of prices or prevention of price increases which would normally have occurred),
- profits,
- return on capital,
- investment,
- employment.

2. Where a threat of injury is alleged, the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury. In this regard, account may also be taken of factors such as:

(a) the rate of increase of exports to the market where the competition with Community products is taking place;

(b) export capacity in the country of origin or export, which is already in existence or will be operational in the foreseeable future, and the likelihood that the exports resulting from that capacity will be to the market referred to in point (a).

3. Injury caused by other factors which, either individually or in combination, are also adversely affecting Community industry must not be attributed to the practices under consideration.

4. Where adverse trade effects within the meaning of paragraph 5 of Article 2 of this Regulation are alleged, the Commission shall examine the impact of such adverse effects, actual or potential, on the economy of the Community or of a region of the Community, or on a sector of economic activity therein. To this effect, the Commission may take into account, where relevant, factors of the type listed in paragraphs 1 and 2 above, as well as the impact on the current and future competitiveness of the Community and of its Member States, including in terms of technological advance.

5. The Commission shall also, in examining evidence of adverse trade effects, have regard to the provisions, principles or practice which govern the right of action under relevant international rules referred to in paragraph 5 of Article 2 of this Regulation.

6. The Commission shall further examine any other relevant evidence contained in the complaint or in the referral. In this respect, the list of factors and the indications given in paragraphs 1 to 5 above are not exhaustive, nor can one or several of such factors and indications necessarily give decisive guidance as to the existence of injury or of adverse trade effects.

Article 9

Termination of the procedure

1. When it is found as a result of the examination procedure that the interests of the Community do not require any action to be taken, the procedure shall be terminated in accordance with Article 12.

2. (a) When, after an examination procedure, the third country or countries concerned take(s) measures which are considered satisfactory, and therefore no action by the Community is required, the procedure may also be terminated in accordance with the provisions of Article 12.

(b) The Commission shall supervise the application of these measures, where appropriate on the basis of information supplied at intervals, which it may request from the third countries concerned and check as necessary.

(c) Where the measures taken by the third country or countries concerned have been rescinded, suspended or improperly implemented or where the Commission has grounds for believing this to be the case or, finally, where a request for information made by the Commission as provided for by point (b) has not been granted, the Commission shall inform the Member States, and where necessary and justified by the results of the investigation and the new facts available any measures shall be taken in accordance with paragraph 3 of Article 11.

Article 10

Adoption of commercial policy measures

1. *Unless the factual and legal situation is such that an examination procedure may not be required, where it is found as a result of the examination procedure, that action is necessary in the interests of the Community in order to:*

(a) respond to any illicit commercial practice with the aim of removing the injury resulting therefrom; or

(b) ensure the removal of adverse trade effects suffered by Community enterprises; or

(c) ensure full exercise of the Community's rights with regard to the commercial practices of third countries.

the appropriate measures shall be determined in accordance with the procedure set out in Article 11.

2. Where the Community's international obligations require the prior discharge of an international procedure for consultation or for the settlement of disputes, the measures referred to in paragraph 3 shall only be decided on after that procedure has been terminated, and taking account of the results of the procedure. In particular, where the Community has requested an international dispute settlement body to indicate and authorize the measures which are appropriate for the implementation of the results of an international dispute settlement procedure, the Community commercial policy measures which may be needed in consequence of such authorization shall be compatible with those recommended by such international dispute settlement body.

3. Any commercial policy measures may be taken which are compatible with existing international obligations and procedures, notably:

(a) suspension or withdrawal of any concession resulting from commercial policy negotiations;

(b) the raising of existing customs duties or the introduction of any other charge on imports;

(c) the introduction of quantitative restrictions or any other measures modifying import or export conditions or otherwise affecting trade with the third country concerned.

4. The corresponding decisions shall state the reasons on which they are based and shall be published in the *Official Journal of the European Communities*. Publication shall also be deemed to constitute notification to the countries and parties primarily concerned.

Article 11

Decision-makingprocedures

1. The decisions referred to in paragraphs 1 and 2(a) of *Article 9 shall be adopted in accordance with the provisions* of Article 12.

2. Where the Community follows formal international consultation or dispute settlement procedures, decisions relating to the initiation, conduct or termination of such procedures shall be taken in accordance with Article 12.

3. Where the Community, having acted in accordance with paragraph 2 of *Article 10 of this Regulation, has to take a decision on the measures of commercial policy to be adopted* under paragraph 2(c) of Article 9 or under Article 10, *the Council shall act, in accordance with Article 113 of the Treaty, by a qualified majority, not later than 30 working days after receiving the proposal.*

Article 12

Committee procedure

Should reference be made to the procedure provided for in this Article, the matter shall be brought before the Committee by its chairman.

The Commission representative shall submit to the Committee a draft of the decision to be taken. The Committee shall discuss the matter within a period to be fixed by the chairman, depending on the urgency of the matter.

The Commission shall adopt a decision which it shall communicate to the Member States and which shall apply after a period of 10 days if during this period no Member State has referred the matter to the Council.

The Council may, at the request of a Member State and acting by a qualified majority revise the Commission's decision.

The Commission's decision shall apply after a period of 30 days if the Council has not given a ruling within this period, calculated from the day on which the matter was referred to the Council.

Article 13

General provisions

1. This Regulation shall not apply in cases covered by other existing rules in the common commercial policy field. It shall operate by way of complement to the:

- rules establishing the common organisation of agricultural markets and their implementing provisions;

- specific rules adopted under Article 235 of the Treaty, applicable to goods processed from agricultural products.

It shall be without prejudice to other measures which may be taken pursuant to Article 113 of the Treaty.

2. Regulation (EEC) No. 2641/84, as amended by Regulation (EC) No. 522/94 is hereby repealed. References to the repealed Regulation shall be construed as references to this Regulation.

Article 14

Entry into force

1. This Regulation shall enter into force on the date determined by a decision governing the entry into force of the acts implementing the results of the Uruguay Round.

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

Part 7

Intellectual property

TRIPs MODIFICATIONS IN COMMUNITY LAW

EXPLANATORY MEMORANDUM
FOR TRIPs MODIFICATIONS IN COMMUNITY LAW

I. INTRODUCTION

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) concluded within the framework of the Uruguay Round negotiations contains provisions on the protection of intellectual property rights, in particular with the purpose of establishing international disciplines in this area in order to promote international trade and to prevent trade distortions due to the lack of adequate and effective intellectual property protection.

The TRIPs Agreement, in addition to establishing general provisions and basic principles on the protection of intellectual property rights, provides for standards concerning the availability, scope and use of intellectual property rights, notably:

- copyright and related rights;
- trademarks;
- geographical indications;
- industrial designs;
- patents;
- layout-designs (topographies) of integrated circuits;
- protection of undisclosed information; and
- contains also provisions on the control of anti-competitive practices in contractual licences.

These standards are to be enforced domestically on the basis of detailed provisions, including special requirements related to border measures; the acquisition and maintenance of intellectual property rights and related civel and criminal law procedures.

This proposal for a Council Regulation contains proposals to amend those Community acts which have to be modified in order to implement in Community law the provisions of the TRIPs Agreement. Reference is also made in this Explanatory Memorandum to current proposals of Community acts submitted by the Commission to the Council/Parliament which would also have to be amended in order to bring them into line with the requirements of the TRIPs Agreement.

The present proposal does not concern those areas of current Member State legislation which would have to be amended to implement the TRIPs Agreement. In this respect, consultations between Member States and the Commission seem necessary in order to ensure that such modifications of Member State legislation be undertaken against the background of a common analysis of the implication and interpretation of the TRIPs Agreement.

II. TRADEMARKS

Legislation: *Council Regulation (EC) 40/94 of 20 December 1993 on the Community Trademark*[1].

Article 5 of Council Regulation 40/94 defines the "Persons who can be proprietors of Community Trademarks". This Article, which notably refers to the Paris Convention for the Protection of Industrial Property, implements in paragraph 1, subparagraphs (a) and (b), the principle of national treatment as regards nationals and domiciliaries of a State party to this Convention.

Nevertheless, Article 5, paragraph 1, subparagraph (d), of this Regulation basically subjects the granting of national treatment to nationals of States not parties to the Paris Convention to the requirement of reciprocal national treatment in their country of origin for nationals of the Member States. Art. 29, paragraph 5, of this Regulation, concerning the right of priority, contains a similar requirement in relation to filings made in a State which is not a party to the Paris Convention..

In order to comply with the national treatment obligation in Article 3 of the TRIPs Agreement, these provisions should be modified to ensure that nationals of all WTO Members, even if the Member in question is not a party to the Paris Convention, receive a treatment no less favourable than that accorded to nationals of Community Member States.

III. GEOGRAPHICAL INDICATIONS

Insofar as the protection of geographical indications for wines and spirits as foreseen in Article 23 TRIPs is concerned, the relevant amendments to Council Regulation 822/87 of 16 March 1987, Council Regulation 1601/91 of 10 June 1991, both of them concerning wines, and Council Regulation 1576/89 of 29 May 1989 concerning spirit drinks, are dealt with in the part on agriculture.

IV. LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

Legislation: *Council Directive 87/54/EEC of 16 December 1986 on the Legal Protection of Topographies of Semiconductor Products*[2].

Articles 35 to 38 of the TRIPs Agreement set out the obligations of WTO Members in relation to the protection of layout-designs (topographies) of integrated circuits. In accordance with these Articles, the Community should ensure that nationals of all other WTO Members benefit from such protection. The Commission proposes to extend the protection of topographies of integrated circuits, as required by the TRIPs Agreement, to nationals of all WTO Members.

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[1] OJ L 11, 14.1.1994
[2] OJ L 24, 27.1.1987

V. PROPOSED COMMUNITY LEGISLATION

In addition to amending existing Community legislation in order to bring it in line with the TRIPs Agreement, the Commission will need to ensure that current Community proposals in the diferent fields of intellectual property rights protection are in conformity with the TRIPs Agreement.

PROPOSAL FOR A COUNCIL REGULATION (EC) No _____/94
of _____ 1994

94/ 0234(CNS)

amending Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trademark for the implementation of the agreements concluded in the framework of the Uruguay Round

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community and in particular Article 235 thereof,

Having regard to the proposal by the Commission,

Having regard to the opinion of the European Parliament,

Whereas the Agreement establishing the World Trade Organization (hereinafter, the WTO Agreement) was signed on behalf of the Community; whereas the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter, the TRIPs Agreement), annexed to the WTO Agreement, contains detailed provisions on the protection of intellectual property rights whose purpose is the establishment of international disciplines in this area in order to promote international trade and prevent trade distortions and friction due to the lack of adequate and effective intellectual property protection;

Whereas in order to ensure that all relevant Community legislation is in full compliance with the TRIPs Agreement, the Community must take certain measures in relation to current Community acts on the protection of intellectual property rights; whereas these measures entail in some respects the amendment or modification of Community acts; whereas these measures also entail complementing current community acts;

Whereas Council Regulation (EC) 40/94 of 20 December 1993 creates the Community Trademark[1]; whereas Article 5 of Council Regulation 40/94 defines the "Persons who can be proprietors of Community Trademarks" by referring notably to the Paris Convention for the Protection of Industrial Property and requires reciprocal national treatment from countries which are not parties to the Paris Convention; whereas Article 29 of Regulation 40/94, concerning the right of priority, also needs to be amended in this respect; whereas in order to comply with the national treatment obligation in Article 3 of the TRIPs Agreement, these provisions should be modified to ensure that nationals of all WTO Members, even if the Member in question is not a party to the Paris Convention, receive

[1] OJ L 11, 14.1.1994, p. 1

a treatment no less favourable than that accorded to nationals of Community Member States.

HAS ADOPTED THIS REGULATION

Article 1

Article 5 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, paragraph 1, subparagraph (b), is replaced by the following text:

> "(b) nationals of other States which are parties to the Paris Convention for the protection of industrial property, hereinafter referred to as "the Paris Convention", or to the Agreement establishing the World Trade Organisation;".

Article 2

Article 5 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, paragraph 1, subparagraph (d), is replaced by the following text:

> "(d) nationals, other than those referred to under subparagraph (c), of any State which is not party to the Paris convention or to the Agreement establishing the World Trade Organisation and which, according to published findings, accords to nationals of all the Member States the same protection for trade marks as it accords to its own nationals and, if nationals of the Member States are required to prove registration in the country of origin, recognises the registration of Community trade marks as such proof.".

Article 3

Article 29 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, paragraph 1, is replaced by the following text:

> "1. A person who has duly filed an application for a trademark in or for any State party to the Paris Convention or to the Agreement establishing the World Trade Organisation, or his successors in title, shall enjoy, for the purpose of filing a Community trade mark application for the same trade mark in respect of goods or services which are identical with or contained within those for which the application has been filed, a right of priority during a period of six months from the date of filing of the first application".

Article 4

Article 29 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, paragraph 5, is replaced by the following text:

> "5. If the first filing has been made in a State which is not a party to the Paris Convention or to the Agreement establishing the World Trade Organisation, paragraphs 1 to 4 shall apply only in so far as that State, according to pub[illegible]

findings, grants, on the basis of the first filing made at the Office and subject to conditions equivalent to those laid down in this Regulation, a right of priority having equivalent effect".

Article 5

1. This regulation shall enter into force on the date determined by the decision on the entry into force of the acts implementing the results of the Uruguay Round.

2. It shall be applicable as of 1 January 1996.

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

Done in Brussels, _____ 1994

For the Council
The President

PROPOSAL FOR A COUNCIL DECISION

on the extension of the legal protection of topographies of semiconductor products to persons from a Member of the World Trade Organisation

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products, and in particular Article 3(7) thereof,

Having regard to the proposal from the Commission,

Whereas the Agreement establishing the World Trade Organization (hereinafter, WTO) was signed on behalf of the Community; whereas the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter, the TRIPs Agreement), annexed to the Agreement establishing the WTO, contains detailed provisions on the protection of intellectual property rights whose purpose is the establishment of international disciplines in this area in order to promote international trade and prevent trade distortions and friction due to the lack of adequate and effective intellectual property protection;

Whereas in order to ensure that all relevant Community legislation is in full compliance with the TRIPs Agreement; the Community must take certain measures in relation to current Community acts on the protection of intellectual property rights; whereas these measures entail in some respects the amendment or modification of Community acts; whereas these measures also entail complementing current community acts;

Whereas Council Directive 87/54/EEC of 16 December 1986 concerns the legal protection of topographies of semiconductor products[1]; whereas Articles 35 to 38 of the TRIPs Agreement set out the obligations of WTO Members in relation to the protection of layout-designs (topographies) of integrated circuits; whereas in accordance with Article 1, paragraph 3, and Article 3 of the TRIPs Agreement, the Community must ensure that nationals of all other WTO Members benefit from such protection and from the application of national treatment; whereas it is therefore necessary to extend the protection under Directive 87/54/EEC to nationals of WTO Members, without any reciprocity requirement; whereas it is adequate to use the procedure of Article 3, paragraph 7, of the Directive to this end;

[1] OJ N° L24, 27.1.1987, p. 36

HAS ADOPTED THIS DECISION

Article 1

Member States shall extend the legal protection for topographies of semiconductor products provided for under Directive 87/54/EEC as follows:

(a) natural persons who are nationals of, or are domiciled in the territory of, a Member of the Agreement establishing the WTO, shall be treated as nationals of a Member State;

(b) legal entities which or natural persons who have a real and effective establishment for the creation of topographies or the production of integrated circuits in the territory of a Member of the Agreement establishing the WTO shall be treated as legal entities or natural persons having a real and effective industrial or commercial establishment in the territory of a Member State.

Article 2

1. This Decision shall enter into force on the date determined by the decision on the entry into force of the acts implementing the results of the Uruguay Round.

2. It shall be applicable as of 1 January 1996.

3. Decisions 90/510/EEC[2] and 93/17/EEC[3] are abrogated, as of the date of application of the present Decision, in so far as they concern the extension of the protection under Directive 87/54/EEC to countries or territories Members of the Agreement establishing the WTO.

Article 3

This Decision is addressed to the Member States.

Done in Brussels, _____ 1994

For the Council
The President

[2] OJ L N° 285, 17.10.1990, p. 29
[3] OJ N° L 11, 19.1.1993, p. 22

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