

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (79) 564 final

Brussels, 16 October 1979

Proposed

Council Regulation

amending Regulation (EEC) No 459/68 on protection against
dumping or the granting of bounties or subsidies by countries which
are not members of the European Economic Community

(Submitted to the Council by the Commission)

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PROPOSED
COUNCIL REGULATION

amending Regulation (EEC) N° 459/68 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 113 and 213 thereof,

Having regard to the proposal from the Commission,

Whereas the European Economic Community has adopted common rules on protection against dumping or the granting of bounties or subsidies by countries which are not members of the Community which are contained in Council Regulation (EEC) N° 459/68⁽¹⁾, as last amended by Regulation (EEC) N° 1681/79⁽²⁾;

Whereas these common rules were adopted in conformity with the existing international obligations, in particular with those resulting from Article VI of the GATT and the first Agreement on Implementation of Article VI of the GATT (1967 Anti-Dumping Code);

Whereas the Multilateral Trade Negotiations concluded in 1979 have resulted in a new Agreement on Implementation of Article VI GATT (1979 Anti-Dumping Code) and in an Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT relating to subsidies and countervailing measures;

Whereas it is therefore appropriate to align the Community's regulations on the 1979 Agreements, in particular on their provisions with regard to subsidies and possible counter measures, to the determination of injury, especially the criteria to be applied and the new rules on causality and regional protection, to undertakings and their monitoring, to the duration of provisional duties and to the possible retroactive application of anti-dumping and countervailing duties;

(1) OJ N° L 93, 17.04.1968, p. 1

(2) OJ N° L 196, 02.08.1979, p. 1

Whereas it is desirable that the rules for determining normal value should be presented more clearly and in greater detail; whereas it should be specifically provided that sales on the domestic market of the country of origin or export which are relatively small in relation to the quantities sold for export do not necessarily form a proper basis for determining the dumping margin; whereas the costs to be used where recourse is made to a constructed normal value must be those arising in the ordinary course of trade; whereas the established international practice of permitting transactions between related parties to be disregarded as not being in the ordinary course of trade should be expressly reflected in the Community's regulations;

Whereas imported products are sometimes first resold to an independent buyer in the Community at a loss; whereas it seems reasonable in such cases to allow the reconstruction of the export price from the price at which such resale takes place, provided that certain strictly defined criteria are met;

Whereas the export price and the normal value should normally be compared at the same level of trade; whereas rules should consequently be provided for adjusting these where they are at different levels of trade;

Whereas it seems advisable to lay down in some detail the manner in which the amount of any subsidy is to be determined;

Whereas it seems appropriate to set out certain factors which may be relevant for the determination of a threat of injury;

Whereas it seems appropriate to make it clear that in case of withdrawal of a complaint proceedings may but need not necessarily be terminated;

Whereas the experience acquired in the application of the Community's regulations demonstrates that it is appropriate to simplify procedures especially those relating to the introduction of complaints and their subsequent examination, to the initiation of proceedings, the conduct of investigations and the disclosure of information;

Whereas it is appropriate to provide for open and fair procedures for the review of measures taken;

Whereas it is opportune to take advantage of the above amendments to proceed to a general streamlining and linguistic simplification of the regulations,

HAS ADOPTED THIS REGULATION:

Article 1

1. The title of Regulation (EEC) No 459/68 is changed to the following:

"Regulation (EEC) No 459/68 of the Council of 5 April 1968 on protection against dumped or subsidized imports from countries not members of the European Economic Community."

2. Article 1(1) of that Regulation is replaced by the following:

"Article 1 - Applicability

This Regulation lays down provisions for protection against dumped or subsidized imports from countries not members of the European Economic Community."

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Article 2

1. Article 2 of Regulation (EEC) No 459/68 shall bear the title "Dumping". Article 2(1) of that Regulation shall be replaced by the following:

"An anti-dumping duty may be applied to any dumped product whose introduction into Community commerce causes injury."

2. Article 3(1) of that Regulation becomes Article 2(2).
3. Article 3(2) of that Regulation becomes Article 2(3), subject to the following modifications:

- a) Subparagraph (a)(bb) is replaced by the following:

"(bb) when there are no sales of the like product in the ordinary course of trade on the domestic market of the country of origin or export, or when such sales do not permit a proper comparison because they are too small in relation to the quantities sold for export, or because of other particular market situations:

i) the comparable price of the like product when exported to any third country, which may be the highest such export price but should be a representative price, or

ii) the constructed value, i.e., the costs in the ordinary course of trade of materials and manufacture - including overheads - in the country of origin, plus a reasonable profit margin; as a general rule, and provided that a profit is normally realized on sales of products of the same general category on the domestic market of the country of origin, the addition for profit shall not exceed such normal profit. In other cases, the addition shall be determined on any reasonable basis, using available information."

b) In subparagraph (b), fifth line, the words "cost of production" are replaced by the words "costs of production, both fixed and variable,";

c) The following new text becomes subparagraph (e):

"e) For the purpose of determining normal value, transactions between related parties may be considered as not being in the ordinary course of trade unless the Community authorities are satisfied that the prices and costs involved are comparable to those involved in transactions between unrelated parties."

4. a) Article 3(3) of that Regulation becomes Article 2(4) (a) and (b)

b) The following new text becomes Article 2(4)(c):

"c) The export price may also be constructed as in the previous paragraph whenever there are reasonable grounds for believing or suspecting that the price at which an imported product is first resold to an independent buyer is less than its export price plus all additional costs - both fixed and variable -, duties and taxes incurred between export and resale, provided that resales at such prices:

(aa) have been made over an extended period of time and in substantial quantities; and

(bb) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade."

5. Article 3(4) of that Regulation is replaced by the following, which becomes Article 2(5):

"5. a) For the purposes of a fair comparison, the export price and the normal value shall be on a comparable basis as regards physical characteristics of the product, quantities, and conditions and

terms of sale. They shall normally be compared at the same level of trade, preferably at the ex-factory level, and as nearly as possible at the same time.

b) If the export price and the normal value are not on a comparable basis in respect of the factors mentioned in the preceding subparagraph, due allowance shall be made in each case, on its merits, for differences affecting price comparability. Where an interested party claims such an allowance, it must prove that its claim is justified. The following guidelines shall apply in determining these allowances:

(aa) differences in physical characteristics of the product: allowance for such differences shall normally be based on the effect on the market value in the country of origin or export; however, where domestic pricing data in that country are not available or do not permit a fair comparison, the calculation shall be based on those production costs accounting for such differences;

(bb) differences in quantities: allowances shall be made when the amount of any price differential is wholly or partly due to either:

i) price discounts for quantity sales which have been made freely available in the normal course of trade over a representative preceding period of time, usually not less than six months, and in respect of a substantial proportion, usually not less than 20%, of the total sales of the product under consideration made on the domestic market or, where applicable, on a third-country market; deferred discounts may be recognized if they are based on consistent practice in prior periods, or on an undertaking to comply with the conditions required to qualify for the deferred discount, or

ii) to savings in the cost of producing different quantities.

However, when the export price is based on quantities which are less than the smallest quantity sold on the domestic market or, if applicable, to third countries, then the allowance shall be determined in such a manner as to reflect the higher price for which the smaller quantity would be sold on the domestic market or, if applicable, on a third-country market;

- (cc) differences in conditions and terms of sale: allowances shall be limited, in general, to those differences which bear a direct relationship to the sales under consideration and include, for example, differences in duties and indirect taxation, credit terms, guarantees, warranties, technical assistance, servicing, commissions or salaries paid to salesmen, packing, transport, insurance, handling, loading and ancillary costs; allowances generally will not be made for differences in overheads and general expenses, including research and development costs, or advertising, unless such costs are incurred on behalf of a purchaser; the amount of these allowances shall normally be determined by the cost of such differences to the seller, though consideration may also be given to their effect on the value of the product;
 - (dd) differences in the level of trade: where sales at the same level of trade do not exist or are insufficient to be regarded as representative, the allowance to be made on sales at a different level of trade shall be based on the costs directly attributable to that difference.
 - (ee) allocation of costs: in general, all cost calculations shall be based on available accounting data, normally allocated, where necessary, in proportion to the turnover for each product and market under consideration.
- c) No product shall be considered to have been dumped by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or export, or by reason of the refund of such duties or taxes."

6. Article 5 of that Regulation is replaced by the following, which becomes Article 2(6):

"6. For the purpose of this Regulation, "like product" means a product which is identical, i.e., alike in all respects to the product under consideration, or in the absence of such a product, another product which has characteristics closely resembling those of the product under consideration."

7. Article 3(5) of that Regulation becomes Article 2(7).

Article 3

Article 22 of Regulation (EEC) No 459/68 is replaced by the following, which becomes Article 3:

"Article 3 - Subsidies

1. A countervailing duty may be imposed for the purpose of offsetting any subsidy bestowed, directly or indirectly, in the country of origin or export, upon the manufacture, production, export or transport of any product whose introduction into Community commerce causes injury.
2. Subsidies bestowed on exports include, but are not limited to, the practices listed in Annex A to this Regulation.
3. The exemption of a product from import charges or indirect taxes, as defined in the Notes to Annex A to this Regulation, effectively borne by the like product when destined for consumption in the country of origin or export, or the refund of such charges or taxes, shall not be considered as a subsidy for the purposes of this Regulation.
4. a) The amount of the subsidy shall be determined per unit of the subsidized product exported to the Community.

b) In establishing the amount of any subsidy the following elements shall be deducted from the total subsidy:
 - (aa) any application fee, deposit, or similar payment made in order to qualify for, or receive the benefit of, the subsidy,
 - (bb) 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 such 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 shall be determined by allocating the value of the subsidy as appropriate over the level of production or exports of the product concerned during a suitable period. Normally this period shall be the accounting year of the beneficiary. However, where the subsidy is used to acquire productive assets the period shall correspond to a reasonable period for depreciation.
- d) The value of subsidized loans or guarantees shall generally be considered as the difference between interest rates paid or payable by the beneficiary and normal commercial rates effectively payable on comparable loans or guarantees.
- e) In the case of imports from non-market economy countries and in particular those to which Regulations (EEC) Nos 2532/78⁽¹⁾ and 925/79⁽²⁾ apply, the amount of any subsidy may be determined by comparing the export price as calculated in accordance with Article 2(4) with the normal value as determined in accordance with Article 2(3)(c).
- f) Where the amount of subsidization varies, weighted averages may be established.

(1) OJ No L 306 of 31.10.1978, p. 1

(2) OJ No L 131 of 29.05.1979, p. 1

Article 4

Article 4 of Regulation (EEC) No 459/68 is replaced by the following:

"Article 4 - Injury

1. A determination of injury shall be made only if the dumped or subsidized imports are, through the effects of dumping or subsidization, causing injury i.e., causing or threatening to cause material injury to an established Community industry or materially retarding the establishment of such an industry. Injuries caused by other factors which, individually or in combination, also adversely affect the Community industry must not be attributed to the dumped or subsidized imports.
2. An examination of injury shall involve the following factors, no one or several of which can necessarily give decisive guidance:
 - a) volume of dumped or subsidized imports, in particular whether there has been a significant increase, either in absolute terms or relative to production or consumption in the Community;
 - b) the prices of dumped or subsidized imports in particular whether 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 industry concerned as indicated by actual or potential trends in the relevant economic factors such as:
 - production
 - utilization of capacity
 - stocks
 - sales
 - market share
 - prices (i.e., depression of prices or prevention of price increases which otherwise would have occurred)

- profits
- return on investment
- cash flow
- employment.

3. A determination of threat of injury may only be made where a particular situation is likely to develop into actual injury. In this regard account may be taken of factors such as:

- a) rate of increase of the dumped or subsidized exports to the Community,
- b) capacity of the country of origin or export to generate further such exports, and the likelihood that such exports will be to the Community,
- c) the nature of any subsidy and the trade effects likely to arise therefrom.

4. The effect of the dumped or subsidized imports shall be assessed in relation to the Community production of the like product when available data permit its separate identification. When the Community production of the like product has no separate identity, the effect of the dumped or subsidized imports shall be assessed in relation to the production of the narrowest group or range of production which includes the like product for which the necessary information can be found.

5. 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 of the total Community production of those products except that:

- when producers are related to the exporters or importers or are themselves importers of the allegedly dumped or subsidized product the term "Community industry" may be interpreted as referring to the rest of the producers;

- in exceptional circumstances the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market regarded as a Community industry if,
 - a) the producers within such market sell all or almost all 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 or subsidized imports into such an isolated market and provided further that the dumped or subsidized imports are causing injury to the producers of all or almost all of the production within such market."

Article 5

1. Article 5 of Regulation (EEC) No 459/68 shall bear the title "Complaint".
2. Article 6(1) of that Regulation is replaced by the following, which becomes Article 5(1):

"1. Any natural or legal person, or any association not having legal personality, acting on behalf of a Community industry which considers itself injured or threatened by dumped or subsidized imports may lodge a written complaint."

3. Article 7 of that Regulation is replaced by the following, which becomes Article 5(2):

"2. The complaint shall contain sufficient evidence of the existence of dumping or subsidization and the injury resulting therefrom."

4. Article 6(2) of that Regulation is replaced by the following, which becomes Article 5(3):

"3. The complaint may be submitted to the Commission, or a Member State, which shall forward it to the Commission. The Commission shall inform Member States of complaints it receives."

5. The following new text becomes Article 5(4):

"4. The complaint may be withdrawn, in which case proceedings may be terminated unless such termination would not be in the interest of the Community."

6. Article 9 of that Regulation is replaced by the following, which becomes Article 5(5):

"5. Where it becomes apparent after consultation as provided for in Article 6 that the complaint does not provide sufficient evidence to justify initiating an investigation, then the complainant shall be so informed."

7. Article 8(2) of that Regulation becomes Article 5(6). The words "or subsidization" are inserted after the word "dumping".

Article 6

1. Article 6 of Regulation (EEC) No 459/68 shall bear the title "Consultations".
2. Article 12 of that Regulation becomes Article 6(1) to 6(4).
3. Article 13 of that Regulation is replaced by the following, which becomes Article 6(5):

"5. Consultation shall in particular cover:

- a) the existence of dumping or of a subsidy and the margin or amount thereof;
- b) the existence and extent of injury;
- c) the causal link between the dumped or subsidized imports and injury;
- d) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping or the subsidy and the ways and means for putting such measures into effect."

Article 7

1. Article 7 of Regulation (EEC) No 459/68 shall bear the title "Initiation and subsequent investigation".
2. The first three paragraphs of Article 10 of that Regulation are replaced by the following, which becomes Article 7(1) and 7(2):

"1. Where, after consultations within the Committee, it is apparent that there is sufficient evidence to justify initiating a proceeding the Commission shall immediately:

- a) announce the initiation of a proceeding in the Official Journal of the European Communities; such announcements 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 by the Commission in accordance with the provisions of paragraph 5;
- b) so advise the exporters and importers known to the Commission to be concerned as well as representatives of the exporting country and the complainants;
- c) commence the investigation at Community level, acting in co-operation with the Member States; such investigation shall cover both dumping or subsidization and injury resulting therefrom and shall be carried out in accordance with the provisions of paragraphs 2 to 8.

2. a) The Commission shall seek all information it deems to be necessary and, where it considers it appropriate, examine and verify the records of importers, exporters, traders, agents, producers, trade associations and organizations.
 - b) However, when it is necessary to carry out investigations in third countries, the Commission shall hear the opinions expressed within the Committee before proceeding. The investigations of the Commission may be carried out only if the firms concerned give their consent and the government of the country in question has been officially notified and raises no objection. The Commission shall be assisted by officials of those Member States who so request."
3. Article 10(5)(a) of that Regulation is replaced by the following, which becomes Article 7(3)(a):

"3. a) The Commission may request Member States:
 - to supply information;
 - to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers;
 - 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."
4. Article 10(5)(b), (c) and (d) of that Regulation become Article 7(3)(b), (c) and (d).
5. Article 10(4) of that Regulation becomes Article 7(4), with the following modifications:
 - a) In subparagraph (a) the words "anti-dumping" are deleted.
 - b) The following is inserted in subparagraph (b) after the words "subject to the investigation":

"and, in the case of subsidization, the representatives of the country of origin or export".

c) In subparagraphs (a) and (c)(bb), the reference to Article 11 becomes a reference to Article 8;

d) Subparagraph (c)(aa)(iii) is replaced by the following:

"iii) be received, in cases where a provisional duty has been applied, not later than two weeks after publication of the imposition of that duty."

e) In subparagraph (c)(cc) the reference to Article 17 becomes a reference to Article 12 and the word "normally" is inserted after the first two words of that subparagraph.

6. Article 10(6)(a) and 10(6)(b) of that Regulation become respectively Article 7(5) and 7(6).

7. Article 10(7) of that Regulation is replaced by the following, which becomes Article 7(7):

"7. a) The provisions of this article shall not preclude the Community authorities from reaching preliminary determinations or from applying provisional measures expeditiously.

b) In cases in which any interested party or third country refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary or final findings, affirmative or negative, may be made on the basis of the facts available."

8. Article 19(6) of that Regulation becomes Article 7(8). The words "or countervailing" are inserted after the word "anti-dumping".

9. The following new text becomes Article 7(9):

"9. A proceeding is concluded either by its termination or by definitive action. Conclusion should normally take place within one year of initiation of the proceeding."

Article 8

1. Article 8 of Regulation (EEC) No 459/68 shall bear the title "Confidentiality".
2. Article 11(1) and (2) of that Regulation become respectively Article 8(1) and 8(2)(a). The words "or countervailing" are inserted after the word "anti-dumping".
3. The following new text becomes Article 8(2)(b) and 8(3) of that Regulation:

"2. b) Each request for confidential treatment shall indicate why the information is confidential. The Commission may require that a non-confidential summary of the information, or a statement of the reasons why the information is not susceptible of such summary, be provided.

3. Information will ordinarily 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. Article 11(3) of that Regulation becomes Article 8(4).
5. Article 11(4) of that Regulation is replaced by the following, which becomes Article 8(5):

"5. The provisions of this Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken in pursuance of this Regulation are based. Such disclosure must take into account the legitimate interest of the interested parties that their commercial secrets should not be divulged."

Article 9

1. Article 9 of Regulation (EEC) No 459/68 shall bear the title "Termination of proceeding where protective measures are unnecessary".
2. Article 14(1) of that Regulation becomes Article 9(1). The words "from consultation as provided for in Article 13" are replaced by the words "after consultations within the Committee". The words "stand terminated" are replaced by the words "be terminated".
3. Article 14(1)(b) of that Regulation is replaced by the following, which becomes Article 9(2):
 - "2. The Commission shall inform any representatives of the country of origin or export and the parties known to have an interest and shall announce the termination in the Official Journal of the European Communities setting forth its basic conclusions and a summary of the reasons therefore."

Article 10

Article 14(2)(a) to (d) of Regulation (EEC) No 459/68 is replaced by the following, which becomes Article 10:

"Article 10 - Undertakings

1. Where during the course of an investigation undertakings are offered which the Commission, after consultations within the Committee, considers acceptable, anti-dumping/anti-subsidy proceedings may be terminated without the imposition of provisional or definitive duties. Such termination shall be decided in conformity with the procedure laid down in Article 9(1) and information shall be given and notice published in accordance with Article 9(2). Such termination does not preclude the definitive collection of amounts secured by way of provisional duties pursuant to the provisions of Article 12(2).
2. The undertakings referred to under the preceding paragraph are those under which:
 - a) the subsidy is eliminated or limited, or other measures concerning its injurious effects taken, by the government of the country of origin or export; or
 - b) prices are revised or exports cease to the extent that the Commission is satisfied that either the margin of dumping or the amount of the subsidy, or the injurious effects thereof, are eliminated. In case of subsidization the consent of the country of origin or export shall be obtained.
3. Undertakings may be suggested by the Commission, but the fact that such undertakings are not offered or an invitation to do so is not accepted, shall not prejudice the consideration of the case. However, the continuation of dumped or subsidized imports may be taken as evidence that the situation is more likely to develop into injury.

4. If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the Commission, after consultations within the Committee, so decides or if request is made, in the case of dumping, by exporters representing a significant percentage of the trade involved or, in the case of subsidization, by the country of origin or export. In such a case, if the Commission, after consultations within the Committee, makes a determination of no injury, the undertaking shall automatically lapse. However, where a determination of no threat of injury is due mainly to the existence of an undertaking the Commission may require that the undertaking be maintained.
5. The Commission may require any party from whom an undertaking has been accepted to provide periodically information relevant to the fulfillment of such undertakings, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a violation of the undertaking.
6. Where an undertaking has been withdrawn or where the Commission has reason to believe or suspect that it has been violated and that further investigation is warranted, it shall forthwith inform the Member States and reopen the proceeding. Furthermore, where the Community interests call for such intervention, it shall immediately apply provisional measures using the information available."

Article 11

1. Article 11 of Regulation (EEC) No 459/68 shall bear the title "Provisional duties".
2. Article 15(1)(a) and (b) of that Regulation is replaced by the following, which becomes Article 11(1) and 11(2)(a):
 - "1. Where preliminary examination shows that dumping or a subsidy exists and that there is sufficient evidence of injury caused thereby and the interests of the Community call for intervention to prevent injury being caused during the proceeding, the Commission, acting at the request of a Member State or on its own initiative, shall impose a provisional anti-dumping or countervailing duty. In such cases entry of the products concerned for Community consumption shall be conditional upon the provision of security for the amount of the provisional duty, definitive collection of which shall be determined by the subsequent decision of the Council under Article 12(2).
 2. a) The Commission shall take such provisional action after consultations within the Committee, or, in cases of extreme urgency, after informing the Member States. In this latter case, consultations shall take place within the Committee ten days at the latest after notification to the Member States of the action taken by the Commission."
3. Article 16(1) of that Regulation is replaced by the following, which becomes Article 11(2)(b):

"b) The Council, acting by a qualified majority, may decide differently."
4. Article 15(1)(c) of that Regulation becomes Article 11(3). The words "anti-dumping duty" are replaced by the words "anti-dumping or countervailing duty".

5. Article 15(2)(a) of that Regulation is replaced by the following, which becomes Article 11(4):

"4. Provisional duties shall have a maximum period of validity of four months. However, where exporters representing a significant percentage of the trade involved so request or, pursuant to a written notice of intention from the Commission, do not object, provisional anti-dumping duties may be extended for a further period of two months."

6. Article 16(2) of that Regulation is replaced by the following, which becomes Article 11(5):

"5. Any proposal for final action, or for extension of provisional measures, shall be submitted to the Council by the Commission not later than one month before expiry of the period of validity of provisional duties."

7. Article 15(2)(b) of that Regulation is replaced by the following, which becomes Article 11(6):

"6. After expiration of the period of validity of provisional duties, the security shall be released as promptly as possible to the extent that the Council has not decided to collect it definitively."

Article 12

1. Article 12 of Regulation (EEC) No 459/68 shall bear the title "Definitive action".
2. Article 17(1) of that Regulation is replaced by the following, which becomes Article 12(1):

"1. Where the facts as finally established show that there is dumping or subsidization, and injury caused thereby, and the interests of the Community call for Community intervention, a definitive anti-dumping or countervailing duty shall be imposed by the Council, acting by qualified majority on a proposal submitted by the Commission after consultation within the Committee."
3. Article 17(2)(a) of that Regulation becomes Article 12(2)(a). The words "anti-dumping duty" are replaced by the words "anti-dumping or countervailing duty".
4. Article 17(2)(b) of that Regulation is replaced by the following, which becomes Article 12(2)(b):

"2. b) The definitive collection of such amount shall not be decided upon unless the facts as finally established show that there has been dumping or subsidization, and injury. 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."

Article 13

1. Article 13 of Regulation (EEC) No 459/68 shall bear the title "General provisions on duties".
2. Article 19(1) of that Regulation becomes Article 13(1). The words "anti-dumping duties" are replaced by the words "anti-dumping or countervailing duties".
3. Article 20(1) and (2) of that Regulation is replaced by the following, which becomes Article 13(2):
 - "2. Such regulations shall indicate in particular the amount and type of duty imposed; the product covered; the country of origin or export; the name of the supplier, if practicable; the reasons on which they are based."
4. Article 19(3) and 23 of that Regulation are replaced by the following, which becomes Article 13(3):
 - "3. The amount of such duties shall not exceed the margin of dumping provisionally estimated or finally established or the amount of the subsidy provisionally estimated or finally established; it should be less if such lesser duty would be adequate to remove the injury."
5. Articles 19(2)(a) and (b) are replaced by the following, which becomes Article 13(4):
 - "4. a) Anti-dumping and countervailing duties shall be neither imposed nor increased with retroactive effect and shall apply to the products which, after entry into force of such duties, are entered for Community consumption. For this purpose, the date of acceptance by the customs authorities of the declarant's statement of his intention to enter the goods for consumption shall be determinant.

b) However, where:

(aa) for dumped products, the Council determines that there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and that the injury is caused by sporadic dumping i.e., massive dumped imports of a product in a relatively short period, to such an extent that, in order to preclude it recurring, it appears necessary to impose an anti-dumping duty retroactively on those imports or

(bb) for subsidized products the Council determines in critical circumstances that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefitting from export subsidies paid or bestowed inconsistently with the provisions of the GATT and of the Agreement on interpretation and application of Articles VI, XVI and XXIII of the GATT and where it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on these imports or

(cc) for dumped or subsidized products, the Council determines that an undertaking has been violated

the definitive anti-dumping or countervailing duties may be imposed on products which were entered for Community consumption not more than ninety days prior to the date of application of provisional duties, except that in the case of violation of an undertaking such retroactive assessment shall not apply to imports entered before the violation."

6. Article 19(2)(c) of that Regulation is replaced by the following, which becomes Article 13(5):

"5. Where a product is imported into the Community from more than one country, duty shall be levied at an appropriate amount on a non-discriminatory basis on all imports of such product found to be dumped or subsidized and causing injury, other than imports from those sources in respect of which undertakings have been accepted."

7. Article 19(5) of that Regulation is replaced by the following, which becomes Article 13(6):

"6. Where the Community industry has been interpreted as referring to the producers in a certain region, the Commission shall give exporters an opportunity to offer undertakings pursuant to Article 10 in respect of the region concerned. If an adequate undertaking is not given promptly or is not fulfilled, a provisional or definitive duty may be imposed in respect of the Community as a whole."

8. Articles 20(3) and 21 of that Regulation become, respectively, Articles 13(7) and 13(8). The words "or countervailing" are inserted in each case after the word "dumping".

9. Article 24 of that Regulation becomes Article 13(9). The words "bounty or" are deleted.

Article 14

Articles 18(1), 14(2)(e) and 18(2) of Regulation (EEC) No 459/68 are replaced by the following, which becomes Article 14:

"Article 14 - Review"

1. The regulations imposing provisional or definitive anti-dumping or countervailing duties and the decisions to accept undertakings shall be subject to review where warranted. Such review may be held either at the request of a Member State or on the initiative of the Commission or if any interested party so requests and submits positive information substantiating the need for review. Such requests shall be addressed either to a Member State or to the Commission. A Member State receiving any such request shall inform the Commission, which shall notify the other Member States. Where the Commission receives the request, it shall inform the Member States.
2. Where, after consultations within the Committee, it becomes apparent that review is warranted, the proceedings shall be re-opened in accordance with Article 7 where the circumstances so require. Such re-opening shall not per se affect the measures in operation.
3. Where warranted by the review, carried out either with or without re-opening of the proceeding, the measures shall be amended, repealed or annulled by the Community institution competent for their introduction. However, where measures have been taken under the transitional provisions of an Act of Accession the Commission shall itself amend, repeal or annul them and shall report this to the Council; the latter may, acting by a qualified majority, decide that different action be taken."

Article 15

1. Article 15 of Regulation (EEC) No 459/68 shall bear the title "Refund".
2. Article 19(4)(a) of that Regulation is replaced by the following, which becomes Article 15(1):

"1. Where an importer can show that the duty collected exceeds the actual dumping margin or the amount of the subsidy, consideration being given to any application of weighted averages, the excess amount shall be reimbursed; where provisional measures were taken, the same shall apply in respect of release of securities."
3. Article 19(4)(b) becomes Article 15(2).

Article 16

Articles 1(2) and 1(3) are replaced by the following, which becomes Article 16:

"Article 16 - Final provisions

This Regulation shall not preclude the application of:

1. any special rules laid down in agreements concluded between the Community and third countries;
2. the Community Regulations in the agricultural sector and Regulations Nos 1059/69/EEC⁽¹⁾, 2730/75/EEC⁽²⁾ and 2783/75/EEC⁽³⁾; the present 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.
3. special measures, provided that such action does not run counter to obligations under the GATT.

(1) OJ No L 141 of 12.06.69
(2) OJ No L 281 of 01.11.75
(3) OJ No L 282 of 01.11.75"

Article 17

Annex A to this Regulation shall become the Annex to Regulation (EEC) No 459/68.

Article 18

Articles 2(2), 8(1), 8(3) and 25 of Regulation (EEC) No 459/68 are deleted.

Article 19

The provisions of Regulation (EEC) No 459/68 as amended by the present Regulation are published as Annex B to the present Regulation.

Article 20

This Regulation shall enter into force on 1 January 1980.

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 delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for delivery of like or directly competitive products or services for use on the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters.
- e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises. Notwithstanding the foregoing, deferral of taxes and charges referred to above need not amount to an export subsidy where, for example, appropriate interest charges are collected.

f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to 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 in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption. The problem of the excessive remission of value added tax is exclusively covered by this paragraph.

h) The exemption, remission or deferral of prior stage cumulative indirect taxes 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 goods that are physically incorporated (making normal allowance for waste) in the exported product. This paragraph does not apply to value added tax systems and border tax adjustments in lieu thereof.

i) The remission or drawback of import charges in excess of those levied on imported goods that are physically incorporated (making normal allowance for waste) in the exported product; provided, however, that in particular cases a firm may use a quantity of home market goods equal to, and having the same quality and characteristics as, the imported goods 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, normally not to exceed two years.

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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 costs of exported products or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes.

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 denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, insofar as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if the country of origin or export is a party to an international undertaking on official export credits to which at least twelve original signatories to the Agreement on interpretation and application of Articles VI, XVI and XXIII of the GATT are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice the country of origin or export applies the interest rate provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy.

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l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of the GATT.

NOTES

For the purposes of this Annex the following definitions apply:

1. The term "direct taxes" shall mean taxes on wages, profits, interest, rents, royalties, and all other forms of income, and taxes on the ownership of real property.
2. The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this paragraph that are levied on imports.
3. 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.
4. "Prior stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product.
5. "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 stage of production.
6. "Remission" of taxes includes the refund or rebate of taxes.

