

English edition

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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 3283/94

of 22 December 1994

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 organization of agricultural markets and the Regulations adopted pursuant to 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 ⁽¹⁾,

Whereas, by Regulation (EC) No 2423/88 ⁽²⁾, the Council adopted common rules for protection against dumped or subsidized imports from countries which are not members of the European 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 (hereinafter, GATT), 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 (hereinafter, 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;

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

⁽¹⁾ Opinion delivered on 14 December 1994 (not yet published in the Official Journal).

⁽²⁾ OJ No L 209, 2. 8. 1988, p. 1. Regulation as amended by Regulation (EC) No 521/94 (OJ No L 66, 10. 3. 1994, p. 7) and Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).

which domestic sales may be considered to be made at a loss and disregarded and recourse may be had 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 is to 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 is to 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 are to 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 full opportunity to defend 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 the condition that they may not be imposed earlier than 60 days from initiation and no later than nine 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 accepting undertakings which eliminate dumping and injury instead of imposing 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, it is necessary to provide for the termination of cases, by termination without measures or by conclusion with definitive measures, normally within 12 months, and in no case later than 15 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 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 are to 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 recalculation 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 provide specifically for the reassessment 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 regarding the circumvention of anti-dumping measures, though a separate GATT Ministerial Decision recognizes 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 suspension of anti-dumping measures where there is a temporary change in market conditions which makes 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 in order to enable measures to be applied subsequently against such imports;

Whereas, in order 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 should 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 proper disclosure of 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 implementation of time limits 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 are to apply,

HAS ADOPTED THIS REGULATION:

Article 1

Principles

1. An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury.
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.
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 transhipped through that country, or the products concerned are not produced in that country, or there is no comparable price for them in that country.
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

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.

(a) Where the exporter in the exporting country does not produce or does not sell the like product the normal value may be established on the basis of prices of other sellers or producers.

(b) 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. Sales of the like product destined for domestic consumption, shall normally be used to determine normal value if such sales volume constitute 5 % 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.

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.

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.

(a) 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.

(b) 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 % of sales being used to determine normal value.

5. For the purpose of paragraphs 1 to 7, 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.

(a) Consideration shall be given to evidence submitted on the proper allocation of costs, provided that it is shown that such allocations have been historically utilized. 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.

(b) 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 utilization 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 abovementioned 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 (a). 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 from the initiation of the investigation.

6. For the purpose of paragraphs 1 to 7, the amounts for selling, for 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 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 realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

7. In the case of imports from non-market economy countries and, in particular, those to which Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) No 1765/82, (EEC) No 1766/82 and 3420/83 ⁽¹⁾ 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.

(a) 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.

(b) 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.

⁽¹⁾ OJ No L 67, 10. 3. 1994, p. 89.

B. EXPORT PRICE

8. The export price shall be the price actually paid or payable for the product when sold from the exporting country to the Community.

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.

(a) 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.

(b) The items 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

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 which affect price comparability. 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 adjustment 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.

(d) *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, including any differences which may arise in OEM (Original Equipment Manufacturer) sales, 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.

Article 3

(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.

D. DUMPING MARGIN

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.

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.

Determination of injury

1. Pursuant to 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 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. 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.

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.

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 subsidization, the magnitude of the actual margin of dumping, actual and potential decline in sales, profits,

output, market share, productivity, return on investments, utilization 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.

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 pursuant to 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 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.

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.

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.

- (a) 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.
- (b) 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

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 a

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 a 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 shall be given an opportunity to offer undertakings pursuant to Article 8 in respect of the region concerned. In such cases, when evaluating the Community interest of the measures, special account shall be taken of the interest of the region. If an adequate undertaking is not offered promptly or the situations set out in Article 8 (9) and (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 producers or exporters.

4. The provisions of Article 3 (8) shall be applicable to this Article.

Article 5

Initiation of proceedings

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.

(a) The complaint may be submitted to the Commission, or to 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.

(b) 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.

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 (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 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 % 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 % of total production of the like product produced by the Community industry.

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.

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.

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. Pursuant to this Article, proceedings shall not be initiated against countries whose imports represent a market share of below 1 %, unless such countries collectively account for 3 %, or more, of Community consumption.

8. The complaint may be withdrawn prior to initiation, in which case it shall be considered not to have been lodged.

9. Where, after consultation, it is apparent that there is sufficient evidence to justify initiating proceedings the Commission shall initiate proceedings within 45 days 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 complaint shall, after consultation, be so informed within 45 days of the date on which the complaints is lodged with the Commission.

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).

11. The Commission shall advise the exporters, importers and representative associations of importers or exporters 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 pursuant to 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.

12. An anti-dumping investigation shall not hinder the procedures of customs clearance.

Article 6

The investigation

1. Following the initiation of the proceedings, the Commission, acting in cooperation 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.

2. Parties receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days 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 30 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 authorized, 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 Article 5 (10), shall 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, 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.

7. The complainants, importers and exporters and their representative associations, users and consumer organizations, which have made themselves known in accordance with Article 5 (10), as well as the representatives of the 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.

8. Except in the circumstances provided for in Article 18, the information supplied by interested parties an upon which findings are based, shall be examined for accuracy to the degree possible.

9. For proceedings initiated pursuant to Article 5 (9), an investigation shall, whenever possible, be concluded within one year. In any event, such investigations shall in all cases be concluded within 15 months of initiation, in accordance with the findings made pursuant to Article 8 for undertakings or the findings made pursuant to Article 9 for definitive action.

Article 7

Provisional measures

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 not later than nine months from the initiation of the proceedings.

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.

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 in 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.

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. 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

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.

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 realized 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 pursuant to Article 20 (5).

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.

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 investigation be terminated. The investigation shall stand terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

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.

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. 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.

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.

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

1. Where the complaint is 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. For proceedings initiated pursuant to 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 %, 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 reinvestigated in any subsequent review carried out for the country concerned pursuant to Article 11.

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.

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, as a general rule, in the cases referred to in Article 2 (7), the supplying country concerned.

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 to imports from any exporter or producer which is granted individual treatment, as provided for in Article 17.

Article 10

Retroactivity

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 pursuant to Articles 7 (1) or 9 (4), as the case may be, 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 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

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.

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 and 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:

- (i) there is, for the product in question, a history of dumping over an extended period, or the importer was aware of, or should have been aware of, the dumping as regards the extent of the dumping and the 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.

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 90 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

1. An anti-dumping measure shall remain in force only as long as and to the extent necessary to counteract the dumping which is causing injury.

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.

- (a) 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.
- (b) 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.
- (c) Pursuant to 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 (a). A notice announcing the actual expiry of measures pursuant to this paragraph shall also be published.

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 one 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.

- (a) 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 the dumping which is causing injury.

(b) In carrying out investigations pursuant to 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.

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.

(a) 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 abovementioned investigation period, or where they can demonstrate that they have entered into an irrevocable contractual obligation to export a significant quantity to the Community.

(b) 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.

(c) The provisions of this paragraph shall not apply where duties have been imposed under the provisions of Article 9 (6).

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 pursuant to paragraphs 2, 3 and 4. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

6. Reviews pursuant to this Article shall be initiated by the Commission after consultation of the Advisory Committee. Where warranted by reviews, measures shall be repealed or maintained pursuant to paragraph 2, or repealed, maintained or amended pursuant to 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 reinvestigated in any subsequent review carried out for that country pursuant to this Article.

7. Where a review of measures pursuant to 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.

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.

(a) 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 of the territory in which the products were released for free circulation 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.

(b) 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 will 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.

(c) 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 authorized should normally be made by Member States within 90 days of the abovementioned decision.

9. In all review or refund investigations carried out pursuant to 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 being taken of the provisions set out in Article 2, and in particular paragraphs 11 and 12 thereof, and the provisions of Article 17 of this Regulation.

10. In any investigation carried out pursuant to 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

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 reopened to examine whether the measure has had effects on the abovementioned prices.

2. During an investigation pursuant to 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 reassessed in accordance with Article 2 and dumping margins shall be recalculated to take account of the reassessed 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 recalculated to take account of such lower export prices.

3. Where a reinvestigation pursuant to 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.

4. The relevant provisions of Article 5 and Article 6 shall apply to any review carried out pursuant to 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 reinvestigation.

5. Alleged changes in normal value shall only be taken into account pursuant to 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

1. Anti-dumping duties imposed pursuant to 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 like products and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

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 and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

3. Investigations shall be initiated pursuant to this Article where the request contains sufficient evidence regarding 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 pursuant to 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 pursuant to this Article.

4. Products shall not be subject to registration pursuant to 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 authorization by decision of the Commission after consultation of the Advisory Committee or decision of the Council imposing measures and they shall remain valid for the period, and under the conditions, set down therein.

5. Nothing in this Article shall preclude the normal application of the provisions in force concerning customs duties.

Article 14

General provisions

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 subsidization.

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.

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 establishing the Community Customs Code ⁽¹⁾, may be adopted in, or pursuant to, this Regulation.

4. In the Community interest, measures imposed pursuant to this Regulation may, after consultation of the Advisory Committee, be suspended by a decision of the Commission for a period of nine months. The suspension may be extended for a further period, not exceeding one year, if the Council so decides, by simple majority, on a proposal from the Commission. Measures may only be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, and provided that the Community industry has been given an opportunity to comment and these comments have been taken into account. Measures may, at any time and after consultation, be reinstated 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, on the import trade in products subject to investigation and subject to measures and the amount of duties collected pursuant to this Regulation.

Article 15

Consultations

1. Any consultations provided for in this Regulation shall take place within an Advisory Committee, which

⁽¹⁾ OJ No L 302, 19. 10. 1992, p. 1.

shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately at the request of a Member State or on the initiative of the Commission and in any event within a period of time 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 period of time which allows the time limits set by this Regulation to be respected.

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

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 organizations and 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.

2. The Commission may carry out investigations in third countries as required, provided that 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.

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 from being made during the verification of further details to be provided in the light of information obtained.

4. In investigations carried out pursuant to this paragraph, the Commission shall be assisted by officials of those Member States who so request.

Article 17

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 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.

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 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.

4. Where it is decided to sample and there is a degree of non-cooperation 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-cooperation persists or there is insufficient time to select a new sample, the relevant provisions of Article 18 shall apply.

*Article 18***Non-cooperation**

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-cooperation.
2. A lack of a computerized response shall not be deemed to constitute non-cooperation, 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 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.
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.
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**

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 summarization 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 authorize its disclosure in generalized 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 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.
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.

6. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

Article 20

Disclosure

1. The complainants, importers and exporters and their representative associations, 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.

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 being 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.

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

1. Pursuant to 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 pursuant to this Article shall only be made where all parties have been given the opportunity to make their views known pursuant to 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.

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 and their representative associations, representative users and representative consumer organizations 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.

3. The parties which have acted in conformity with paragraph 2 may request a hearing. Such requests shall be granted when they are submitted within the time limits set in paragraph 2, and when they set out the reasons, in terms of the Community interest, why the parties 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 pursuant to Article 9.

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. Pursuant to 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 Regulation (EEC) No 1059/69 of the Council of 28 May 1969 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products⁽¹⁾, Regulation (EEC) No 2730/75 of the Council of 29 October 1975 on glucose and lactose⁽²⁾ and Regulation (EEC) No 2783/75 of the Council of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin⁽³⁾; this Regulation shall operate by way of complement to those Regulations

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

Done at Brussels, 22 December 1994.

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 pursuant to the GATT.

Article 23

Repeal of existing legislation

Regulation (EEC) No 2423/88 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 1 January 1995. It shall apply to proceedings and interim review investigations initiated after 1 September 1994 and to expiry review investigations for which the notice of impending expiry of measures has been published after the same date. However, for proceedings initiated pursuant to Article 5 (9), the references to time limits 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.

For the Council

The President

H. SEEHOFER

⁽¹⁾ OJ No L 141, 12. 6. 1969, p. 1.

⁽²⁾ OJ No L 281, 1. 11. 1975, p. 20. Regulation as last amended by Commission Regulation (EEC) No 222/88 (OJ No L 28, 1. 2. 1988, p. 1).

⁽³⁾ OJ No L 282, 1. 11. 1975, p. 104. Regulation as last amended by Commission Regulation (EEC) No 4001/87 (OJ No L 377, 31. 12. 1987, p. 44).

COUNCIL REGULATION (EC) No 3284/94

of 22 December 1994

on protection against subsidized 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 organization of agricultural markets and the Regulations adopted pursuant to 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 ⁽¹⁾,

Whereas, by Regulation (EEC) No 2423/88 ⁽²⁾, the Council adopted common rules for protection against dumped or subsidized imports from countries which are not members of the European 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 ('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 Organization ('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 the Anti-Dumping Agreement and the Subsidies Agreement respectively, 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, with regard *inter alia* 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 is to 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;

⁽¹⁾ Opinion delivered on 14 December 1994 (not yet published in the Official Journal).

⁽²⁾ OJ No L 209, 2. 8. 1988, p. 1. Regulation as amended by Regulation (EC) No 521/94 (OJ No L 66, 10. 3. 1994, p. 7) and Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).

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 subsidized 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 nine 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, it is necessary to provide for the termination of cases, by termination without measures or by conclusion with definitive measures, normally within 12 months, and in no case later than 13 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 subsidized 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 in 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 in products subject to investigation and subject to measures and the amount of duties collected pursuant to 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 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 subsidized 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 subsidized 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'. The term 'government' is defined, for the purposes of this

Regulation as a government or any public body within the territory of the country of origin or 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 (as defined in Article 1 (3)) in the country of origin or export, that is to say, where:
 - (i) a government practice involves a direct transfer of funds (for example grants, loans, equity infusion), potential direct transfers of funds or liabilities (for example, loan guarantees);
 - (ii) government revenue that is otherwise due, is foregone or not collected (for example, 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 to 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 points (i) to (iii) 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 within the meaning 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 in Article 2 shall be subject to countervailing measures only if they are specific, as defined in paragraphs 2 to 4.

B. SPECIFICITY

2. In order to determine whether a subsidy, as defined in Article 2 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 by 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), 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, 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-COUNTERAVAILABLE 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.

(b) Subsidies which are specific, within the meaning of paragraphs 2 and 3, but which meet the conditions provided for in paragraphs 7, 8 or 9.

(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 % of the costs of industrial research or 50 % 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 points (i) to (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 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 by 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 % of the average for the territory of the country of origin or export concerned,
 - unemployment rate, which must be at least 110 % 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 subsidized 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 subparagraph shall be applied in the light of the criteria set out in paragraphs 2 and 3.

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 % of the cost of adaptation; and
- (iii) does not cover the cost of replacing and operating the subsidized 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 subsidization. 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 in the absence of 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 product 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 subsidized 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 subsidization.
 - (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 subparagraph (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).
- (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 subparagraph 3 (c), unless special circumstances arise justifying attribution over a different period.

Article 5

Determination of injury

1. Pursuant to 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 subsidized imports and the effect of the subsidized 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 subsidized imports, consideration shall be given as to whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the Community. With regard to the effect of the subsidized imports on prices, consideration shall be given as to whether there has been a significant price undercutting by the subsidized 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 Article 11 (5) 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 subsidized 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 subsidization or dumping, the magnitude of the amount of countervailable subsidies, actual and potential decline in sales, profits, output, market share, productivity, return on

investments, utilization 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 subsidized imports are causing injury within the meaning of this Regulation. Specifically, this shall entail a demonstration that the volume and/or price levels identified pursuant to 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 subsidized 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 subsidized imports pursuant to paragraph 6. Factors which may be considered in this respect include, *inter alia*, the volume and prices of non-subsidized 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 subsidized 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 subsidized 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 subsidized 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 subsidized 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 import; 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 subsidized 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 Article 7 (8), 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 subsidized 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 subsidized imports into such an isolated market and provided further that the subsidized 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. In such cases, when evaluating whether the measures are in the Community interest, special account shall be taken of the interest of the region. If an adequate undertaking is not offered promptly or the situations set out in Article 10 (9) and (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 producers or exporters.

4. The provisions of Article 5 (8) shall apply to this Article.

Article 7

Initiation of proceedings

1. Except as provided for in paragraph 10, 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 subsidization and of injury resulting therefrom for the Community industry it shall immediately communicate such evidence to the Commission.

2. A complaint pursuant to 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 subsidized 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 subsidized 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 subsidized 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 Article 5 (3) and (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 Article 3 (2) and (3) of this Regulation.

5. An investigation may also be initiated in respect of subsidies non-countervailable according to Article 3 (7), (8) or (9) 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 provision 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 Article 8 (5) 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 % 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 % 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 pursuant to 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 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. Pursuant to this Article,

proceedings shall not be initiated against countries whose imports represent a market share of below 1 %, unless such countries collectively account for 3 %, or more, of Community consumption.

12. The complaint may be withdrawn prior to initiation, in which case it shall be considered not to 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 45 days 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 45 days 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 Article 8 (5).

15. The Commission shall advise the exporters, importers and representative associations of importers or exporters 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 pursuant to 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

1. Following the initiation of the proceedings, the Commission, acting in cooperation with the Member States, shall commence an investigation at Community level. Such investigation shall cover both subsidization

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 subsidization, shall normally cover the investigation period provided for in Article 4 (1). 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 30 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 of the 30 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 authorized, 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 Article 7 (14), shall 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 Article 7 (14), 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 pursuant to 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 and exporters and their representative associations, users and consumer organizations, which have made themselves known in accordance with Article 7 (14), 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. For proceedings initiated pursuant to Article 7 (13), an investigation shall, whenever possible, be concluded within one year. In any event, such investigations shall in all cases be concluded within 13 months of initiation, in accordance with the findings made pursuant to Article 10 for undertakings or the findings made pursuant to Article 11 for definitive action.

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 pursuant to 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 realized if the subsidized imports continue. Undertakings shall not be sought or accepted from governments or exporters unless a provisional affirmative determination of subsidization and injury caused by such subsidization 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 pursuant to Article 21 (5).

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 reason 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 subsidization and injury shall normally be completed. In such a case, if a negative determination of subsidization 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 subsidization 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, be 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 subsidization 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 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. There shall be immediate termination of the proceedings where it is determined that the amount of countervailable subsidies is *de minimis*, in accordance with the provisions of paragraph 5, or where the volume of subsidized imports, actual or potential, or the injury, is negligible.

4. For all proceedings initiated pursuant to Article 7 (13), injury shall normally be regarded as negligible where the market share of the imports is less than the amounts set out in Article 7 (11). With regard to investigations concerning imports from developing

countries, the volume of subsidized imports shall also be considered negligible if it represents less than 4 % 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 % collectively account for more than 9 % 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 % *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 two 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 Article 3 (4) (a) of this Regulation, the *de minimis* subsidy threshold shall be 3 % *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 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 pursuant to 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 on 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 pursuant to 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 Article 9 (1) and Article 11 (6), 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 Article 15 (5), the importers concerned have been given an opportunity to comment by the Commission and it is found that:

- (i) there exist critical circumstances where for the subsidized 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 90 days before the application of provisional measures provided that the imports have been registered in accordance with Article 15 (5) 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 subsidization and injury, unless it is determined in a review that the expiry would be likely to lead to continuation or recurrence of subsidization 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 be initiated where the request contains sufficient evidence that the removal of measures would be likely to result in a continuation or recurrence of subsidization and injury. Such a likelihood may, for example, be indicated by evidence of continued subsidization 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 subsidization.

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 subsidization 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 one 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 the countervailing duties imposed are less than the amount of countervailable subsidies found, 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 subsidization 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 cooperate 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 Articles 7 and 8, excluding those relating to time limits, shall apply to any review carried out pursuant to paragraphs 2 to 5, 6 to 9 and 10. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

12. Reviews pursuant to this Article shall be initiated by the Commission after consultation of the Advisory Committee. Where warranted by reviews, measures shall be repealed or maintained pursuant to paragraphs 2 to 5, or repealed, maintained or amended pursuant to paragraphs 6 to 9 and 10, 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 pursuant to this Article.

13. Where a review of measures pursuant to paragraphs 6 to 9 is in progress at the end of the period of application of measures as defined in paragraphs 2 to 5, the measures shall also be investigated under the provisions of paragraphs 2 to 5.

E. Refunds

14. Notwithstanding paragraphs 2 to 5, 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 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 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 authorized 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 pursuant to 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 pursuant to 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 like products, and the imported like product and/or parts thereof still benefit from the subsidy.

2. Investigations shall be initiated pursuant to 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 15 (5) 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. Where the facts, as finally ascertained, justify the extension of measures this shall be done by the Council, acting by simple majority on a proposal from the Commission, from the date that registration was imposed pursuant to Article 15 (5) or guarantees were requested. The relevant procedural provisions of this Regulation with regard to initiations and the conduct of investigations shall apply pursuant to this Article.

3. Products shall not be subject to registration pursuant to Article 15 (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 authorization 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 subsidization.

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 of 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 establishing the Community Customs Code ⁽¹⁾, may be adopted in, or pursuant to this Regulation.

4. In the Community interest, measures imposed pursuant to this Regulation may, after consultation of the Advisory Committee, be suspended by a decision of the Commission for a period of nine months. The suspension

⁽¹⁾ OJ No L 302, 19. 10. 1992, p. 1.

may be extended for a further period, not exceeding one year, if the Council so decides, by simple majority, on a proposal from the Commission. Measures may only be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, and provided that the Community industry has been given an opportunity to comment and these comments have been taken into account. Measures may, at any time and after consultation, be reinstated 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 pursuant to this Regulation.

Article 16

Consultations

1. Any consultations provided for in this Regulation, except those referred to in Article 7 (9) and 8 (10), 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 subsidized imports and injury;
- (iv) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by the countervailable subsidies 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 organizations, to verify information provided on subsidization 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 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 being made during the verification for further details to be provided in the light of information obtained.

4. In investigations carried out pursuant to 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 subsidization 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-cooperation 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-cooperation persists of there is insufficient time to select a new sample the relevant provisions of Article 19 shall apply.

Article 19

Non-cooperation

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 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-cooperation.

2. A lack of a computerized response shall not be deemed to constitute non-cooperation 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, 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, 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 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 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 summarization 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 authorize its disclosure in generalized 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 the reasons on which decisions taken pursuant to this Regulation are based, nor disclosure of the evidence relied on by the Community authorities in so far as is 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 Articles 7 (9) and (10), 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 and exporters and their representative associations, and representatives of the country of 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. Pursuant to this Regulation, a determination as to whether the Community interest calls for intervention shall be based on an assessment of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers, and a determination pursuant to this Article shall only be made where all parties have been given the opportunity to make their views known pursuant to paragraph 2. In such an examination, the need to eliminate the trade distorting effects of injurious subsidization 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 and their representative associations, representative users and representative consumer organizations 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 granted when they are submitted within the time limits set in paragraph 2, and when they set out the reasons, in terms of the Community interest, why the parties 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 pursuant to 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. Pursuant to 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 Council Regulations (EC) No 3448/93 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products, Regulation (EEC) No 2730/75 of the Council of 29 October 1975 on glucose and lactose ⁽²⁾ and Regulation (EEC) No 2783/75 of the Council of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin ⁽³¹⁾; this Regulation shall operate by way of complement to those Regulations and in derogation from any provisions thereof which preclude the application of countervailing duties;
- (iii) special measures, provided that such action does not run counter to obligations under the GATT.

Article 25

Repeal of existing legislation

Regulation (EEC) No 2423/88 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 1 January 1995.

It shall apply to proceedings and interim review investigations initiated after 1 September 1994 and to expiry review investigations for which the notice of impending expiry of measures has been published after the same date. However, for proceedings initiated pursuant to Article 7 (13), the references to time limits 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.

⁽¹⁾ OJ No L 318, 20. 12. 1993, p. 18.

⁽²⁾ OJ No L 281, 1. 11. 1975, p. 20. Regulation as last amended by Regulation (EEC) No 222/88 (OJ No L 28, 1. 2. 1988, p. 1).

⁽³¹⁾ OJ No L 282, 1. 11. 1975, p. 104. Regulation as last amended by Regulation (EEC) No 4001/87 (OJ No L 377, 31. 12. 1987, p. 44).

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

Done at Brussels, 22 December 1994.

For the Council

The President

H. Seehofer

ANNEX I

ILLUSTRATIVE 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 favourable than those commercially available ⁽¹⁾ on world markets to their exporters.
- (e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes ⁽¹⁾ or social welfare charges paid or payable by industrial or commercial enterprises ⁽²⁾.
- (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 taxes are charged.
- (g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes ⁽¹⁾ 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) ⁽³⁾. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II.
- (i) The remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided,

⁽¹⁾ The term 'commercially available' means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

⁽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).

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.
- (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 12 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 ⁽¹⁾

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.

II

3. In examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation, the Commission must 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 must 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 must 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 Article 17 (2), 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 to 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 must 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' must normally be taken into account, and such waste must 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

⁽¹⁾ 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.

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' must 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 must 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 must 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 must 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 Article 17 (2), 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 to 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 determine 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 programmes2. *General services*

Policies in this category involve expenditures (or revenue foregone) in relation to programmes which provide services to 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 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* ⁽¹⁾

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

⁽¹⁾ 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.

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* ⁽¹⁾

Expenditures (or revenue foregone) in relation to the provision of domestic food aid to sections of the population in need.

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 at 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, plus specific criteria applying to individual types of direct payment as set out in paragraphs 6 through 13. 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 % 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 % 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.

⁽¹⁾ 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.

- (d) Where a producer receives in the same year payments pursuant to this paragraph and pursuant to paragraph 8 (relief from natural disasters), the total of such payments shall be less than 100 % 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 % 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).
- (e) Where a producer receives in the same year payments pursuant to this paragraph and pursuant to paragraph 7 (income insurance and income safety-net programmes), the total of such payments shall be less than 100 % 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).
- (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 realization 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.
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COUNCIL REGULATION (EC) No 3285/94

of 22 December 1994

on the common rules for imports and repealing Regulation (EC) No 518/94

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 the common organization of agricultural markets and the instruments concerning processed agricultural products, in particular in so far 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,⁽¹⁾

Whereas the common commercial policy should be based on uniform principles; whereas Council Regulation (EC) No 518/94 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 from 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 Safeguard 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;

Whereas the Agreement on Safeguards also covers ECSC products; whereas the common rules for imports,

especially as regards safeguard measures, therefore also applies to those products without prejudice to any possible measures to apply an agreement specifically concerning ECSC products;

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

⁽¹⁾ Opinion delivered on 14 December 1994 (not yet published in the Official Journal).

⁽²⁾ OJ No L 67, 10. 3. 1994, p. 77.

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 serious injury and 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 Council Regulation (EC) No 517/94 of 7 March 1994⁽¹⁾ 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⁽¹⁾ are subject to special treatment at Community and international level, except for the products listed in Annex II which are integrated into GATT 1994; whereas they should therefore be 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 national restrictions with respect to products falling under the ECSC Treaty will be progressively dismantled in accordance with the provisions of the WTO;

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 originating in third countries, except for:

⁽¹⁾ OJ No L 67, 10. 3. 1994, p. 1.

- textile products covered by Regulation (EC) No 517/94, other than the products listed in Annex II in so far as those products originate in a country which is a member of the WTO,
- the products originating in certain third countries listed in Council Regulation (EC) No 519/94 on common rules for imports from certain third countries ⁽¹⁾.

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 commercial 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

⁽¹⁾ OJ No L 67, 10. 3. 1994, p. 89.

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 pursuant to 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 pursuant to 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 with 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, and
- 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 establishing the Community Customs Code ⁽¹⁾ 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 pursuant to this Regulation are based. The said authorities shall, however, take into account the legitimate interest of 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 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 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

⁽¹⁾ OJ No L 302, 19. 10. 1992, p. 1.

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,
- (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 (7) and (8).

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 Annex I.

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 pursuant to 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 13

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 Annex I.

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 10 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. As regards Members of the WTO, the measures referred to in paragraph 1 shall be taken only when the two conditions indicated in the first subparagraph of that paragraph are met.

3. (a) If 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) Any 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.

4. (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 in case of serious injury 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.

5. (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, pursuant to Articles 11 and 12, may be put into free circulation only in production of an import document are in fact accompanied by such a document.

6. 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.

7. Any decision taken by the Commission pursuant to 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.

8. 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), (4) and (5) 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 pursuant to 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 (4) (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 producers as the initial measures. A measure so extended shall not be 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, including the period of application of any provisional measures, the initial period of application and any prorogation thereof, may 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

1. Residual national restrictions relating to products covered by the ECSC Treaty shall be progressively dismantled in accordance with the provisions of the WTO.

2. 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 1 January 1995.

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

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

ANNEX I

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

Original for the applicant	1	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	
1	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: 1. the undersigned, certify that the information provided in this application is true and given in good faith				
19. Stamp of the competent authorities			Place and date	
Date:				
(signature)		(stamp)		
			(signature)	(stamp)



Copy for the competent authorities	2	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
	2	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: 1. the undersigned, certify that the information provided in this application is true and given in good faith				
19. Stamp of the competent authorities		Place and date		
	Date:			
(signature)	(stamp)	(signature)	(stamp)	

ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II —
ALLEGATO II — BIJLAGE II — ANEXO II

List of textiles and clothing products integrated into the GATT 1994 in conformity with Article 2 of the
Agreement on Textiles and Clothing

HS Line	Description
I. TOPS AND YARNS	
5307 10	Yarn of jute or other textile bast fibres, single
5307 20	Yarn of jute or other textile bast fibres, multiple (folded) or cabled
5601 10	Sanitary articles of wadding of textile material i.e. sanitary towels, tampons
5601 21	Wadding of cotton and articles thereof, other than sanitary articles
5601 22	Wadding of man-made fibres and articles thereof, other than sanitary articles
5601 29	Wadding of other textile materials and articles thereof, other than sanitary articles
5601 30	Textile flock and dust and mill neps
5604 10	Rubber thread and cord, textile covered
5605 00	Metallized yarn, beg textile yarn combined with metal thread, strip/powder
ex 7019 10	Yarns of fibre glass
II. FABRICS	
ex 3921 12	Woven, knitted or non-woven fabrics coated, covered or laminated with plastics
ex 3921 13	Woven, knitted or non-woven fabrics coated, covered or laminated with plastics
ex 3921 90	Woven, knitted or non-woven fabrics coated, covered or laminated with plastics
ex 4202 12	Luggage, handbags and flatgoods with an outer surface predominantly of textile materials
ex 4202 22	Luggage, handbags and flatgoods with an outer surface predominantly of textile materials
ex 4202 32	Luggage, handbags and flatgoods with an outer surface predominantly of textile materials
ex 4202 92	Luggage, handbags and flatgoods with an outer surface predominantly of textile materials
5310 10	Woven fabrics of jute or other textile bast fibres, unbleached
5310 90	Woven fabrics of jute or other textile bast fibres, other than unbleached
5901 10	Textile fabrics coated with gum, of a kind used for outer covers of books
5901 90	Tracing cloth; prepared painting canvas; stiffened textile fab; for hats etc.
5904 10	Linoleum, whether or not cut to shape
5904 91	Floor coverings, other than linoleum, with a base of needleloom felt/non-wovens
5904 92	Floor coverings, other than linoleum, with other textile base
5906 10	Rubberized textile adhesive tape of a width not exceeding 20 cm
5906 99	Rubberized textile fabrics, nes
5907 00	Textile fab impreg, ctd, cov nes; paintd canvas (e.g. theatrical scenery)
ex 7019 20	Woven fabrics of fibre glass
ex 9612 10	Woven ribbons, of man-made fibres, other than those measuring less than 30 mm in width and permanently put up in cartridge
III. MADE-UP TEXTILES	
6305 10	Sacks and bags, for packing of goods, of jute or of other textile bast fibres
6309 00	Worn clothing and other worn articles
ex 6406 10	Footwear uppers of which 50 % or more of the external surface area is textile material
ex 6406 99	Leg warmers and gaiters of textile material
6501 00	Hat-forms, hat bodies and hoods of felt, plateaux and manchons of felt

HS Line	Description
6502 00	Hat-shapes, plaided or made by assembling strips of any material
6601 91	Other umbrella types, telescopic shaft
6601 99	Other umbrellas
8804 00	Parachutes; their parts and accessories
9113 90	Watch straps, bands and bracelets of textile materials

IV. CLOTHING

6103 11	Mens/boys suits, of wool or fine animal hair, knitted
6103 12	Mens/boys suits, of synthetic fibres, knitted
6103 19	Mens/boys suits, of other textile materials, knitted
6103 21	Mens/boys ensembles, of wool or fine animal hair, knitted
6103 22	Mens/boys ensembles, of cotton, knitted
6103 23	Mens/boys ensembles, of synthetic fibres, knitted
6103 29	Mens/boys ensembles, of other textile materials, knitted
6108 11	Womens/girls slips and petticoats, of man-made fibres, knitted
6108 19	Womens/girls slips and petticoats, of other textile materials, knitted
6215 20	Ties, bow ties and cravats, of man-made fibres, not knitted
6215 90	Ties, bow ties and cravats, of other textile materials, not knitted
6503 00	Felt hats and other felt headgear
6504 00	Hats and other headgear, plaided or made by assembling strips of any material
6505 90	Hats and other headgear, knitted or made-up from lace or other textile material
9502 91	Garments for dolls

COUNCIL REGULATION (EC) No 3286/94

of 22 December 1994

laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization

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 organization of agricultural markets and the rules adopted pursuant to 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 ⁽¹⁾,

Whereas the common commercial policy must be based on uniform principles, in particular with regard to commercial defence;

Whereas Council Regulation (EEC) No 2641/84 of 17 September 1984 on the strengthening of the common commercial policy with regard in particular to protection against illicit commercial practices ⁽²⁾ 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 experience in the application of Regulation (EEC) No 2641/84 has shown that the need to deal with obstacles to trade adopted or maintained by third countries remains, and whereas the approach followed in Regulation (EEC) No 2641/84 has not proved to be entirely effective;

Whereas it appears necessary, therefore, to establish new and improved Community procedures to ensure the

effective exercise of the rights of the Community under international trade rules;

Whereas international trade rules are primarily those established under the auspices of the WTO and laid down in the Annexes to the WTO Agreement, but they can also be those laid down in any other agreement to which the Community is a party and which sets out rules applicable to trade between the Community and third countries, and whereas it is appropriate to give a clear idea of the types of agreements to which the term 'international trade rules' refers;

Whereas the abovementioned Community procedures should be based on a legal mechanism under Community law which would be fully transparent, and would ensure that the decision to invoke the Community's rights under international trade rules is taken on the basis of accurate factual information and legal analysis;

Whereas this mechanism aims to provide procedural means to request that the Community institutions react to obstacles to trade adopted or maintained by third countries which cause injury or otherwise adverse trade effects, provided that a right of action exists, in respect of such obstacles, under applicable international trade rules;

Whereas the right of Member States to resort to this mechanism should be without prejudice to their possibility to raise the same or similar matters through other existing Community procedures, and in particular before the committee established by Article 113 of the Treaty;

Whereas regard should be paid to the institutional role of the committee established by Article 113 of the Treaty in formulating advice for the institutions of the Community on all issues of commercial policy; whereas, therefore, this committee should be kept informed of the development of individual cases, in order to enable it to consider their broader policy implications;

⁽¹⁾ Opinion delivered on 14 December 1994 (not yet published in the Official Journal).

⁽²⁾ OJ No L 252, 20. 9. 1984, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).

Whereas, moreover, to the extent that an agreement with a third country appears to be the most appropriate means to resolve a dispute arising from an obstacle to trade, negotiations to this end shall be conducted according to the procedures established in Article 113 of the Treaty, in particular in consultation with the committee established thereby;

Whereas it is 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 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 pursuant to 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;

Whereas it is incumbent on the Commission and the Council to act in respect of obstacles to trade adopted or maintained by third countries, within the framework of the Community's international rights and obligations, only when the interests of the Community call for intervention, and whereas, when assessing such interests, the Commission and the Council should give due consideration to the views by all interested parties in the proceedings;

HAS ADOPTED THIS REGULATION:

Article 1

Aims

This Regulation establishes Community procedures in the field of the common commercial policy in order to ensure

the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization which, subject to compliance with existing international obligations and procedures, are aimed at:

- (a) responding to obstacles to trade that have an effect on the market of the Community, with a view to removing the injury resulting therefrom;
- (b) responding to obstacles to trade that have an effect on the market of a third country, with a view to removing the adverse trade effects resulting therefrom.

These procedures 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, 'obstacles to trade' shall be any trade practice adopted or maintained by a third country in respect of which international trade rules establish a right of action. Such a right of action exists when international trade rules either prohibit a practice outright, or give another party affected by the practice a right to seek elimination of the effect of the practice in question.

2. For the purposes of this Regulation and subject to paragraph 8, 'the Community's rights' shall be those international trade rights of which it may avail itself under international trade rules. In this context, 'international trade rules' are primarily those established under the auspices of the WTO and laid down in the Annexes to the WTO Agreement, but they can also be those laid down in any other agreement to which the Community is a party and which sets out rules applicable to trade between the Community and third countries.

3. For the purposes of this Regulation, 'injury' shall be any material injury which an obstacle to trade causes or threatens to cause, in respect of a product or service, to a Community industry on the market of the Community.

4. For the purposes of this Regulation, 'adverse trade effects' shall be those which an obstacle to trade causes or threatens to cause, in respect of a product or service,

to Community enterprises on the market of any third country, and which have a material impact on the economy of the Community or of a region of the Community, or on a sector of economic activity therein. The fact that the complainant suffers from such adverse effects shall not be considered sufficient to justify, on its own, that the Community institutions proceed with any action.

5. 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 an obstacle to trade, 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 an obstacle to trade,

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 obstacles to trade, 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 States within which the region is located provided that the effect of the obstacle to trade is concentrated in that Member State or those Member States.

6. The term 'Community enterprise' shall be taken to mean a company or firm formed in accordance with the law of a Member State and having its registered office, central administration or principal place of business within the Community, directly concerned by the production of goods or the provision of services which are the subject of the obstacle to trade.

7. For the purposes of this Regulation, the notion of 'providers of services' in the context of both the term 'Community industry' as defined in paragraph 5, and the term 'Community enterprises' as defined in paragraph 6,

is without prejudice to the non-commercial nature which the provision of any particular service may have according to the legislation or regulation of a Member State.

8. For the purposes of this Regulation, the term 'services' shall be taken to mean those services in respect of which international agreements can be concluded by the Community on the basis of Article 113 of the Treaty.

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 obstacles to trade that have an effect on the market of the Community may lodge a written complaint.

2. The complaint must contain sufficient evidence of the existence of the obstacles to trade and of the injury resulting therefrom. Evidence of injury must be given on the basis of the illustrative list of factors indicated in Article 10, where applicable.

Article 4

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 suffered adverse trade effects as a result of obstacles to trade that have an effect on the market of a third country may lodge a written complaint. Such complaint, however, shall only be admissible if the obstacle to trade alleged therein is the subject of a right of action established under international trade rules laid down in a multilateral or plurilateral trade agreement.

2. The complaint must contain sufficient evidence of the existence of the obstacles to trade and of the adverse trade effects, resulting therefrom. Evidence of adverse trade effects must be given on the basis of the illustrative list of factors indicated in Article 10, where applicable.

Article 5

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 4; 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 6

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 obstacles to trade and 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 illustrative list of factors indicated in Article 10, where applicable.

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 6; 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 7

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 held immediately at the request of 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. The chairman of the Committee shall provide the Member States, as promptly as possible, with all relevant information in his possession. The Commission shall also refer such information to the committee established by Article 113 of the Treaty so that it can consider any wider implications for the common commercial policy.

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 which the chairman shall arrange, provided that such oral consultations can be held within a time frame which allows the time limits set by this Regulation to be respected.

Article 8

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 or service 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 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 cooperation with the Member States.

2. (a) If necessary 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 organizations, provided that the undertakings or organizations 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 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 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 9 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 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 9

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 is 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 authorize its disclosure in generalized 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 10

Evidence

1. An examination of injury shall involve where applicable 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, utilization 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 are alleged, the Commission shall examine the impact of such adverse effects 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. Adverse trade effects may arise, *inter alia*, in situations in which trade flows concerning a product or service are prevented, impeded or diverted as a result of any obstacle to trade, or from situations in which obstacles to trade have materially affected the supply or inputs (e.g. parts and components or raw materials) to Community enterprises. Where a threat of adverse trade effects is alleged, the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual adverse trade effects.

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 Article 2 (1).

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 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 11

Termination and suspension 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 14.

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 be suspended in accordance with the provisions of Article 14.

(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 Article 13 (3).

3. Where, either after an examination procedure, or at any time before, during and after an international dispute settlement procedure, it appears that the most appropriate means to resolve a dispute arising from an obstacle to trade is the conclusion of an agreement with the third country or countries concerned, which may change the substantive rights of the Community and of the third country or countries concerned, the procedure

shall be suspended according to the provisions of Article 14, and negotiations shall be carried out according to the provisions of Article 113 of the Treaty.

Article 12

Adoption of commercial policy measures

1. Where it is found (as a result of the examination procedure, unless the factual and legal situation is such that an examination procedure may not be required) that action is necessary in the interests of the Community in order to ensure the exercise of the Community's rights under international trade rules, with a view to removing the injury or the adverse trade effects resulting from obstacles to trade adopted or maintained by third countries, the appropriate measures shall be determined in accordance with the procedure set out in Article 13.

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 in accordance with the recommendation of 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 13

Decision-making procedures

1. The decisions referred to in Article 11 (1) and (2) (a) shall be adopted in accordance with the provisions of Article 14.

2. Where the Community, as a result of a complaint pursuant to Articles 3 or 4, or of a referral pursuant to Article 6, 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 14.

3. Where the Community, having acted in accordance with Article 12 (2), has to take a decision on the measures of commercial policy to be adopted pursuant to Article 11 (2) (c) or pursuant to Article 12 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 14

Committee procedure

1. Should reference be made to the procedure provided for in this Article, the matter shall be brought before the Committee by its chairman.

2. 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.

3. 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.

4. The Council may, at the request of a Member State and acting by a qualified majority revise the Commission's decision.

5. 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 15

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 organization of agricultural markets and their implementing provisions, and
- the specific rules adopted pursuant to 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, as well as to Community procedures for dealing with matters concerning obstacles to trade raised by Member States in the committee established by Article 113 of the Treaty.

2. Regulation (EEC) No 2641/84 is hereby repealed. References to the repealed Regulation shall be construed as references to this Regulation.

Article 16

Entry into force

This Regulation shall enter into force on 1 January 1996. It shall apply to proceedings initiated after that date.

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

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

COUNCIL REGULATION (EC) No 3287/94

of 22 December 1994

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 ⁽¹⁾,

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- and under-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 recognizes the right of the developing countries to have recourse to pre-shipment inspection; whereas, however, pre-shipment inspection can give rise to abusive interference in the price freely agreed between parties to a contract and to other practices which form unnecessary obstacles to trade; whereas, therefore, efforts should be made through cooperation and technical assistance to reduce the need for pre-shipment inspection;

Whereas the Uruguay Round Final Act, signed on 15 April 1994 in Marakesh (Morocco), establishes an Agreement on pre-shipment inspection between members of the World Trade Organization ('WTO Agreement'); whereas this Agreement has been approved and needs to be put into effect for the Community;

Whereas Community legislation provides exporters with additional assurance that pre-shipment inspection activities are indeed carried out according to the provisions of the WTO Agreement and thus do not constitute a barrier to trade;

Whereas, to this end, pre-shipment inspection activities carried out in the Community should be made subject to certain conditions;

Whereas, in view of the maintenance of uniform principles of export policy of the Community it is necessary that the activities of pre-shipment inspection entities be regulated along uniform lines;

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 provided by the WTO Agreement and such exemption can thus be applied only with the agreement of the pre-shipment inspection entities;

Whereas a quick and effective procedure for the settlement of disputes between exporters and pre-shipment inspection entities should be instituted; whereas such a procedure is provided by the WTO Agreement;

Whereas disputes concerning non-compliance with conditions or non-observance of procedures by pre-shipment inspection entities should be settled with the third countries making use of such entities in accordance with the relevant Community and WTO procedures;

Whereas Article 3 (3) of the WTO Agreement provides for technical assistance to third countries,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation applies to activities carried out on the customs territory of the European Community by pre-shipment inspection entities which, for the account of governments of public entities, of third countries, carry out controls on the quality, quantity or price, including exchange rate and financial terms, of goods destined for export to the territory of these third countries ('pre-shipment inspection programmes').

Article 2

1. The activities of pre-shipment inspection entities as defined in Article 1 are subject to a procedure for prior notification on a generic basis under the conditions set out in this Regulation.

⁽¹⁾ Opinion delivered on 14 December 1994 (not yet published in the Official Journal).

2. In their notification, the pre-shipment entities shall communicate to the Commission the provisions, with the exception of remuneration, of contracts agreed with 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 notify all modifications regarding conditions for control to the Commission. They shall also indicate which measures they have taken to comply with the conditions set out in this Regulation.

3. The Commission shall copy all the notifications received to the Member States.

Article 3

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

- (a) physical inspection of 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 of the importing country or recognized at international level;
- (b) verification of the price and where applicable, the 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 authorization.

Article 4

Pre-shipment inspection entities, when carrying out their activities, shall meet the following conditions:

- (a) Prior to any control, the pre-shipment inspection entity shall inform the exporter of the details 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. It 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 reinspection 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 authorization. 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 or 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.

- (b) 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.
- (c) Pre-shipment inspection entities shall not request exporters to provide information regarding:
 - (i) manufacturing data related to patented, licensed or undisclosed processes, or to processes for which a patent is pending;
 - (ii) unpublished technical data other than data necessary to demonstrate compliance with technical regulations or standards;
 - (iii) internal pricing, including manufacturing costs;
 - (iv) profit levels;
 - (v) 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).

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 of payment or for customs, import licensing or exchange control purposes.

- (d) 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 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 subparagraph (ii).

Article 5

Pre-shipment inspection entities, when carrying out their activity with respect to price verification, shall meet 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 subparagraphs (b) to (e) inclusive;
- (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 subparagraph (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, license 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;
- (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 of 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

If, as a result of its obligations towards the government or a public entity of a third country, the pre-shipment inspection entity does not observe the conditions set out in Articles 4 and 5 of this Regulation, if the entity does not comply with the procedures set out in Article 7, or if there is any other reason to believe that the WTO Agreement is not respected, recourse may be had to any appropriate procedure, including the procedure laid down by Regulation (EEC) No 2641/84 under the conditions set out therein ⁽¹⁾.

Article 7

If pre-shipment inspection entities and exporters cannot resolve their disputes otherwise and at the earliest two working days after submission of the grievances in accordance with the provisions of paragraph (d) of Article 4, the following procedure shall normally be applied:

⁽¹⁾ OJ No L 252, 20. 9. 1984, p. 1.

- (a) an exporter or pre-shipment inspection entity wishing to raise a dispute shall contact the independent entity referred to in Article 4 of the WTO Agreement on pre-shipment inspection 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 provided for in the WTO Agreement 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 provided for in the WTO Agreement 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 provided for in the WTO Agreement by the independent entity referred to above. No objections shall be made to any independent trade expert drawn from section (iii) of the list provided for in the WTO Agreement;
- (b) the independent trade expert drawn from section (iii) of the list provided for in the WTO Agreement 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 provided for in the WTO Agreement on pre-shipment inspection by the independent entity referred to in subparagraph (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

the WTO Agreement, and thus with the provisions of this Regulation. 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 may 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 8

Each Member State shall:

- take appropriate measures at the national level for the implementation of the present Regulation, in particular to facilitate the proper operation of the independent review procedure set out in Article 7,
- appoint an official responsible for pre-shipment inspection questions, whose name and functions will be communicated to the Commission.

The Community and the Member States, if requested, may provide user countries with technical assistance related to pre-shipment inspection; normally such assistance should be aimed at removing the circumstances which have led these countries to resort to pre-shipment inspection.

Article 9

The Commission will inform the Secretariat of the WTO of this Regulation and any modification thereof.

Article 10

This Regulation shall enter into force on 1 January 1995.

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

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

COUNCIL REGULATION (EC) No 3288/94

of 22 December 1994

amending Regulation (EC) No 40/94 on the Community trade mark 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 from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

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 Regulation (EC) No 40/94 creates the Community trade mark ⁽²⁾; whereas Article 5 of Regulation (EC) No 40/94 defines the 'Persons who can be proprietors of Community trade marks' 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 (EC) No 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 a treatment no less favourable than that accorded to nationals of Community Member States;

Whereas Article 23 (2) of the TRIPs Agreement provides for the refusal or invalidation of trade marks which contain or consist of false geographical indications for wines and spirits without the condition that they are of such a nature as to deceive the public, a new subparagraph (j) has to be added to Article 7 (1) of Regulation (EC) No 40/94,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 40/94 is amended as follows:

1. Article 5 (1) (b) shall be replaced by the following:

'(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 Organization;'

2. Article 5 (1) (d) shall be replaced by the following:

'(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 Organization 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, recognizes the registration of Community trade marks as such proof.'

3. In Article 7 (1) after subparagraph (i) the following shall be added:

'(j) trade marks for wines which contain or consist of a geographical indication identifying wines or for spirits which contain or consist of a

⁽¹⁾ Opinion delivered on 14 December 1994 (not yet published in the Official Journal).

⁽²⁾ OJ No L 11, 14. 1. 1994, p. 1.

geographical indication identifying spirits with respect to such wines or spirits not having that origin.'

4. Article 29 (1) shall be replaced by the following:

'1. A person who has duly filed an application for a trade mark in or for any State party to the Paris Convention or to the Agreement establishing the World Trade Organization, 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.'

5. Article 29 (5) shall be replaced by the following:

'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 Organization, paragraphs 1 to 4 shall apply only in so far as that State, according to published 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 2

This Regulation shall enter into force on 1 January 1995.

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 at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

COUNCIL REGULATION (EC) No 3289/94

of 22 December 1994

amending Regulation (EEC) No 3030/93 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 ⁽¹⁾,

Whereas the Community has signed the Final Act of the Uruguay Round of the GATT negotiations setting up a World Trade Organization, (hereinafter referred to as the 'WTO');

Whereas the WTO Agreement on Textiles and Clothing (hereinafter referred to as the 'ATC') will govern trade between all Members of the WTO in textiles and clothing products until such time as they have been integrated into normal WTO rules and disciplines within the meaning of Article 2 of the ATC; whereas it is appropriate, therefore, to extend the scope of Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries ⁽²⁾, so as to cover the textile products listed in the Annex to the ATC which have not been integrated into normal WTO rules and disciplines and originating in any WTO Member;

Whereas Article 2 of the ATC provides for integration of all textiles and clothing products into normal WTO rules and disciplines in three stages; whereas it is necessary, therefore, to lay down a clear Community procedure for the selection of products to be integrated and notified to the WTO at each stage;

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 provided for 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 provided for in Article 17 of the Regulation and Article 2 (1) of the Regulation should be amended to that effect;

Whereas it is necessary to amend the safeguard provisions laid down in Regulation (EEC) No 3030/93 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 ATC contains strengthened disciplines on circumvention of quantitative limits involving third countries with which the Community has not concluded bilateral arrangements, whereas it is appropriate therefore to lay down a Community procedure for applying these new provisions,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3030/93 is amended as follows:

(a) Article 1 (1) shall be replaced by the following:

'1. This Regulation applies to:

- imports of textile products listed in Annex I, originating in third countries with which the Community has concluded bilateral agreements, protocols or other arrangements as listed in Annex II,
- imports of textile products which have not been integrated into the World Trade Organization within the meaning of Article 2.6 of the World Trade Organization Agreement on Textiles and Clothing (ATC) as listed in Annex X and which originate in third countries, Members of the WTO as listed in Annex XI.'

(b) The following paragraph shall be added at the end of Article 1;

'7. The Council, acting by qualified majority on a proposal from the Commission, shall amend Annex X of this Regulation in order to integrate the remaining products listed in Annex X into the WTO in three stages as follows:

⁽¹⁾ Opinion delivered on 14 December 1994 (not yet published in the Official Journal).

⁽²⁾ OJ No L 275, 8. 11. 1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 195/94 (OJ No L 29, 2. 1994, p. 1).

- on 1 January 1998, products which in 1990 accounted for not less than 17 % of the total volume of 1990 imports into the Community of all textiles and clothing products covered by the ATC,
- on 1 January 2002, products which in 1990 accounted for not less than 18 % of the total volume of 1990 imports into the Community of all textiles and clothing products covered by the ATC,
- on 1 January 2005 the remaining products.

Before each integration stage referred to above, the Commission shall present to the Council a report on the respect by third countries of their commitments under the GATT rules and disciplines referred to in Article 7 of the ATC.'

(c) Article 2 (1) shall be replaced by the following:

'1. Importation into 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.'

(d) Article 10 shall be 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 calendar 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 referred to in paragraph 3 (b) shall be established at 25 %, at least, of the level of imports during the 12-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 listed in Annex X 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 Community 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 referred 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) in highly unusual and critical circumstances where delay would cause damage which would be difficult to repair, it may impose a provisional quantitative limit on the products in question on the condition that the request for consultations shall be effected within no more than five working days after taking the action. Such provisional limit shall not be lower than the actual level from the supplier country during the 12-month period terminating two months preceding 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 12-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 12-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 pursuant to 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 accordance 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.'

- (e) The following paragraph shall be added at the end of Article 15:

'5. In addition, where there is evidence of the involvement of the territories of third countries which are Members of the WTO as listed in Annex XI but which are not listed in Annex V, the Commission shall request consultations with the third country or countries concerned in accordance with the procedure described in Article 16 in order to take appropriate action to address the problem. The Commission, in accordance with the procedure laid down in Article

17, may introduce quantitative limits against the third country or countries concerned or it may take any other appropriate measures.'

- (f) Article 20 shall be replaced by the following:

'Article 20

This Regulation shall not constitute in any way a derogation from the provisions either of the bilateral agreements, protocols or arrangements on textile trade which the Community has concluded with the third countries listed in Annex II or of the ATC with regard to the WTO Members listed in Annex XI and which, in all cases of conflict, shall prevail.'

- (g) Annex I and Annex II to this Regulation shall be added as Annex X and Annex XI.

Article 2

This Regulation shall enter into force on 1 January 1995.

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

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

ANEXO I — BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ Ι — ANNEX I — ANNEXE I —
ALLEGATO I — BIJLAGE I — ANEXO I

List of textiles and clothing products not integrated into the WTO within the meaning of Article 2 of the
ATC

HS No	Product description
5004 00	Silk yarn (other than yarn spun from silk waste) not put up for retail sale
5005 00	Yarn spun from silk waste, not put up for retail sale
5006 00	Silk yarn & yarn spun from silk waste, put up for retail sale; silk-worm gut
5007 10	Woven fabrics of noil silk
5007 20	Woven fabrics of silk/silk waste, other than noil silk, 85 %/more of such fibres
5007 90	Woven fabrics of silk, nes
5105 10	Carded wool
5105 21	Combed wool in fragments
5105 29	Wool tops and other combed wool, other than combed wool in fragments
5105 30	Fine animal hair, carded or combed
5106 10	Yarn of carded wool, ≥ 85 % by weight of wool, not put up for retail sale
5106 20	Yarn of carded, wool < 85 % by weight of wool, not put up for retail sale
5107 10	Yarn of combed wool, > 85 % by weight of wool, not put up for retail sale
5107 20	Yarn of combed wool, < 85 % by weight of wool, not put up for retail sale
5108 10	Yarn of carded fine animal hair, not put up for retail sale
5108 20	Yarn of combed fine animal hair, not put up for retail sale
5109 10	Yarn of wool/of fine animal hair, ≥ 85 % by weight of such fibres, put up
5109 90	Yarn of wool/of fine animal hair, < 85 % by weight of such fibres, put up
5110 00	Yarn of coarse animal hair or of horsehair
5111 11	Woven fabrics of carded wool/fine animal hair, > 85 % by weight; ≤ 300 g/m ²
5111 19	Woven fabrics of carded wool/fine animal hair, ≥ 85 % by weight, > 300 g/m ²
5111 20	Woven fabric of carded wool/fine animal hair, ≥ 85 % by weight, mixed with man-made fibres
5111 30	Woven fabric of carded wool/fine animal hair, ≥ 85 % by weight, mixed with man-made fibres
5111 90	Woven fabric of carded wool/fine animal hair, ≥ 85 % by weight, nes
5112 11	Woven fabric of combed wool/fine animal hair, ≥ 85 % by weight, ≤ 200 g/m ²
5112 19	Woven fabrics of combed wool/fine animal hair, ≥ 85 % by weight, > 200 g/m ²
5112 20	Woven fabrics of combed wool/fine animal hair, < 85 % by weight, mixed with man-made fibres
5112 30	Woven fabrics of combed wool/fine animal hair, < 85 % by weight, mixed with man-made fibres
5112 90	Woven fabrics of combed wool/fine animal hair, < 85 % by weight, nes
5113 00	Woven fabrics of coarse animal hair or of horsehair
5204 11	Cotton sewing thread ≥ 85 % by weight of cotton, not put up for retail sale
5204 19	Cotton sewing thread, < 85 % by weight of cotton, not put up for retail sale
5204 20	Cotton sewing thread, put up for retail sale
5205 11	Cotton yarn, ≥ 85 %, single, uncombed, $\geq 714,29$ dtex, not put up
5205 12	Cotton yarn, ≥ 85 %, single, uncombed, $714,29 > dtex \geq 232,56$, not put up
5205 13	Cotton yarn, ≥ 85 %, single, uncombed, $232,56 \geq dtex \geq 192,31$, not put up
5205 14	Cotton yarn, ≥ 85 %, single, uncombed, $192,31 \geq dtex \geq 125$, not put up
5205 15	Cotton yarn, ≥ 85 %, single, uncombed, < 125 dtex, not put up for retail sale
5205 21	Cotton yarn, ≥ 85 %, single, combed, $\geq 714,29$, not put up
5205 22	Cotton yarn, ≥ 85 %, single, combed, $714,29 > dtex \geq 232,56$, not put up
5205 23	Cotton yarn, ≥ 85 %, single, combed, $232,56 > dtex \geq 192,31$, not put up
5205 24	Cotton yarn, ≥ 85 %, single, combed, $192,31 > dtex \geq 125$, not put up
5205 25	Cotton yarn, ≥ 85 %, single, combed, < 125 dtex, not put up for retail sale
5205 31	Cotton yarn, ≥ 85 %, multi, uncombed, $\geq 714,29$ dtex, not put up, nes
5205 32	Cotton yarn, ≥ 85 %, multi, uncombed, $714,29 > dtex \geq 232,56$, not put up, nes
5205 33	Cotton yarn, ≥ 85 %, multi, uncombed, $232,56 > dtex \geq 192,31$, not put up, nes

HS No	Product description
5205 34	Cotton yarn, $\geq 85\%$, multi, uncombed, 192,31 $>$ dtex ≥ 125 , not put up, nes
5205 35	Cotton yarn, $\geq 85\%$, multi, uncombed, < 125 dtex, not put up, nes
5205 41	Cotton yarn, $\geq 85\%$, multiple, combed, $\geq 714,29$ dtex, not put up, nes
5205 42	Cotton yarn, $\geq 85\%$, multi, combed, 714,29 $>$ dtex $\geq 232,56$, not put up, nes
5205 43	Cotton yarn, $\geq 85\%$, multi, combed, 232,56 $>$ dtex $\geq 192,31$, not put up, nes
5205 44	Cotton yarn, $\geq 85\%$, multiple, combed, 192,31 $>$ dtex ≥ 125 , not put up, nes
5205 45	Cotton yarn, $\geq 85\%$, multiple, combed, < 125 dtex, not put up, nes
5206 11	Cotton yarn, $\leq 85\%$, single, uncombed, $\geq 714,29$, not put up
5206 12	Cotton yarn, $\leq 85\%$, single, uncombed, 714,29 $>$ dtex $\geq 232,56$, not put up
5206 13	Cotton yarn, $\leq 85\%$, single uncombed, 232,56 $>$ dtex $\geq 192,31$, not put up
5206 14	Cotton yarn, $\leq 85\%$, single, uncombed, 192,31 $>$ dtex ≥ 125 , not put up
5206 15	Cotton yarn, $\leq 85\%$, single, uncombed, < 125 dtex, not put up for retail sale
5206 21	Cotton yarn, $\leq 85\%$, single, combed, $\geq 714,29$ dtex, not put up
5206 22	Cotton yarn, $\leq 85\%$, single, combed, 714,29 $>$ dtex $\geq 232,56$, not put up
5206 23	Cotton yarn, $\leq 85\%$, single, combed, 232,56 $>$ dtex $\geq 192,31$, not put up
5206 24	Cotton yarn, $\leq 85\%$, single, combed, 192,31 $>$ dtex ≥ 125 , not put up
5206 25	Cotton yarn, $\leq 85\%$, single combed, < 125 dtex, not put up for retail sale
5206 31	Cotton yarn, $\leq 85\%$, multiple, uncombed, $\leq 714,29$, not put up, nes
5206 32	Cotton yarn, $\leq 85\%$, multiple, uncombed, 714,29 $>$ dtex $\geq 232,56$, not put up, nes
5206 33	Cotton yarn, $\leq 85\%$, multiple, uncombed, 232,56 $>$ dex $\geq 192,31$, not put up, nes
5206 34	Cotton yarn, $\leq 85\%$, multiple, uncombed, 192,31 $>$ dtex ≥ 125 , not put up, nes
5206 35	Cotton yarn, $\leq 85\%$, multiple, uncombed, < 125 dtex, not put up, nes
5206 41	Cotton yarn, $\leq 85\%$, multiple, combed, $\geq 714,29$, not put up, nes
5206 42	Cotton yarn, $\leq 85\%$, multiple, combed, 714,29 $>$ dtex $\geq 232,56$, not put up, nes
5206 43	Cotton yarn, $\leq 85\%$, multiple, combed, 232,56 $>$ dtex $\geq 192,31$, not put up, nes
5206 44	Cotton yarn, $\leq 85\%$, multiple, combed, 192,31 $>$ dtex ≥ 125 , not put up, nes
5206 45	Cotton yarn, $\leq 85\%$, multiple, combed, < 125 dtex, not put up, nes
5207 10	Cotton yarn (other than sewing thread) $\geq 85\%$ by weight of cotton, put up
5207 90	Cotton yarn (other than sewing thread) $\leq 85\%$ by weight of cotton, put up for retail sale
5208 11	Plain weave cotton fabric, $\geq 85\%$, not more than 100 g/m ² , unbleached
5208 12	Plain weave cotton fabric, $\geq 85\%$, > 100 g/m ² to 200 g/m ² , unbleached
5208 13	Twill weave cotton fabric, $\geq 85\%$, not more than 200 g/m ² , unbleached
5208 19	Woven fabrics of cotton, $\geq 85\%$, not more than 200 g/m ² , unbleached, nes
5208 21	Plain weave cotton fabric, $\geq 85\%$, not more than 100 g/m ² , bleached
5208 22	Plain weave cotton fabric, $\geq 85\%$, > 100 g/m ² to 200 g/m ² , bleached
5208 23	Twill weave cotton fabric, $\geq 85\%$, not more than 200 g/m ² , bleached
5208 29	Woven fabrics of cotton, $\geq 85\%$, not more than 200 g/m ² , bleached, nes
5208 31	Plain weave cotton fabric, $\geq 85\%$, not more than 100 g/m ² , dyed
5208 32	Plain weave cotton fabric, $\geq 85\%$, > 100 g/m ² to 200 g/m ² , dyed
5208 33	Twill weave cotton fabrics, $\geq 85\%$, not more than 200 g/m ² , dyed
5208 39	Woven fabrics of cotton, $\geq 85\%$, not more than 200 g/m ² , dyed, nes
5208 41	Plain weave cotton fabric, $\geq 85\%$, not more than 100 g/m ² , yarn dyed
5208.42	Plain weave cotton fabrics, $\geq 85\%$, > 100 g/m ² to 200 g/m ² , yarn dyed
5208 43	Twill weave cotton fabric, $\geq 85\%$, not more than 200 g/m ² , yarn dyed
5208 49	Woven fabrics of cotton, $\geq 85\%$, not more than 200 g/m ² , yarn dyed, nes
5208 51	Plain weave cotton fabrics, $\geq 85\%$, not more than 100 g/m ² , printed
5208 52	Plain weave cotton fabric, $\geq 85\%$, > 100 g/m ² to 200 g/m ² , printed
5208 53	Twill weave cotton fabric, $\geq 85\%$, not more than 200 g/m ² , printed
5208 59	Woven fabrics of cotton, $\geq 85\%$, not more than 200 g/m ² , printed, nes
5209 11	Plain weave cotton fabric, $\geq 85\%$, more than 200 g/m ² , unbleached
5209 12	Twill weave cotton fabric, $\geq 85\%$, more than 200 g/m ² , unbleached
5209 19	Woven fabrics of cotton, $\geq 85\%$, more than 200 g/m ² , unbleached, nes
5209 21	Plain weave cotton fabric, $\geq 85\%$, more than 200 g/m ² , bleached

HS No	Product description
5209 22	Twill weave cotton fabrics, $\geq 85\%$, more than 200 g/m ² , bleached
5209 29	Woven fabrics of cotton, $\geq 85\%$, more than 200 g/m ² , bleached, nes
5209 31	Plain weave cotton fabrics, $\geq 85\%$, more than 200 g/m ² , dyed
5209 32	Twill weave cotton fabrics, $\geq 85\%$, more than 200 g/m ² , dyed
5209 39	Woven fabrics of cotton, $\geq 85\%$, more than 200 g/m ² , dyed, nes
5209 41	Plain weave cotton fabrics, $\geq 85\%$, more than 200 g/m ² , yarn dyed
5209 42	Denim fabrics of cotton, $\geq 85\%$, more than 200 g/m ²
5209 43	Twill weave cotton fabrics, other than denim, $\geq 85\%$, more than 200 g/m ² , yarn dyed
5209 49	Woven fabrics of cotton, $\geq 85\%$, more than 200 g/m ² , yarn dyed, nes
5209 51	Plain weave cotton fabrics, $\geq 85\%$, more than 200 g/m ² , printed
5209 52	Twill weave cotton fabrics, $\geq 85\%$, more than 200 g/m ² , printed
5209 59	Woven fabrics of cotton, $\geq 85\%$, more than 200 g/m ² , printed, nes
5210 11	Plain weave cotton fabrics, $\leq 85\%$ mixed with man-made fibres, not more than 200 g/m ² , unbleached
5210 12	Twill weave cotton fabrics, $\leq 85\%$ mixed with man-made fibres, not more than 200 g/m ² , unbleached
5210 19	Woven fabrics of cotton, $\leq 85\%$ mixed with man-made fibres, ≤ 200 g/m ² , unbleached nes
5210 21	Plain weave cotton fabrics, $\leq 85\%$ mixed with man-made fibres, not more than 200 g/m ² , bleached
5210 22	Twill weave cotton fabrics, $\leq 85\%$ mixed with man-made fibres, not more than 200 g/m ² , bleached
5210 29	Woven fabrics of cotton, $< 85\%$ mixed with man-made fibres, ≤ 200 g/m ² , bleached nes
5210 31	Plain weave cotton fabrics, $< 85\%$ mixed with man-made fibres, not more than 200 g/m ² , dyed
5210 32	Twill weave cotton fabrics, $< 85\%$ mixed with man-made fibres, not more than 200 g/m ² , dyed
5210 39	Woven fabrics of cotton, $< 85\%$ mixed with man-made fibres, ≤ 200 g/m ² , dyed, nes
5210 41	Plain weave cotton fabrics, $< 85\%$ mixed with man-made fibres, not more than 200 g/m ² , yarn dyed
5210 42	Twill weave cotton fabrics, $< 85\%$ mixed with man-made fibres, not more than 200 g/m ² , yarn dyed
5210 49	Woven fabrics of cotton, $< 85\%$ mixed with man-made fib, ≤ 200 g/m ² , yarn dyed, nes
5210 51	Plain weave cotton fabrics, $< 85\%$ mixed with man-made fibres, not more than 200 g/m ² , printed
5210 52	Twill weave cotton fabrics, $< 85\%$ mixed with man-made fibres, not more than 200 g/m ² , printed
5210 59	Woven fabrics of cotton, $< 85\%$ mixed with man-made fibres, ≤ 200 g/m ² , printed, nes
5211 11	Plain weave cotton fabrics, $< 85\%$ mixed with man-made fibres, more than 200 g/m ² , unbleached
5211 12	Twill weave cotton fabrics, $< 85\%$ mixed with man-made fibres, more than 200 g/m ² , unbleached
5211 19	Woven fabrics of cotton, $< 85\%$ mixed with man-made fibres, more than 200 g/m ² , unbleached, nes
5211 21	Plain weave cotton fabrics, $< 85\%$ mixed with man-made fibres, more than 200 g/m ² , bleached
5211 22	Twill weave cotton fabrics, $< 85\%$ mixed with man-made fibres, more than 200 g/m ² , bleached
5211 29	Woven fabrics of cotton, $< 85\%$ mixed with man-made fibres, more than 200 g/m ² , bleached nes
5211 31	Plain weave cotton fabrics, $< 85\%$ mixed with man-made fibres, more than 200 g/m ² , dyed
5211 32	Twill weave cotton fabrics, $< 85\%$ mixed with man-made fibres, more than 200 g/m ² , dyed
5211 39	Woven fabrics of cotton, $< 85\%$ mixed with man-made fibres, more than 200 g/m ² , dyed, nes
5211 41	Plain weave cotton fabrics, $< 85\%$ mixed with man-made fibres, more than 200 g/m ² , yarn dyed
5211 42	Denim fabrics of cotton, $< 85\%$ mixed with man-made fibres, more than 200 g/m ²
5211 43	Twill weave cotton fabrics, other than denim, $< 85\%$ mixed with man-made fibres, > 200 g/m ² , yarn dyed
5211 49	Woven fabrics of cotton, $< 85\%$ mixed with man-made fibres, > 200 g/m ² , yarn dyed, nes
5211 51	Plain weave cotton fabrics, $< 85\%$ mixed with man-made fibres, more than 200 g/m ² , printed

HS No	Product description
5211 52	Twill weave cotton fabrics, </85 % mixed with man-made fibres, more than 200 g/m ² , printed
5211 59	Woven fabrics of cotton, </85 % mixed with man-made fibres, mor than 200 g/m ² , printed, nes
5212 11	Woven fabrics of cotton, weighing not more than 200 g/m ² , unbleached, nes
5212 12	Woven fabrics of cotton, weighing not more than 200 g/m ² , bleached, nes
5212 13	Woven fabrics of cotton, weighing not more than 200 g/m ² , dyed, nes
5212 14	Woven fabrics of cotton, </= 200 g/m ² , of yarns of different colours, nes
5212 15	Woven fabrics of cotton, weighing not more than 200 g/m ² , printed, nes
5212 21	Woven fabrics of cotton, weighing more than 200 g/m ² , unbleached, nes
5212 22	Woven fabrics of cotton, weighing more than 200 g/m ² , bleached, nes
5212 23	Woven fabrics of cotton, weighing more than 200 g/m ² , dyed, nes
5212 24	Woven fabrics of cotton, > 200 g/m ² , of yarns of different colours, nes
5212 25	Woven fabrics of cotton, weighing more than 200 g/m ² , printed, nes
5306 10	Flax yarn, single
5306 20	Flax yarn, multile (folded) or cable
5308 20	True hemp yarn
5308 90	Yarn of other vegetable textile fibres
5309 11	Woven fabrics, containing 85 % or more by weight of flax, unbleached or bleached
5309 19	Woven fabrics, containing 85 % or more by weight of flax, other than unbleached or bleached
5309 21	Woven fabrics of flax, containg < 85 % by weight of flax, unbleached or bleached
5309 29	Woven fabrics of flax, containing < 85 % by weight of flax, other than unbleached or bleached
5311 00	Woven fabrics of other vegetable textile fibres; woven fabrics of paper yarn
5401 10	Sewing thread of synthetic filaments
5401 20	Sewing thread of artificial filaments
5402 10	High tenacity yarn (other than sewing thread), nylon/oth polyamides filaments, not put up
5402 20	High tenacity yarn (other than sewing thread), of polyester filaments, not put up
5402 31	Texturd yarn nes, of nylon/oth polyamides filaments, </= 50 tex/s.y., not put up
5402 32	Texturd yarn nes, of nylon/oth polyamides filaments, > 50 tex/s.y., not put up
5402 33	Textured yarn nes, of polyester filaments, not put up for retail sale
5402 39	Textured yarn of synthetic filaments, nes, not put up
5402 41	Yarn of nylon or other polyamides filaments, single, untwisted, nes, not put up
5402 42	Yarn of polyester filaments, partially oriented, single, nes, not put up
5402 43	Yarn of polyester filaments, single, untwisted, nes, not put up
5402 49	Yarn of synthetic filaments, single, untwisted, nes, not put up
5402 51	Yarn of nylon or other polyamides filaments, single, > 50 turns/m, not put up
5402 52	Yarn of polyester filaments, single, > 50 turns per metre, not put up
5402 59	Yarn of synthetic filaments, single, > 50 turns per metre, nes, not put up
5402 61	Yarn of nylon or other polyamides filaments, multiple, nes not put up
5402 62	Yarn of polyester filaments, multiple, nes, not put up
5402 69	Yarn of synthetic filaments, multiple, nes, not put up
5403 10	High tenacity yarn (other than sewing thread), of viscose rayon filament, not put up
5403 20	Textured yarn nes, of artificial filaments, not put up for retail sale
5403 31	Yarn of viscose rayon filaments, single, untwisted, nes, not put up
5403 32	Yarn of viscose rayon filaments, single, > 120 turns per m, nes, not put up
5403 33	Yarn of cellulose acetate filaments, single, nes, not put up
5403 39	Yarn of polyester filaments, single, nes, not put up
5403 41	Yarn of viscose rayon filaments, multiple, nes, not put up
5403 42	Yarn of cellulose acetate filaments, multiple, nes, not up
5403 49	Yarn of artificial filaments, multiple, nes, not put up
5404 10	Synthetic mono, >/= 67 dtex, no cross sectional dimension exceeds 1 mm
5404 90	Strip & the like of syn tex material of an apparent width not exceeds 5 mm
5405 00	Artificial mono, 67 dtex, cross-sect > 1 mm; strip of artificial textile materials w </= 5 mm

HS No	Product description
5406 10	Yarn of synthetic filament (other than sewing thread), put up for retail sale
5406 20	Yarn of artificial filament (other than sewing thread), put up for retail sale
5407 10	Woven fabrics of high tenacity fibres yarns of nylon oth polyamides/polyesters
5407 20	Woven fabrics obtained from strip/the like of synthetic textile materials
5407 30	Fabrics specif in Note 9 Section XI (layers of parallel synthetics textile yarn)
5407 41	Woven fabrics, >/= 85 % of nylon/other polyamides filaments, unbleached or bleached, nes
5407 42	Woven fabrics, >/= 85 % of nylon/other polyamides filaments, dyed, nes
5407 43	Woven fabrics, >/= 85 % of nylon/other polyamides filaments, yarn dyed, nes
5407 44	Woven fabrics, >/= 85 % of nylon/other polyamides filaments, printed, nes
5407 51	Woven fabrics, >/= 85 % of textured polyester filaments, unbleached or bleached, nes
5407 52	Woven fabrics, >/= 85 % of textured polyester filaments, dyed, nes
5407 53	Woven fabrics, >/= 85 % of textured polyester filaments, yarn dyed, nes
5407 54	Woven fabrics, >/= 85 % of textured polyester filaments, printed, nes
5407 60	Woven fabrics, >/= 85 % of non-textured polyester filaments, nes
5407 71	Woven fabrics, >/= 85 % of synthetic filaments, unbleached or bleached, nes
5407 72	Woven fabrics, >/= 85 % of synthetic filaments, dyed, nes
5407 73	Woven fabrics, >/= 85 % of synthetic filaments, yarn dyed, nes
5407 74	Woven fabrics, >/= 85 % of synthetic filaments, printed, nes
5407 81	Woven fabrics of synthetic filaments, < 85 % mixed with cotton, unbleached or bleached, nes
5407 82	Woven fabrics of synthetic filaments, < 85 % mixed with cotton, dyed, nes
5407 83	Woven fabrics of synthetic filaments, < 85 % mixed with cotton, yarn dyed, nes
5407 84	Woven fabrics of synthetic filaments, < 85 % mixed with cotton, printed, nes
5407 91	Woven fabrics of synthetic filaments, unbleached or bleached, nes
5407 92	Woven fabrics of synthetic filaments, dyed, nes
5407 93	Woven fabrics of synthetic filaments, yarn dyed, nes
5407 94	Woven fabrics of synthetic filaments, printed, nes
5408 10	Woven fabrics of high tenacity filament yarns of viscose rayon
5408 21	Woven fabrics, >/= 85 % of artificial fibres o strip of artificial textile material, unbleached/bleached nes
5408 22	Woven fabrics, >/= 85 % of artificial fibres or strip of artificial textile material, dyed, nes
5408 23	Woven fabrics, >/= 85 % of artificial fibres or strip of artificial textile material, y dyed, nes
5408 24	Woven fabrics, >/= 85 % of artificial fibres or strip of artificial textile material, printed, nes
5408 31	Woven fabrics of artificial filaments, unbleached or bleached, nes
5408 32	Woven fabrics of artificial filaments, dyed, nes
5408 33	Woven fabrics of artificial filaments, yarn dyed, nes
5408 34	Woven fabrics of artificial filaments, printed, nes
5501 10	Filament tow of nylon or other polyamides
5501 20	Filament tow of polyesters
5501 30	Filament tow of acrylic or modacrylic
5501 90	Synthetic filament, tow, nes
5502 00	Artificial filament tow
5503 10	Staple fibres of nylon or other polyamides, not carded or combed
5503 20	Staple fibres of polyesters, not carded or combed
5503 30	Staple fibres of acrylic or modacrylic, not carded or combed
5503 40	Staple fibres of polypropylene, not carded or combed
5503 90	Synthetic staple fibres, not carded or combed, nes
5504 10	Staple fibres of viscose, not carded or combed
5504 90	Artificial staple fibres, other than viscose, not carded or combed
5505 10	Waste of synthetic fibres
5505 20	Waste of artificial fibres
5506 10	Staple fibres of nylon or other polyamides, carded or combed
5506 20	Staple fibres of polyesters, carded or combed

HS No	Product description
5506 30	Staple fibres of acrylic or modacrylic, carded or combed
5506 90	Synthetic staple fibres, carded or combed, nes
5507 00	Artificial staple fibres, carded or combed
5508 10	Sewing thread of synthetic staple fibres
5508 20	Sewing thread of artificial staple fibres
5509 11	Yarn, \geq 85 % nylon or other polyamides staple fibres, single, not put up
5509 12	Yarn, \geq 85 % nylon or other polyamides staple fibres, multi, not put up nes
5509 21	Yarn, \geq 85 % of polyester staple fibres, single, not put up
5509 22	Yarn, \geq 85 % of polyester staple fibres, multiple, not put up, nes
5509 31	Yarn, \geq 85 % of acrylic or modacrylic staple fibres, single, not put up
5509 32	Yarn, \geq 85 % acrylic/modacrylic staple fibres, multiple, not put up, nes
5509 41	Yarn, \geq 85 % of other synthetic staple fibres, single, not put up
5509 42	Yarn, \geq 85 % of other synthetic staple fibres, multiple, not put up, nes
5509 51	Yarn of polyester staple fibres mixed w/artificial staple fibres, not put up, nes
5509 52	Yarn of polyester staple fibres mixed w wool/fine animal hair, not put up, nes
5509 53	Yarn of polyester staple fibres mixed with cotton, not put up. nes
5509 59	Yarn of polyester staple fibres, not put up, nes
5509 61	Yarn of acrylic staple fibres mixed w wool/fine animal hair, not put up, nes
5509 62	Yarn of acrylic staple fibres mixed with cotton, not up, nes
5509 69	Yarn of acrylic staple fibres, not put up, nes
5509 91	Yarn of other synthetic staple fibres mixed w/wool/fine animal hair, nes
5509 92	Yarn of other synthetic staple fibres mixed with cotton, not put up, nes
5509 99	Yarn of other synthetic staple fibres, not put up, nes
5510 11	Yarn, \geq 85 % of artificial staple fibres, single, not put up
5510 12	Yarn, \geq 85 % of artificial staple fibres, multiple, not put up, nes
5510 20	Yarn of artificial staple fibres mixed w wool/fine animal hair, not put up, nes
5510 30	Yarn of artificial staple fibres mixed with cotton, not put up, nes
5510 90	Yarn of artificial staple fibres, not put up, nes
5511 10	Yarn, \geq 85 % of synthetic staple fibres, other than sewing thread, put up
5511 20	Yarn, $<$ 85 % of synthetic staple fibres, put up for retail sale, nes
5511 30	Yarn of artificial fibres (other than sewing thread), put up for retail sale
5512 11	Woven fabrics, containing \geq 85 % of polyester staple fibres, unbleached or bleached
5512 19	Woven fabrics, containing \geq 85 % of polyester staple fibres, other than unbleached or bleached
5512 21	Woven fabrics, containing \geq 85 % of acrylic staple fibres, unbleached or bleached
5512 29	Woven fabrics, containing \geq 85 % of acrylic staple fibres, other than unbleached or bleached
5512 91	Woven fabrics, containing \geq 85 % of other synthetic staple fibres, unbl/bl
5512 99	Woven fabrics, containing \geq 85 % of other synthetic fibres, other than unbl/bl
5513 11	Plain weave polyester staple fibres fabrics, $<$ 85 % mixed w/cottn. \leq 170 g/m ² , unbleached/bleached
5513 12	Twill weave polyester staple fibres fabrics, $<$ 85 % mixed w/cottn. \leq 170 g/m ² , unbleached/bleached
5513 13	Woven fab of polyester staple fibres, $<$ 85 % mixed w/cot. \leq 170 g/m ² , unbleached/bleached, nes
5513 19	Woven fabrics of other syn staple fibres, $<$ 85 % mixed w/cot, \leq 170 g/m ² , unbleached/bleached
5513 21	Plain weave polyester staple fibres fabrics, $>$ 85 % mixed w/cotton, \leq 170 g/m ² , dyed
5513 22	Twill weave polyester staple fibres fabrics, $<$ 85 % mixed w/cotton, \leq 170 g/m ² , dyed
5513 23	Woven fabrics of polyester staple fibres, $>$ 85 % mixed w/cotton. \leq 170 g/m ² , dyed, nes
5513 29	Woven fabrics of other syn staple fibres, $<$ 85 % mixed w/cotton. \leq 170 g/m ² , dyed
5513 31	Plain weave polyester staple fibres fabrics, $<$ 85 % mixed w/cotton. \leq 170 g/m ² , yarn dyd
5513 32	Twill weave polyester staple fabrics, $<$ 85 % mixed w/cotton. \leq 170 g/m ² , yarn dyed
5513 33	Woven fabrics of polyester staple fibres, $<$ 85 % mixed w/cotton, \leq 170 g/m ² , dyed nes
5513 39	Woven fabrics of other syn staple fibres, $<$ 85 % mixed w/cotton, \leq 170 g/m ² , yarn dyed

HS No	Product description
5513 41	Plain weave polyester staple fibres fabrics, < 85 % mixed w/cotton, <= 170 g/m ² , printed
5513 42	Twill weave polyester staple fibres fabrics, < 85 % mixed w/cotton, <= 170 g/m ² , printed
5513 43	Woven fab of polyester staple fibres, < 85 % mixed w/cotton, <= 170 g/m ² , printed, nes
5513 49	Woven fabrics of other syn staple fibres, < 85 % mixed w/cotton, <= 170 g/m ² , printed
5514 11	Plain weave polyester staple fibres fabrics, < 85 % mixed w/cotton, > 170 g/m ² , unbl/bl
5514 12	Twill weave polyester staple fibres fabrics, < 85 % mixed w/cotton, > 170 g/m ² , unbl/bl
5514 13	Woven fab of polyester staple fibres, < 85 % mixed w/cotton, > 170 g/m ² , unbl/bl, nes
5514 19	Woven fabrics of other synthetic staple fibres, < 85 % mixed w/cotton, > 170 g/m ² , unbl/bl
5514 21	Plain weave polyester staple fibre fabrics, < 85 % mixed w/cotton, > 170 g/m ² , dyed
5514 22	Twill weave polyester staple fibre fabrics, < 85 % mixed w/cotton, > 170 g/m ² , dyed
5514 23	Woven fabrics of polyester staple fibres, < 85 % mixed w/cotton, > 170 g/m ² , dyed
5514 29	Woven fabrics of other synthetic staple fibres, < 85 % mixed w/cotton, > 170 g/m ² , dyed
5514 31	Plain weave polyester staple fibres fabric, < 85 % mixed w/cotton, > 170 g/m ² , yarn dyed
5514 32	Twill weave polyester staple fibre fabrics, < 85 % mixed w/cotton, > 170 g/m ² , yarn dyed
5514 33	Woven fab of polyester staple fibres, < 85 % mixed w/cotton, > 170 g/m ² , yarn dyed nes
5514 39	Woven fabrics of other syn staple fibres, < 85 % mixed w/cotton, > 170 g/m ² , yarn dyed
5514 41	Plain weave polyester staple fibre fabrics, < 85 % mixed w/cotton, > 170 g/m ² , printed
5514 42	Twill weave polyester staple fibre fabrics, < 85 % mixed w/cotton, > 170 g/m ² , printed
5514 43	Woven fabrics of polyester staple fibres < 85 % mixed w/cotton, > 170 g/m ² , ptd. nes
5514 49	Woven fabrics of other synthetic staple fibres, < 85 % mixed w/cotton, > 170 g/m ² , printed
5515 11	Woven fabrics of polyester staple fibres mixed with viscose rayon staple fib. nes
5515 12	Woven fabrics of polyester staple fibres mixed with man-made filaments, nes
5515 13	Woven fabrics of polyester staple fibres mixed w/wool/fine animal hair, nes
5515 19	Woven fabrics of polyester staple fibres nes
5515 21	Woven fabrics of acrylic staple fibres, mixed with man-made filaments, nes
5515 22	Woven fabrics of acrylic staple fibres, mixed w/wool/fine animal hair, nes
5515 29	Woven fabrics of acrylic or modacrylic staple fibres, nes
5515 91	Woven fabrics of other synthetic staple fibres mixed with man-made filaments, nes
5515 92	Woven fabrics of other synthetic staple fibres mixed w/wool of fine animal hair, nes
5515 99	Woven fabrics of synthetic staple fibres, nes
5516 11	Woven fabrics, containing >= 85 % of artificial staple fibres, unbleached/bleached
5516 12	Woven fabrics, containing >= 85 % of artificial staple fibres, dyed
5516 13	Woven fabrics, containing >= 85 % of artificial staple fibres, yarn dyed
5516 14	Woven fabrics, containing >= 85 % of artificial staple fibres, printed
5516 21	Woven fabrics of artificial staple fib, < 85 %, mixed with man-made fibres, unbleached/bleached
5516 22	Woven fabrics of artificial staple fibres, < 85 %, mixed with man-made fibres, dyed
5516 23	Woven fabrics of artificial staple fibres, < 85 % mixed with man-made fibres, yarn dyed
5516 24	Woven fabrics of artificial staple fibres, < 85 %, mixed with man-made fibres, printed
5516 31	Woven fabrics of artificial staple fibres, < 85 % mixed w/wool/fine animal hair, unbleached/bleached
5516 32	Woven fabrics of artificial staple fibres, < 85 % mixed w/wool/fine animal hair, dyed
5516 33	Woven fabrics of artificial staple fibres, < 85 % mixed w/wool/fine animal hair, yarn dyed
5516 34	Woven fabrics of artificial staple fibres, < 85 % mixed w/wool/fine animal hair, printed
5516 41	Woven fabrics of artificial staple fibres, < 85 % mixed with cotton, unbleached or bleached
5516 42	Woven fabrics of artificial staple fibres, < 85 % mixed with cotton, dyed
5516 43	Woven fabrics of artificial staple fibres, < 85 % mixed with cotton, yarn dyed
5516 44	Woven fabrics of artificial staple fibres, < 85 % mixed with cotton, printed
5516 91	Woven fabrics of artificial staple fibres, < 85 % unbleached or bleached, nes
5516 92	Woven fabrics of artificial staple fibres, dyed, nes
5516 93	Woven fabrics of artificial staple fibres, yarn dyed, nes
5516 94	Woven fabrics of artificial staple fibres, printed, nes

HS No	Product description
5602 10	Needleloom felt and stitch-bonded fibre fabrics
5602 21	Felt other than needleloom, of wool or fine animal hair, not impregnated, coated, covered etc.
5602 29	Felt other than needleloom, of other textile materials, not impregnated, coated, covered etc.
5602 90	Felt of textile materials, nes
5603 00	Non wovens, whether or not impregnated, coated, covered or laminated
5604 20	High tenacity yarn of polyester, nylon other polyamid, viscose rayon, coated, etc.
5604 90	Textile yarn, strips & the like, impregnated coated/covered with rubber or plastics, nes
5606 00	Gimped yarn nes: chenille yarn: loop wale-yarn
5607 10	Twine, cordage, ropes and cables, of jute or other textile bast fibres
5607 21	Binder or baler twine, of sisal or other textile fibres of the genus <i>Agave</i>
5607 29	Twine nes, cordage, ropes and cables, of sisal textile fibres
5607 30	Twine, cordage, ropes and cables, of abaca or other hard (leaf) fibres
5607 41	Binder or baler twine, of polyethylene or polypropylene
5607 49	Twine nes, cordage, ropes and cables, of polyethylene or polypropylene
5607 50	Twine, cordage, ropes and cables, of other synthetic fibres
5607 90	Twine, cordage, ropes and cables, of other materials
5608 11	Made up fishing nets, of man-made textile materials
5608 19	Knotted netting of twine/cordage/rope, and other made up nets of man-made textile materials
5608 90	Knotted netting of twine/cordage/rope, nes, and made up nets of other textile materials
5609 00	Articles of yarn, strip, twine, cordage, rope and cables, nes
5701 10	Carpets of wool or fine animal hair, knotted
5701 90	Carpets of other textile materials, knotted
5702 10	Kelem, Schumacks, Karamanie and similar textile hand-woven rugs
5702 20	Floor coverings of coconut fibres (coir)
5702 31	Carpets of wool/fine animal hair, of woven pile construction, not made up, nes
5702 32	Carpets of man-made textile materials, of woven pile construction, not made up, nes
5702 39	Carpets of other textile materials, of woven pile construction, not made up, nes
5702 41	Carpets of wool/fine animal hair, of woven pile construction, not made up, nes
5702 42	Carpets of man-made textile materials, of woven pile construction, made up, nes
5702 49	Carpets of other textile materials, of woven pile construction, made up, nes
5702 51	Carpets of wool or fine animal hair, woven, not made up, nes
5702 52	Carpets of man-made textile materials, woven, not made up, nes
5702 59	Carpets of other textile materials, woven, not made up, nes
5702 91	Carpets of wool or fine animal hair, woven, made up, nes
5702 92	Carpets of man-made textile materials, woven, made up, nes
5702 99	Carpets of other textile materials, woven, made up, nes
5703 10	Carpets of wool or fine animal hair, tufted
5703 20	Carpets of nylon or other polyamides, tufted
5703 30	Carpets of other man-made textile materials, tufted
5703 90	Carpets of other textile materials, tufted
5704 10	Tiles of felt textile materials, having a maximum surface area of 0,3 m ²
5704 90	Carpets of felt of textile materials, nes
5705 00	Carpets and other textile floor coverings, nes
5801 10	Woven pile fabrics of wool/fine animal hair, other than terry & narrow fabrics
5801 21	Woven uncut weft pile fabrics of cotton, other than terry and narrow fabrics
5801 22	Cut corduroy fabrics of cotton, other than narrows fabrics
5801 23	Woven weft pile fabrics of cotton, nes
5801 24	Woven warp pile fabrics of cotton, pingl (uncut), other than terry & narrow fabrics
5801 25	Woven warp pile fabrics of cotton, cut, other than terry and narrow fabrics
5801 26	Chenille fabrics of cotton, other than narrow fabrics
5801 31	Woven uncut weft pile fabrics of man-made fibres, other than terry & narrow fabrics

HS No	Product description
5801 32	Cut corduroy fabrics of man-made fibres, other than narrow fabrics
5801 33	Woven weft pile fabrics of man-made fibres, nes
5801 34	Woven warp pile fabrics of man-made fibres pingl (uncut), other than terry & narrow fabrics
5801 35	Chenille warp pile fabrics of man-made fibres cut, other than terry & narrow fabrics
5801 36	Woven fabrics of man-made, other than narrow fabrics
5801 90	Woven pile fabrics & chenille fabrics of other textile materials, other than terry & narrow fabrics
5802 11	Terry towelling & similar woven terry fabrics of cotton, other than narrow fabrics unbleached
5802 19	Terry towelling & similar woven terry fabrics of cotton, other than unbleached & other than narrow fabrics
5802 20	Terry towelling & similar woven terry fabrics of other textile materials, other than narrow fabrics
5802 30	Tufted textile fabrics, other than products of heading No 5703
5803 10	Gauze of cotton, other than narrow fabrics
5803 90	Gauze of other textile material, other than narrow fabrics
5804 10	Tulles & other net fabrics, not including woven, knitted or crocheted fabrics
5804 21	Mechanically made lace of man-made fibres, in the piece, in strips/motifs
5804 29	Mechanically made lace of other textile materials, in the piece, in strips/in motifs
5804 30	Hand-made lace, in the piece, in strips or in motifs
5805 00	Hand-woven tapestries & needle-worked tapestries, whether or not made up
5806 10	Narrow woven pile fabrics and narrow chenille fabrics
5806 20	Narrow woven fabrics, cntg by wt \geq 5 % elastomeric yarn/rubber thread nes
5806 31	Narrow woven fabrics of cotton, nes
5806 32	Narrow woven fabrics of man-made fibres, nes
5806 39	Narrow woven fabrics of other textile materials, nes
5806 40	Fabrics consisting of warp w/o weft assembled by means of an adhesive
5807 10	Labels, badges and similar woven articles of textile materials
5807 90	Labels, badges and similar articles, not woven, of textile materials, nes
5808 10	Braids in the piece
5808 90	Ornamental trimmings in the piece, other than knitted; tassels, pompons & similar art
5809 00	Woven fabrics of metal thread/of metallized yarn, for apparel, etc, nes
5810 10	Embroidery without visible ground, in the piece, in strips or in motifs
5810 91	Embroidery of cotton, in piece, in strips or in motifs, nes
5810 92	Embroidery of man-made fibres, in the piece, in strips or in motifs, nes
5810 99	Embroidery of other textile materials, in the piece, in strips/motifs, nes
5811 00	Quilted textile products in the piece
5902 10	Tire cord fabric made of nylon or other polyamides high tenacity yarns
5902 20	Tire cord fabric made of polyester high tenacity yarns
5902 90	Tire cord fabric made of viscose rayon high tenacity yarns
5903 10	Textile fabrics impregnated, coated, covered, or laminated with polyvinyl chloride, nes
5803 20	Textile fabrics impregnated, coated, covered, or laminated with polyurethane, nes
5903 90	Textile fabrics impregnated, coated, covered, or laminated with plastics, nes
5905 00	Textile wall coverings
5906 91	Rubberized textile knitted or crocheted fabrics, nes
5908 00	Textile wicks for lamps, stoves, etc; gas mantles & knitted gas mantle fabric
5909 00	Textile hosepiping and similar textile tubing
5910 00	Transmission or conveyor belts or belting of textile material
5911 10	Textile fabrics used for card clothing, and similar fabric for technical uses
5911 20	Textile bolting cloth, whether or not made up
5911 31	Textile fabrics used in paper-making or similar machines, $<$ 650 g/m ²
5911 32	Textile fabrics used in paper-making or similar machines weighing \geq 650 g/m ²
5911 40	Textile straug cloth used in oil presses or the like, inclusive of human hair
5911 90	Textile products and articles for technical uses, nes

HS No	Product description
6001 10	Long pile knitted or crocheted textile fabrics
6001 21	Looped pile knitted or crocheted fabrics, of cotton
6001 22	Looped pile knitted or crocheted fabrics, of man-made fibres
6001 29	Looped pile knitted or crocheted fabrics, of other textile materials
6001 91	Pile knitted or crocheted fabrics, of cotton, nes
6001 92	Pile knitted or crocheted fabrics, of man-made fibres, nes
6001 99	Pile knitted or crocheted fabrics, of other textile materials, nes
6002 10	Knitted or crocheted textile fabrics, with ≤ 30 cm, ≥ 5 % of elastomeric/rubber, nes
6002 20	Knitted or crocheted textile fabrics, of a width not exceeding 30 cm, nes
6002 30	Knitted crocheted textile fabrics, width > 30 cm, ≥ 5 % of elastomeric/rubber, nes
6002 41	Warp knitted fabrics, of wool or fine animal hair, nes
6003 42	Warp knitted fabrics, of cotton, nes
6002 43	Warp knitted fabrics, of man-made fibres, nes
6002 49	Warp knitted fabrics, of other materials, nes
6002 91	Knitted or crocheted fabrics, of wool or of fine animal hair, nes
6002 92	Knitted or crocheted fabrics, of cotton, nes
6002 93	Knitted or crocheted fabrics, of man-made fibres, nes
6002 99	Knitted or crocheted fabrics, of other materials, nes
6101 10	Mens/boys overcoats, anoraks etc. of wool or fine animal hair, knitted
6101 20	Mens/boys overcoats, anoraks etc. of cotton, knitted
6101 30	Mens/boys overcoats, anoraks etc. of man-made fibres, knitted
6101 90	Mens/boys overcoats, anoraks etc. of other textile materials, knitted
6102 10	Womens/girls overcoats, anoraks etc. of wool or fine animal hair, knitted
6102 20	Womens/girls overcoats, anoraks etc. of cotton, knitted
6102 30	Womens/girls overcoats, anoraks etc. of man-made fibres, knitted
6102 90	Womens/girls overcoats, anoraks etc. of other textile materials, knitted
6103 31	Mens/boys jackets and blazers, of wool or fine animal hair, knitted
6103 32	Mens/boys jackets and blazers, of cotton, knitted
6103 33	Mens/boys jackets and blazers, of synthetic fibres, knitted
6103 39	Mens/boys jackets and blazers, of other textile materials, knitted
6103 41	Mens/boys trousers and shorts, of wool or fine animal hair, knitted
6103 42	Mens/boys trousers and shorts, of cotton, knitted
6103 43	Mens/boys trousers and shorts, of synthetic fibres, knitted
6103 49	Mens/boys trousers and shorts, of other textile materials, knitted
6104 11	Womens/girls suits, of wool or fine animal hair, knitted
6104 12	Womens/girls suits, of cotton, knitted
6104 13	Womens/girls suits, of synthetic fibres, knitted
6104 19	Womens/girls suits, of other textile materials, knitted
6104 21	Womens/girls ensembles, of wool or fine animal hair, knitted
6104 22	Womens/girls ensembles, of cotton, knitted
6104 23	Womens/girls ensembles, of synthetic fibres, knitted
6104 29	Womens/girls ensembles, of other textile materials, knitted
6104 31	Womens/girls jackets, of wool or fine animal hair, knitted
6104 32	Womens/girls jackets, of cotton, knitted
6104 33	Womens/girls jackets, of synthetic fibres, knitted
6104 39	Womens/girls jackets, of other textile materials, knitted
6104 41	Womens/girls dresses, of wool or fine animal hair, knitted
6104 42	Womens/girls dresses, of cotton, knitted
6104 43	Womens/girls dresses, of synthetic fibres, knitted
6104 44	Womens/girls dresses, of artificial fibres, knitted
6104 49	Womens/girls dresses, of other textile materials, knitted
6104 51	Womens/girls skirts, of wool or fine animal hair, knitted

HS No	Product description
6104 52	Womens/girls skirts, of cotton, knitted
6104 53	Womens/girls skirts, of synthetic fibres, knitted
6104 59	Womens/girls skirts, of other textile materials, knitted
6104 61	Womens/girls trousers and shorts, of wool or fine animal hair, knitted
6104 62	Womens/girls trousers and shorts, of cotton, knitted
6104 63	Womens/girls trousers and shorts, of synthetic fibres, knitted
6104 69	Womens/girls trousers and shorts, of other textile materials, knitted
6105 10	Mens/boys shirts, of cotton, knitted
6105 20	Mens/boys shirts, of man-made fibres, knitted
6105 90	Mens/boys shirts, of other textile materials, knitted
6106 10	Womens/girls blouses and shirts, of cotton, knitted
6106 20	Womens/girls blouses and shirts, of man-made fibres, knitted
6106 90	Womens/girls blouses and shirts, of other materials, knitted
6107 11	Mens/boys underpants and briefs, of cotton, knitted
6107 12	Mens/boys underpants and briefs, of man-made fibres, knitted
6107 19	Mens/boys underpants and briefs, of other textile materials, knitted
6107 21	Mens/boys nightshirts and pyjamas, of cotton, knitted
6107 22	Mens/boys nightshirts and pyjamas, of man-made fibres, knitted
6107 29	Mens/boys nightshirts and pyjamas, of other textile materials, knitted
6107 91	Mens/boys bathrobes, dressing gowns etc. of cotton, knitted
6107 92	Mens/boys bathrobes, dressing gowns etc. of man-made fibres, knitted
6107 99	Mens/boys bathrobes, dressing gowns etc. of other textile materials, knitted
6108 21	Womens/girls briefs and panties, of cotton, knitted
6108 22	Womens/girls briefs and panties, of man-made fibres, knitted
6108 29	Womens/girls briefs and panties, of other textile materials, knitted
6108 31	Womens/girls nightdresses and pyjamas, of cotton, knitted
6108 32	Womens/girls nightdresses and pyjamas, of man-made fibres, knitted
6108 39	Womens/girls nightdresses & pyjamas, of other textile materials, knitted
6108 91	Womens/girls bathrobes, dressing gowns, etc. of cotton, knitted
6108 92	Womens/girls bathrobes, dressing gowns, etc. of man-made fibres, knitted
6108 99	Womens/girls bathrobes, dressing gowns, etc. of other textile materials, knitted
6109 10	T-shirts, singlets and other vests, of cotton, knitted
6109 90	T-shirts, singlets and other vests, of other textile materials, knitted
6110 10	Pullovers, cardigans & similar article of wool or fine animal hair, knitted
6110 20	Pullovers, cardigans and similar articles of cotton, knitted
6110 30	Pullovers, cardigans and similar articles of man-made fibres, knitted
6110 90	Pullovers, cardigans & similar articles of other textile materials, knitted
6111 10	Babies garments & clothing accessories of wool or fine animal hair, knitted
6111 20	Babies garments and clothing accessories of cotton, knitted
6111 30	Babies garments and clothing accessories of synthetic fibres, knitted
6111 90	Babies garments & clothing accessories of other textile materials, knitted
6112 11	Track suits, of cotton, knitted
6112 12	Track suits, of synthetic fibres, knitted
6112 19	Track suits, of other textile materials, knitted
6112 20	Ski suits, of textile materials knitted
6112 31	Mens/boys swimwear, of synthetic fibres, knitted
6112 39	Mens/boys swimwear, of other textile materials, knitted
6112 41	Women/girls swimwear, of synthetic fibres, knitted
6112 49	Women/girls swimwear, of other textile materials, knitted
6113 00	Garments made up of impregnation coated, covered or laminated textile knitted fabric
6114 10	Garments nes, of wool or fine animal hair, knitted
6114 20	Garments nes, of cotton, knitted
6114 30	Garments nes, of man-made fibres, knitted
6114 90	Garments nes, of other textile materials, knitted
6115 11	Panty hose & tights, of synthetic fibre yarns <67 dtex/single yarn knitted

HS No	Product description
6115 12	Panty hose & tights, of synthetic fibre yarn ≥ 67 dtex/single yarn knitted
6115 19	Panty hose and tights, of other textile materials, knitted
6115 20	Women full-/knee-/hosiery, of textile yarn < 67 dtex/single yarn knitted
6115 91	Hosiery nes, of wool or fine animal hair, knitted
6115 92	Hosiery nes, of cotton, knitted
6115 93	Hosiery nes, of synthetic fibres, knitted
6115 99	Hosiery nes, of other textile materials, knitted
6116 10	Gloves, impregnated, coated or covered with plastics or rubber, knitted
6116 91	Gloves, mittens and mitts, nes, of wool or fine animal hair, knitted
6116 92	Gloves, mittens and mitts, nes, of cotton, knitted
6116 93	Gloves, mittens and mitts, nes, of synthetic fibres, knitted
6116 99	Gloves, mittens and mitts, nes, of other textile materials, knitted
6117 10	Shawls, scarves, veils and the like, of textile materials, knitted
6117 20	Ties, bow ties and cravats, of textile materials, knitted
6117 80	Clothing accessoires nes, of textile materials, knitted
6117 90	Parts of garments/of clothing accessoires, of textile materials knitted
6201 11	Mens/boys overcoats & similar articles of wool/fine animal hair, not knitted
6201 12	Mens/boys overcoats and similar articles of cotton, not knitted
6201 13	Mens/boys overcoats & similar articles of man-made fibres, not knitted
6201 19	Mens/boys overcoats & similar articles of other textile materials, not knitted
6201 91	Mens/boys anoraks & similar articles, of wool/fine animal hair, not knitted
6201 92	Mens/boys anoraks and similar articles, of cotton, not knitted
6201 93	Mens/boys anoraks and similar articles, of man-made fibres, not knitted
6201 99	Mens/boys anoraks & similar articles, of other textile materials, not knitted
6202 11	Womens/girls overcoats & similar articles of wool/fine animal hair not knitted
6202 12	Womens/girls overcoats and similar articles of cotton, not knitted
6202 13	Womens/girls overcoats & similar articles of man-made fibres, not knitted
6202 19	Womens/girls overcoats & similar articles of other textile materials, not knitted
6202 91	Womens/girls anoraks & similar article of wool/fine animal hair, not knitted
6202 92	Womens/girls anoraks and similar article of cotton, not knitted
6202 93	Womens/girls anoraks & similar article of man-made fibres, not knitted
6202 99	Womens/girls anoraks & similar article of other textile materials, not knitted
6203 11	Mens/boys suits, of wool or fine animal hair, not knitted
6203 12	Mens/boys suits, of synthetic fibres, not knitted
6203 19	Mens/boys suits, of other textile materials, not knitted
6203 21	Mens/boys ensembles, of wool or fine animal hair, not knitted
6203 22	Mens/boys ensembles, of cotton, not knitted
6203 23	Mens/boys ensembles, of synthetic fibres, not knitted
6203 29	Mens/boys ensembles, of other textile materials, not knitted
6203 31	Mens/boys jackets and blazers, of wool or fine animal hair, not knitted
6203 32	Mens/boys jackets and blazers, of cotton, not knitted
6203 33	Mens/boys jackets and blazers, of synthetic fibres, not knitted
6203 39	Mens/boys jackets and blazers, of other textile materials, not knitted
6203 41	Mens/boys trousers and shorts, of wool or fine animal hair, not knitted
6203 42	Mens/boys trousers and shorts, of cotton, not knitted
6203 43	Mens/boys trousers and shorts, of synthetic fibres, not knitted
6203 49	Mens/boys trousers and shorts, of other textile materials, not knitted
6204 11	Womens/girls suits, of wool or fine animal hair, not knitted
6204 12	Womens/girls suits, of cotton, not knitted
6204 13	Womens/girls suits, of synthetic fibres, not knitted
6204 19	Womens/girls suits, of other textile materials, not knitted
6204 21	Womens/girls ensembles, of wool or fine animal hair, not knitted

HS No	Product description
6204 22	Womens/girls ensembles, of cotton, not knitted
6204 23	Womens/girls ensembles, of synthetic fibres, not knitted
6204 29	Womens/girls ensembles, of other textile materials, not knitted
6204 31	Womens/girls jackets, of wool or fine animal hair, not knitted
6204 32	Womens/girls jackets, of cotton, not knitted
6204 33	Womens/girls jackets, of synthetic fibres, not knitted
6204 39	Womens/girls jackets, of other textile materials, not knitted
6204 41	Womens/girls dresses, of wool or fine animal hair, not knitted
6204 42	Womens/girls dresses, of cotton, not knitted
6204 43	Womens/girls dresses, of synthetic fibres, not knitted
6204 44	Womens/girls dresses, of artificial fibres, not knitted
6204 49	Womens/girls dresses, of other textile materials, not knitted
6204 51	Womens/girls skirts, of wool or fine animal hair, not knitted
6204 52	Womens/girls skirts, of cotton, not knitted
6204 53	Womens/girls skirts, of synthetic fibres, not knitted
6204 59	Womens/girls skirts, of other textile materials, not knitted
6204 61	Womens/girls trousers & shorts, of wool or fine animal hair, not knitted
6204 62	Womens/girls trousers and shorts, of cotton, not knitted
6204 63	Womens/girls trousers and shorts, of synthetic fibres, not knitted
6204 69	Womens/girls trousers & shorts, of other textile materials, not knitted
6205 10	Mens/boys shirts, of wool or fine animal hair, not knitted
6205 20	Mens/boys shirts, of cotton, not knitted
6205 30	Mens/boys shirts, of man-made fibres, not knitted
6205 90	Mens/boys shirts, of other textile materials, not knitted
6206 10	Womens/girls blouses and shirts, of silk or silk waste, not knitted
6206 20	Womens/girls blouses & shirts, of wool or fine animal hair, not knitted
6206 30	Womens/girls blouses and shirts, of cotton, not knitted
6206 40	Womens/girls blouses and shirts, of man-made fibres, not knitted
6206 90	Womens/girls blouses and shirts, of other textile materials, not knitted
6207 11	Mens/boys underpants and briefs, of cotton, not knitted
6207 19	Mens/boys underpants and briefs, of other textile materials, not knitted
6207 21	Mens/boys nightshirts and pyjamas, of cotton, not knitted
6207 22	Mens/boys nightshirts and pyjamas, of man-made fibres, not knitted
6207 29	Mens/boys nightshirts & pyjamas, of other textile materials, not knitted
6207 91	Mens/boys bathrobes, dressing gowns, etc. of cotton, not knitted
6207 92	Mens/boys bathrobes, dressing gowns, etc. man-made fibres, not knitted
6207 99	Mens/boys bathrobes, dressing gowns, etc. of other textile materials, not knitted
6208 11	Womens/girls slips and petticoats, of man-made fibres, not knitted
6208 19	Womens/girls slips & petticoats, of other textile materials, not knitted
6208 21	Womens/girls nightdresses and pyjamas, of cotton, not knitted
6208 22	Womens/girls nightdresses and pyjamas, of man-made fibres, not knitted
6208 29	Womens/girls nightdresses & pyjamas, of other textile materials, not knitted
6208 91	Womens/girls panties, bathrobes, etc. of cotton, not knitted
6208 92	Womens/girls panties, bathrobes, etc. of man-made fibres, not knitted
6208 99	Womens/girls panties, bathrobes, etc. of other textile materials, not knitted
6209 10	Babies garments & clothing accessories of wool or fine animal hair, not knitted
6209 20	Babies garments & clothing accessories of cotton, not knitted
6209 30	Babies garments & clothing accessories of synthetic fibres, not knitted
6209 90	Babies garments & clothing accessories of other textile materials, not knitted
6210 10	Garments made up of textile felts and of nonwoven textile fabrics
6210 20	Mens/boys overcoats & similar articles of impregnated, coated, etc, textile woven fabrics
6210 30	Womens/girls overcoats & similar articles, of impregnated, coated, etc, textile woven fabrics
6210 40	Mens/boys garments nes, made up of impregnated, coated covered, etc, textile woven fabrics

HS No	Product description
6210 50	Womens/girls garments nes, of impregnated, coated covered, etc, textile woven fabrics
6211 11	Mens/boys swimwear, of textile materials, not knitted
6211 12	Womens/girls swimwear, of textile materials, not knitted
6211 20	Ski suits, of textile materials, not knitted
6211 31	Mens/boys garments nes, of wool or fine animal hair, not knitted
6211 32	Mens/boys garments nes, of cotton, not knitted
6211 33	Mens/boys garments nes, of man-made fibres, not knitted
6211 39	Mens/boys garments nes, of other textile materials, not knitted
6211 41	Womens/girls garments nes, of wool or fine animal hair, not knitted
6211 42	Womens/girls garments nes, of cotton, not knitted
6211 43	Womens/girls garments nes, of man-made fibres, not knitted
6211 49	Womens/girls garments nes, of other textile materials, not knitted
6210 10	Brassieres and parts thereof, of textile materials
6212 20	Girdles, panty girdles and parts thereof, of textile materials
6212 30	Corselettes and parts thereof, of textile materials
6212 90	Corsets, braces & similar articles & parts thereof, of textile materials
6213 10	Handkerchiefs, of silk or silk waste, not knitted
6213 20	Handkerchiefs, of cotton, not knitted
6213 90	Handkerchiefs, of other textile materials, not knitted
6214 10	Shawls, scarves, veils and the like, of silk or silk waste, not knitted
6214 20	Shawls, scarves, veils & the like, of wool or fine animal hair, not knitted
6214 30	Shawls, scarves, veils and the like, of synthetic fibres, not knitted
6214 40	Shawls, scarves, veils and the like, of artificial fibres, not knitted
6214 90	Shawls, scarves, veils & the like, of other textile materials, not knitted
6214 20	Ties, bow ties and cravats, of silk or silk waste, not knitted
6216 00	Gloves, mittens and mitts, of textile materials, not knitted
6217 10	Clothing accessoires nes, of textile materials, not knitted
6217 90	Parts of garments or of clothing accessories nes, of textile materials not knitted
6301 10	Electric blankets, of textile materials
6301 20	Blankets (other than electric) & travelling rugs, of wool or fine animal hair
6301 30	Blankets (other than electric) and travelling rugs, of cotton
6301 40	Blankets (other than electric) and travelling rugs, of synthetic fibres
6301 90	Blankets (other than electric) and travelling rugs, of other textile materials
6302 10	Bed linen, of textile knitted or crocheted materials
6302 21	Bed linen, of cotton, printed, not knitted
6302 22	Bed linen, of man-made fibres, printed, not knitted
6302 29	Bed linen, of other textile materials, printed, not knitted
6302 31	Bed linen, of cotton, nes
6302 32	Bed linen, of man-made fibres, nes
6302 39	Bed linen, of other textile materials, nes
6302 40	Table linen, of textile knitted or crocheted materials
6302 51	Table linen, of cotton, not knitted
6302 52	Table linen, of flax, not knitted
6302 53	Table linen, of man-made fibres, not knitted
6302 59	Table linen, of other textile materials, not knitted
6302 60	Toilet & kitchen linen, of terry towelling or similar terry fabrics, of cotton
6302 91	Toilet and kitchen linen, of cotton, nes
6302 92	Toilet and kitchen linen, of flax
6302 93	Toilet and kitchen linen, of man-made fibres
6302 99	Toilet and kitchen linen, of other textile materials
6303 11	Curtains, drapes, interior blinds & curtain or bed valances, of cotton, knitted

HS No	Product description
6303 12	Curtains, drapes, interior blinds & curtain/bed valances, of synthetic fibres, knitted
6303 19	Curtains, drapes, interior blinds & curtain/bed valances, other textile materials knitted
6303 91	Curtains/drapes/interior blinds & curtain/bed valances, of cotton, not knitted
6303 92	Curtains/drapes/interior blinds curtain/bed valances, of synthetic fibres, not knitted
6303 99	Curtains/drape/interior blind curtain/bd valance, of other textile materials, not knitted
6304 11	Bedspreads of textile materials, nes, knitted or crocheted
6304 19	Bedspreads of textile materials, nes, not knitted or crocheted
6304 91	Furnishing articles nes, of textile materials, knitted or crocheted
6304 92	Furnishing articles nes, of cotton, not knitted or crocheted
6304 93	Furnishing articles nes, of synthetic fibres, not knitted or crocheted
6304 99	Furnishing articles nes, of other textile materials, not knitted or crocheted
6305 20	Sacks and bags, for packing of goods, of cotton
6305 31	Sacks & bags, for packing of goods, of polyethylene or polypropylene strips
6305 39	Sacks & bags, for packing of goods, of other man-made textile materials
6305 90	Sacks & bags, for packing of goods, of other textile materials
6306 11	Tarpaulins, awnings and sunblinds, of cotton
6306 12	Tarpaulins, awnings and sunblinds, of synthetic fibres
6306 19	Tarpaulins, awnings and sunblinds, of other textile materials
6306 21	Tents, of cotton
6306 22	Tents, of synthetic fibres
6306 29	Tents, of other textile materials
6306 31	Sails, of synthetic fibres
6306 39	Sails, of other textile materials
6306 41	Pneumatic mattresses, of cotton
6306 49	Pneumatic mattresses, of other textile materials
6306 91	Camping goods nes, of cotton
6306 99	Camping goods nes, of other textile materials
6307 10	Floor-cloths, dish-cloths, dusters & similar cleaning cloths, of textile materials
6307 20	Life jackets and life belts, of textile materials
6307 90	Made up articles, of textile materials, nes, including dress patterns
6308 00	Sets consisting of woven fabrics & yarn, for making up into rugs, tapestries etc.
ex 6405 20	Footwear with soles and uppers of wool felt
6601 10	Umbrellas and sun umbrellas, garden type
8708 21	Safety seat belts for motor vehicles
ex 9404 90	Pillow and cushions of cotton, quilts, eiderdowns, comforters and similar articles of textile materials

ANNEX II

ANNEX XI

List of Members of the World Trade Organization

(This list shall be completed by the Commission in due course under the procedure laid down in Article 17 of Regulation (EEC) No 3030/93.)

COUNCIL REGULATION (EC) No 3290/94

of 22 December 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

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⁾, and in particular Article 7 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽²⁾,

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;

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 tariffication, the Agreement permits the application of additional customs duties under precisely defined conditions but only to products subject to tariffication; 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, 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⁾;

Whereas, since the Agreement of Safeguards lays down clear rules on the application of protective clauses as

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24. Regulation as last amended by Regulation (EC) No 1884/94 (OJ No L 197, 30. 7. 1994, p. 27).

⁽²⁾ Opinion delivered on 14 December 1994 (not yet published in the Official Journal).

⁽³⁾ OJ No L 47, 25. 2. 1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 3518/93 (OJ No L 320, 22. 12. 1993, p. 15).

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; whereas, in the case of a change of destination, the restitution applicable to the actual destination should be paid, with a ceiling at the level of the amount applicable to the destination fixed in advance;

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, in most of the common organizations of the market, the exclusion from recourse to the arrangements for inward processing traffic falls exclusively within the

competence of the Council; whereas in the economic conditions arising under the Agreement, it could prove necessary to react rapidly to market problems arising from the application of the said arrangements; whereas in that regard competence should be conferred on the Commission to adopt urgent measures which are limited in time; whereas those measures should be subject to the application of the procedure laid down in Article 3 of Council Decision 87/373/EEC of 13 July 1987 ⁽¹⁾;

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 ⁽²⁾;

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 it is the same for certain Council Regulations referred to as 'second generation' which may for the most part be incorporated in the basic regulations in question;

Whereas, however, it has not been possible to integrate the existing general rules of the Council on the application of the safeguard clause in the basic regulations; whereas in the light of the importance of the amendments rendered necessary in that area following the GATT agreements, the regulations in question may not be maintained; whereas they should therefore be repealed, while providing the legal bases to enable their replacement;

Whereas application of the Agreement on agriculture could be jeopardized if the internal procedures to be used differed substantially between different sectors; whereas, for that reason, it is desirable to make those procedures uniform;

Whereas adoption by the Council of general implementing rules has in the past made it possible to provide an adequate framework for the more specific rules necessary for managing the markets; whereas implementation of the said Agreement on Agriculture should not call into question the mechanisms and procedures for managing the common agricultural policy;

⁽¹⁾ OJ No L 197, 18. 7. 1987, p. 33

⁽²⁾ OJ No L 84, 27. 3. 1987, p. 1. Regulation as last amended by Regulation (EEC) No 1891/94 (OJ No L 197, 30. 7. 1994, p. 42).

Whereas it will be useful to analyse, at a later stage, both the functioning of the arrangements set up by this Regulation and the experience acquired with the measures taken by third countries for the implementation of the GATT agreements; whereas to that effect, upon expiry of the first two years of application of this Regulation, the Commission should present a report to the Council and the European Parliament;

Whereas the switch-over 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 agricultural sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations.

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 switch-over 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 laid down in Article 38 of Regulation No 136/66/EEC⁽¹⁾ or, as appropriate, the corresponding Articles in the other Regulations on the common organization of agricultural markets, or in Regulation (EC) No 3448/93⁽²⁾.

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.

⁽¹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ No L 318, 20. 12. 1993, p. 18.

2. The measures referred to in paragraph 1 may be adopted during a period expiring on 30 June 1996 and shall not apply beyond that date. The Council, acting by a qualified majority on a proposal from the Commission, may 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 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 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 set out in Article 3 (1).

Article 5

The Commission shall submit a report to the Council and to the European Parliament before 30 June 1997 on the operation of the arrangements resulting from this Regulation and on the experience acquired with the measures taken by third countries to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations.

The Council, acting on a proposal from the Commission in accordance with the procedure laid down in Article 43 (2) of the Treaty, will decide on any amendments arising out of the results and conclusions of that report.

Article 6

1. This Regulation shall enter into force on 1 January 1995.

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 Annexes XIII and XVI for which an entry price is applicable shall apply during 1995 as from the commencement of the marketing year for the products concerned in 1995;

- (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 1 January 1995;
- (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 Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

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ANNEX I

CEREALS

- I. Council Regulation (EEC) No 1766/92 of 30 June 1992 (OJ No L 181, 1. 7. 1992, p. 21), as last amended by Regulation (EC) No 1866/94 (OJ No L 197, 30. 7. 1994, p. 1).

1. Article 3 (2) shall be deleted.
2. The following subparagraph shall be 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) shall be 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 shall be deleted.
5. Title II shall be 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; except 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 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 merlin, 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 cif, import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

3. For the purposes of calculating the import charge referred to in paragraph 2:

(a) for products listed in paragraph 2 expressed in one standard quality or, as appropriate, subdivided into several (common wheat: high, medium, low; durum wheat; maize; other fodder grains) representative cif import prices shall be recorded on the basis of the prices for those qualities on the world market.

Such representative cif import prices shall be established regularly;

(b) each consignment for import shall be classified according to the nearest quality among the standard qualities referred to in (a).

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

The detailed rules shall in particular specify:

- the standard qualities to be used,
- the price quotations to be taken into consideration,
- the method of calculating the import charge for each consignment classified according to one of the standard qualities referred to in paragraph 3 (a),
- the possibility, where appropriate in specific cases, of giving operators the opportunity of knowing the charge applicable before the arrival of the consignments concerned.

Article 11

1. Without prejudice to Article 10 (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, imports of one or more of such products at the rate of duty laid down in Article 10 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional import duty may be imposed shall be those forwarded to the World Trade Organization by the Community.

The trigger quantities which must be exceeded in order for an additional import duty to be imposed shall be determined, *inter alia*, on the basis of imports into the Community in the three years preceding that in which the adverse effects referred to in paragraph 1 arise or seem likely to arise.

3. The import prices to be taken into consideration when imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment concerned.

Cif import prices shall be checked to that end against the representative prices for the product on the world market or on the Community import market for that product.

4. 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 pursuant to Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary for application of paragraph 1 in accordance with Article 5 of the said Agreement.

Article 12

1. Tariff quotas for the products listed in Article 1 resulting from agreements concluded in the framework of the Uruguay Round trade negotiations shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 23.

2. Quotas may be administered using one of the following methods or by a combination thereof:

- method based on the order in which applications are submitted (on a 'first come, first served' basis),
- method allocating quotas in proportion to the quantities requested when applications are submitted (using the 'simultaneous examination' method),
- method based on traditional trade flows (using the 'traditional/new arrivals' method).

Other appropriate methods may be adopted.

They must avoid any discrimination between the operators concerned.

3. The method of administration adopted shall, where appropriate, give due weight to the supply requirements of the Community market and the need to safeguard the equilibrium of that market, whilst at the same time possibly drawing on methods which may have been applied in the past to quotas corresponding to those referred to in paragraph 1, without prejudice to the rights resulting from agreements concluded in the framework of the Uruguay Round negotiations.

4. The detailed rules referred to in paragraph 1 shall provide for the opening of annual quotas, if necessary suitably phased over the year, determine the method of administration to be applied and include, where appropriate, provision 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.

In the case of the quota for import into Spain of 2 000 000 tonnes of maize and 300 000 tonnes of sorghum and the quota for import into Portugal of 500 000 tonnes of maize, those detailed rules shall also include the provisions necessary for carrying out the quota imports and, where appropriate, the public storage of the quantities imported by the intervention agencies of the Member States concerned and their disposal on the markets of those Member States.

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. The method adopted for allocating quantities eligible for export refund shall be that:

- (a) best suited to the nature of the product and to the situation on the market concerned, and that will allow the available resources to be used as efficiently as possible, account being taken of the efficiency and structure of Community exports without, however, creating discrimination between large and small operators;
- (b) which is least cumbersome administratively for operators, account being taken of administration requirements;
- (c) which avoids any discrimination between the operators concerned.

3. Refunds shall be the same for the whole Community. They may vary according to destination, where the situation on the world market or the specific requirements of certain markets so necessitate.

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 for products in respect of which provision was made for that procedure in the past.

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.

4. 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.

5. 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:

- (a) for the destination indicated on the licence or, where appropriate;
- (b) for the real destination, if it is not the same as that indicated on the licence. In that case, the amount applicable shall not exceed the amount applicable for the destination on the licence.

Appropriate measures may be adopted to prevent the flexibility of this paragraph from being misused.

6. Paragraphs 4 and 5 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.

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 23.

8. 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 5 shall be adjusted in line with the level of the monthly increases applicable to the intervention price and, where appropriate, changes in that price.

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.

For the first three months of the marketing year, the refund applicable to exports of malt in storage at the end of the previous marketing year or made from barley in stock at that time shall be that which would have been applied in respect of the certificate in question to exports during the last month of the preceding marketing year.

9. 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.

10. Compliance with the limits on volumes arising from agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export certificates issued for the reference periods provided for therein and applicable to the products concerned. With regard to compliance with the obligations arising under the Agreement on Agriculture, the ending of a reference period shall not affect the validity of export licences.

11. Detailed rules for the application of this Article, including the arrangements for redistributing unallocated and unused quantities, and in particular those on the adaptation provided for in paragraph 9 shall be adopted in accordance with the procedure laid down in Article 23. Annex B shall be amended in accordance with the same procedure. However, detailed rules for the application of paragraph 6 to products referred to in Article 1 and exported in the form of goods referred to in the Annex, shall be adopted in accordance with the procedure laid down in Article 16 of Regulation (EC) No 3448/93.

Article 14

1. To the extent necessary for the proper working of the common organization of the market in cereals, the Council, acting in accordance with the procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, may 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 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. By way of derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by inward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within a week following receipt of the request.

3. Measures decided on by the Commission may be referred to the Council by any Member State within a week of the day on which they were notified. The Council, acting by a qualified majority, may confirm amend or repeal the Commission decision. If the Council has not acted within three months, the Commission decision shall be deemed to have been repealed.

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.

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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for application of this paragraph and shall determine the cases and limits within which Member States may take protective measures.

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. 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 shall be 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' shall be replaced by 'duty' and 'duties' respectively.

III. *Council Regulation (EC) No 3670/93 of 22 December 1993 (OJ No L 338, 31. 12. 1993, p. 35).*

The above Regulation is repealed.

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 concerned, the intervention centres referred to in paragraph 4;
- (b) the rate for converting husked rice into paddy rice, or vice versa;
- (c) the rate for converting husked rice into wholly milled and semi-milled rice, or vice versa; and
- (d) processing costs and the value of by-products to be taken into consideration for the application of paragraph 3.

2. Title II shall be 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; except 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 27.

Article 11

1. A subsidy may be fixed for consignments to the French overseas department of Réunion, intended for consumption there, 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 a tendering procedure. Such tendering procedure shall relate to the amount of the subsidy.

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.

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 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 percentage 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 covered by CN codes 1006 10, 1006 20 or 1006 40 00 into the French overseas department of Réunion, intended for consumption there;
 - (b) the duty to be charged on imports of products covered by CN code 1006 30 into the French overseas department of Réunion, intended for consumption there shall be multiplied 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.

Article 13

1. Without prejudice to Article 12 (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, imports of one or more of such products at the rate of duty laid down in Article 10 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.
2. The trigger prices below which an additional duty may be imposed shall be those forwarded by the Community to the World Trade Organization

The trigger volumes to be exceeded in order to have the additional import duty imposed shall be determined particularly on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment in question.

The cif import prices shall be verified for this purpose on the basis of representative prices for the product in question on the world market or on the Community import market for the product.

4. 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 under the terms of Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary to ensure application of paragraph 1 in accordance with Article 5 of the Agreement on Agriculture.

Article 14

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 an export refund.

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. The method to be adopted for the allocation of the quantities which may be exported with a refund shall be the method which:

- (a) is most suited to the nature of the product and the situation on the market in question, allowing the most efficient possible use of the resources available, taking into account the effectiveness and structure of Community exports without, however, creating discrimination between large and small operators;
- (b) is least cumbersome administratively, for operators taking account of administration requirements;
- (c) prevents any discrimination between the operators concerned.

3. Refunds shall be the same for the whole Community. They may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.

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 for products for which that procedure was laid down in the past.

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.

Refunds fixed at regular intervals for the product referred to in Article 1 (1) (a) and (b) shall be fixed at least once a month.

4. The following shall be taken into account when refunds are being fixed:

- (a) the existing situation and future trends with regard to:
 - prices and availability of rice and broken rice on the Community market;
 - prices of rice and broken rice on the world market;
- (b) the aims of the common organization of the market in rice, which are to ensure equilibrium and the natural development of prices and trade on this market;
- (c) limits resulting from agreements concluded in accordance with Article 228 of the Treaty;
- (d) the need to avoid disturbances on the Community market;
- (e) the economic aspect of the proposed exports.

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.

5. Refunds for products listed in Article 1 (1) (a) and (b) shall be fixed in accordance with the following specific criteria:

- (a) prices for those products obtaining on the various representative export markets of the Community;
- (b) the most favourable quotations recorded on the various markets of importing third countries; and
- (c) marketing costs and the most favourable transport charges from the Community markets referred to in (a) to ports or other points of export in the Community serving these markets, as well as costs incurred in placing the goods on the world market.

6. Where refunds are fixed by a tendering procedure, such tendering procedure shall relate to the amount of the refund.

7. 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.

8. 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:

- (a) the destination indicated on the licence; or
- (b) the actual destination if it differs from the destination indicated on the licence. In that case, the amount applicable may not exceed the amount applicable for the destination indicated on the licence.

Appropriate measures may be taken to prevent abuse of the flexibility provided for in this paragraph.

9. Paragraphs 7 and 8 may be able 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.

10. Paragraphs 7 and 8 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.

11. 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) applicable in accordance with paragraph 4 shall be adjusted in line with the amount of monthly increases applicable to the intervention price and, where appropriate, variations in that price, depending on the degree of processing and 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 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.

12. The refund may be increased by a compensatory amount in respect of stocks of paddy rice harvested within the Community and of husked rice obtained therefrom, in hand at the end of a marketing year and forming part of that year's crop, which are exported without further processing in the form of wholly milled rice or semi-milled rice between the beginning of the following marketing year and dates still to be determined. Before 1 July of each year the Council, acting by a qualified majority on a proposal from the Commission, shall, if necessary, determine the products to which the provisions of the preceding subparagraph shall apply.

The compensatory amount shall be:

- in the case of husked rice, equal to the difference between the target price valid for the last month of the marketing year and that valid for the first month of the new marketing year,
- in the case of paddy rice, equal to that difference adjusted by the conversion rate.

This amount shall, however, be reduced by the amount of any carry-over payment already granted, pursuant to Article 8.

The compensatory amount shall be granted only if stocks reach a minimum level.

13. The refund on the products referred to in Article 1 (a) and (b) shall be paid upon proof that:

- the products, in the case of paddy rice and husked rice, are of Community origin, except where paragraph 14 applies,
- the products have been exported from the Community, and
- in the case of a differentiated refund, the products have reached the destination indicated on the licence or another destination for which a refund was fixed, without prejudice to paragraph 8 (b). Exceptions may be made to this rule in accordance with the procedure laid down in Article 27, provided conditions are laid down which offer equivalent guarantees.

Additional provisions may be adopted in accordance with the procedure laid down in Article 27.

14. No export refund shall be granted on paddy rice and husked rice which is imported from third countries and re-exported to third countries, unless the exporter proves:

- that the product to be exported and the product previously imported are one and the same, and
- that the levy was collected on importation.

In such cases the refund on each product shall be equal to the duties collected on importation where the latter are lower than the refund applicable; where the duties collected on importation are higher than that refund, the latter shall apply.

15. Compliance with the limits on volumes arising from agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export certificates issued for the reference periods provided for therein and applicable to the products concerned. With regard to compliance with the obligations arising under the Agreement on Agriculture, the ending of a reference period shall not affect the validity of export licences.

16. Detailed rules for the application of this Article, including provisions concerning the reallocation of quantities exported not allocated or not used, in particular as regards the adjustment referred to in paragraph 11, shall be adopted in accordance with the procedure laid down in Article 27. Annex B shall be amended in accordance with the same procedure. However, detailed rules for the application of paragraph 7 to products referred to in Article 1 and exported in the form of goods referred to in the Annex shall be adopted in accordance with the procedure laid down in Article 16 of Regulation (EC) No 3448/93.

Article 15

1. To the extent necessary for the proper working of the common organization of the market in rice, the Council, acting on a proposal from the Commission in accordance with the procedure laid down in Article 43 (2) of the Treaty, may in special cases prohibit in whole or in part the use of inward or outward processing arrangements in respect of products listed in Article 1.

2. By way of derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by the inward or outward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within a week following receipt of the request.

3. The Commission decision may be referred to the Council by any Member State within a week of the day on which it was notified. The Council, acting by a qualified majority, may confirm, amend or repeal the Commission decision. If the Council has not acted within three months, the Commission decision shall be deemed to have been repealed.

Article 16

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 in provisions adopted pursuant thereto, 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.

Article 17

1. Where the quotations or prices on the world market for one or more of the products listed in Article 1 (a) and (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. Quotations or prices on the world market shall be regarded as having reached the level of Community prices when they approach or exceed the intervention buying-in price for indica and japonica rice, increased by:

- 80 % in the case of indica rice, and
- 80 % in the case of japonica rice.

3. The situation referred to in paragraph 1 shall be regarded as likely to persist or deteriorate where there is an imbalance between supply and demand and where that imbalance is likely to continue in view of foreseeable production and market price trends.

4. The Community market shall be regarded as being disturbed or threatened with disturbance, as a result of the situation referred to in the preceding paragraphs, where international trade prices are so high as to impede importation of products listed in Article 1 into the Community or to provoke their export from the Community, thereby jeopardizing market stability or security of supplies.

5. Where the conditions specified in this Article are met, the following measures may be taken:

- application of an export levy; in addition, a special export levy may be determined by a tendering procedure in respect of a fixed quantity,
- fixing of a time limit for the issue of export licences,
- total or partial suspension of the issue of export licences,
- total or partial rejection of outstanding applications for the issue of export licences.

These measures shall be repealed at the latest when it is found that, for a period of three consecutive weeks, the condition stated in paragraphs 2 is no longer fulfilled.

6. The following shall be taken into account when an export levy is being fixed for products listed in Article 1 (1) (a) and (b):

- (a) the existing situation and the future trend with regard to:
- prices and availability of rice on the Community market,
 - prices for rice and products processed in the rice sector on the world market;

- (b) the aims of the common organization of the markets in the rice sector, which are to ensure equilibrium for both supply and trade;
 - (c) the need to avoid disturbances on the Community market;
 - (d) the economic aspect of the exports.
7. When the export levy on the products listed in Article 1 (1) (c) is being fixed, the factors listed in paragraph 6 shall apply. In addition, the following specific factors shall be taken into account:
- (a) prices obtaining for broken rice on the various Community markets;
 - (b) the quantity of broken rice necessary to manufacture the products under consideration and, where appropriate, the value of the by-products;
 - (c) sale opportunities and conditions for the products in question on the world market.
8. Where the situation on the world market and the specific requirements of certain markets so require, the export levy may be differentiated.
9. The export levy to be charged shall be the one applicable on the day of export. However, the levy applicable on the day of lodgement of the application for a licence shall be applied, if the applicant so requests at the time of requesting the licence, to an export to be carried out during the period of validity of the licence.
10. No levy may be applied to exports carried out under food-aid arrangements pursuant to Article 25.
11. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 27.

In accordance with the same procedure and for each of the products:

- a decision shall be taken to establish the measures listed in paragraph 5 and put an end to the measures listed in the second and third indents of that paragraph,
- the export levy shall be fixed periodically.

Where necessary, the Commission may establish or modify the export levy.

12. In urgent cases, the Commission may take the measures referred to in the third and fourth indents of paragraph 5. It shall notify its decision to the Member States and shall publish it on the notice boards at its headquarters. The measures shall, by virtue of such a decision, be applied to the relevant products from the date specified to that end, that day shall be subsequent to the date of notification. The decision on the measures referred to in the third indent of paragraph 5 shall be applicable for a period not exceeding seven days.

Article 18

1. If, by reason of 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.

The Council, acting on a proposal from the Commission in accordance with the procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for the application of this paragraph and shall define in what cases and within what limits Member States may take protective measures.

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 States 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. 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 shall be deleted.

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 156, 14. 6. 1978, p. 14).

The above Regulations shall be repealed.

ANNEX III

DRIED FODDER

Council Regulation (EEC) No 1117/78 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:

'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.'

3. 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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43(2) of the Treaty, shall adopt the general rules for application of this paragraph and shall determine the cases and limits within which Member States may take protective measures.

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

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; except 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. 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.

Article 14

1. Unless this Regulation provides otherwise, the rates of duty in the Common Custom 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.

Suspension may apply for the period in which the price on the world market plus the import duty in the Common Customs Tariff:

- in the case of raw sugar, exceeds the intervention price for the product;
- in the case of molasses, exceeds the price level corresponding to the price of molasses used as a basis, for the sugar marketing year under consideration, for determining revenue from sales of molasses pursuant to the provisions of Article 4 (2).

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 shall be subject to payment of an additional import duty if 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 have been fulfilled, unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional duty may be imposed shall be those notified by the Community to the World Trade Organization.

The trigger volumes to be exceeded in order to have the additional import duty imposed shall in particular be determined on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment under consideration.

Cif import prices shall be checked to that end against the representative prices for the product on the world market or on the Community import market for that product.

4. 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 shall apply under the terms of Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary to ensure application of paragraph 1 in accordance with Article 5 of the Agreement on Agriculture.

Article 15a

For molasses:

- the world market price referred to in Article 14 (2), and
- the representative price referred to in Article 15 (3),

shall apply to standard quality.

Standard quality may be determined in accordance with the procedure laid down in Article 41.

Article 16

1. Tariff quotas for the products listed in Article 1 resulting from agreements concluded in the framework of the Uruguay Round of multilateral trade negotiations shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 41.

2. Quotas shall be administered by applying one of the following methods or a combination of them:

- method based on chronological order of the lodgment of applications ('first come, first served' principle),
- method of distribution in proportion to the quantities requested when the applications were lodged (using the 'simultaneous examination' method),
- method based on taking traditional trade patterns into account (using the 'traditional/new arrivals' method).

Other appropriate methods may be adopted.

They must avoid any discrimination between the operators concerned.

3. The method of administration adopted shall, where appropriate, give due weight to the supply requirements of the Community market and the need to safeguard the equilibrium of that market, whilst at the same time possibly drawing on methods which may have been applied in the past to quotas corresponding to those referred to in paragraph 1, without prejudice to the rights resulting from agreements concluded in the framework of the Uruguay Round negotiations.

4. The detailed rules referred to in paragraph 1 shall provide for annual quotas, suitably phased over the year, if necessary, shall determine the administrative method to be used and, where appropriate, shall include provisions regarding:

- (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 goods listed in Annex I shall not be greater than that applicable to these products exported without further processing.

4. The method to be adopted for the allocation of the quantities which may be exported with a refund shall be the method which:

- (a) is most suited to the nature of the product and the situation on the market in question, allowing the most efficient possible use of the resources available, account being taken of the efficiency and structure of Community exports without, however, creating discrimination between large and small operators;
- (b) is least cumbersome administratively for operators, account being taken of administration requirements;
- (c) prevents any discrimination between the operators concerned.

5. Refunds shall be the same for the whole Community. They may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.

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 in respect of products for which provision was made for that procedure in the past.

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.

Tenders submitted in response to an invitation shall not be considered unless a deposit is lodged. Except in cases of *force majeure*, the deposit shall be forfeited in whole or in part if tenderers have not fulfilled, or have only partially fulfilled, the obligations placed upon them.

The provisions of Articles 17a, 17b and 17c concerning products not denatured and exported without further processing listed in Article 1 (1) (a), (c) and (d) shall apply in addition.

6. 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.

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

8. 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:

- (a) for the destination indicated on the licence; or
- (b) for the actual destination if it differs from the destination indicated on the licence. In that case, the amount applicable may not exceed the amount applicable for the destination indicated on the licence.

Appropriate measures may be taken to prevent abuse of the flexibility provided for in this paragraph.

9. 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.

10. 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.

11. The refund shall be paid upon proof:

- that the products have been exported from the Community, and
- that, in the case of a differentiated refund, the products have reached the destination indicated on the licence or another destination for which a refund was fixed, without prejudice to paragraph 6 (b). However, exceptions may be made to this rule in accordance with the procedure laid down in paragraph 41, provided that conditions are laid down which offer equivalent guarantees.

Supplementary provisions may be laid down in accordance with the procedure provided for in Article 41.

12. No refund shall be granted on exports in the natural state of the not denatured products referred to in Article 1 (1) (a) unless, depending on the case, they have been:

- (a) obtained from sugar beet or sugar cane harvested within the Community;
- (b) imported into the Community in accordance with Article 33;
- (c) obtained from one of the products imported pursuant to the provisions of paragraph (b).

13. No refund shall be granted on exports in the natural state of the not denatured products referred to in Article 1 (c) and (d) which are not of Community origin or which have not been obtained from sugars imported into the Community in accordance with the provisions of paragraph 8b (b) or from the products referred to in paragraph 8b (c).

14. Compliance with the limits on volumes arising from agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export licences issued for the reference periods provided for therein and applicable to the products concerned.

15. The detailed rules for the application of this Article, including the arrangements for redistributing unallocated or unused exportable quantities, and the amendment of Annex I shall be adopted in accordance with the procedure laid down in Article 41. However, the rules governing the application of paragraph 6 for the products referred to in Article 1 exported in the form of goods listed in the Annex shall be adopted in accordance with the procedure provided for in Article 16 of Regulation (EC) No 3448/93.

Article 17a

1. This Article shall apply to the fixing of refunds on the not denatured products exported in the natural state referred to in Article 1 (1) (a).

2. As regards the periodic fixing of refunds for the products referred to in Article 1 (1) (a):

- (a) the refunds shall be fixed every two weeks.

However, such fixing may be discontinued in accordance with the procedure laid down in Article 41 if it is found that no surplus sugar is available within the Community for export on the basis of world market prices. In that event, no refund shall be granted;

- (b) when the refund is being fixed, the situation on the Community and world markets in sugar, and in particular the following, shall be taken into account:

- the intervention price for white sugar for the Community area with the largest surplus or the intervention price for raw sugar for the Community area which is considered to be representative for the exportation of this type of sugar,
- the costs of transporting sugar from the areas referred to in (a) to ports or other points of export in the Community,
- trade expenses and any transshipment, transport and packaging charges incurred in marketing sugar on the world market,
- quotations or prices recorded for sugar on the world market, and
- the economic aspect of the proposed exports.

3. Where the refund is fixed by tender for the products referred to in Article 1 (1) (a):

- (a) the purpose of the tender shall be to determine the amount of the refund;
- (b) the competent authorities of the Member States shall invite tenders in accordance with an instrument binding in law in all Member States. This instrument shall lay down the terms of the invitation to tender. These terms must guarantee equal access for all persons established within the Community;
- (c) the terms of the invitation to tender shall include a time limit for the submission of tenders. The maximum amount of the refund for the invitation in question shall be fixed in accordance with the procedure laid down in Article 41 within three working days following the expiry of the time limit and in the light of the tenders received. When the maximum amount is being calculated, account shall be taken of the supply situation and prices within the Community, prices and potential outlets on the world market and costs incurred in exporting sugar.

A maximum tonnage may be fixed in accordance with the same procedure;

- (d) where exports can be effected on the basis of a refund which is lower than that which would result from taking the difference between prices within the Community and prices on the world market into account and where exports are for a specific destination, the competent authorities of the Member States may be required to issue a special invitation to tender, the terms of which shall include:

- the possibility of submitting tenders at any time until the tendering procedure is terminated, and
- a maximum amount of the refund, calculated in the light of requirements for the exports in question;

- (e) if the amount of the refund shown in a tender:

- exceeds the maximum fixed, the competent authorities of the Member States shall reject that tender,
- does not exceed the maximum, those authorities shall fix the refund at an amount equal to the refund appearing in the tender in question.

4. The refund on raw sugar:

- (a) shall be fixed for the standard quality defined in Article 1 of Regulation (EEC) No 431/68;
- (b) fixed periodically in accordance with paragraph 2 (a):
- may not exceed 92 % of the refund for white sugar for the same period. However, this limit shall not apply to refunds to be fixed for candy sugar,
 - shall for each exporting operation under consideration be multiplied by a conversion factor which shall be obtained by dividing the yield of the raw sugar exported, calculated in accordance with the provisions of Article 1 of Regulation (EEC) No 431/68, by 92;
- (c) the maximum amount fixed pursuant to paragraph 3 (c) within the framework of a tender may not exceed 92 % of the maximum amount fixed at the same time for white sugar pursuant to that paragraph.

Article 17b

1. The refund on the not denatured products exported in the natural state listed in Article 1 (1) (c), shall be fixed each month, account being taken of:

- (a) the price of molasses used to determine receipts from the sale of molasses for the sugar year in question pursuant to Article 4 (2);
- (b) prices and potential outlets for molasses on the Community market;
- (c) quotations or prices recorded for molasses on the world market; and
- (d) the economic aspect of the proposed exports.

However, such fixing may be discontinued in accordance with the procedure laid down in Article 41 if it is found that no surplus molasses is available within the Community for export on the basis of world market prices. In that event, no refund shall be granted.

2. In special circumstances the amount of the refund may be fixed by tender for specific quantities and specific areas of the Community. The purpose of the tender shall be to determine the amount of the refund.

The competent authorities of the Member States concerned shall invite tenders on the basis of an authorization laying down the terms of the invitation to tender. These terms must guarantee equal access for all persons established within the Community.

Article 17c

1. The basic amount of the refund shall be fixed each month for the not denatured products exported in the natural state listed in Article 1 (1) (d).

However, such periodic fixing may be discontinued in accordance with the procedure laid down in Article 41 if the periodic fixing of the refund on white sugar not further processed, is suspended. In this event, no refund shall be granted.

2. The basic amount of the refund on the products referred to in paragraph 1, with the exception of sorbose, shall be equal to one-hundredth of an amount arrived at by taking account of:

- (a) the difference between the intervention price for white sugar for the Community area with the largest surplus for the month for which the basic amount is fixed, and the quotations or prices for white sugar recorded on the world market;
- (b) the need to establish a balance between:
 - the use of Community basic products in the manufacture of processed goods for export to third countries, and
 - the use of third country products brought in under inward processing arrangements.

3. In the case of sorbose, the basic amount of the refund shall be equal to the basic amount of the refund less one-hundredth of the production refund valid pursuant to Regulation (EEC) No 1010/86 for the products listed in Annex I to that Regulation.

4. The application of the basic amount of the refund may be limited to some of the products listed in Article 1 (1) (d).

Article 18

1. To the extent necessary for the proper working of the common organization of the markets in the sugar sector, the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, may prohibit in whole or in part the use of inward processing arrangements:

- in respect of products listed in Article 1 (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. By way of derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by inward or outward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within a week following receipt of the request.

3. Measures decided on by the Commission may be referred to the Council by any Member State within a week of the day on which they were notified. The Council acting by a qualified majority, may confirm amend or repeal the Commission decision. If the Council has not acted within three months, the Commission decision shall be deemed to have been repealed.

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 intervention price plus an amount equal to the sum of 10 % of the intervention price and the storage levy applicable during the marketing year concerned.

The export levy may be determined by tender. Except in the case of tendering, the levy to be charged shall be that applicable on the day of export.

2. Where the cif price of white or raw sugar is greater than the intervention price plus an amount equal to the sum of 10 % of the intervention price and the storage levy applicable during the marketing year concerned, the Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, may decide to grant an import subsidy for the product in question.

Where it is established that:

- (a) supplies to the Community or;
- (b) supplies to a major consumption region in the Community;

cannot be ensured from Community availability, the Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall decide to grant the import subsidy and determine the conditions for its application. Those conditions shall relate in particular to the quantity of white or raw sugar to be covered by the subsidy, the duration of the subsidy and, where appropriate, the importing regions.

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

- (a) the cif prices referred to in paragraphs 1 and 2;
- (b) the other arrangements for implementation 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 may be adopted in accordance with the procedure laid down in Article 41.

4. The amounts stemming from the application of this Article shall be fixed by the Commission. However, the export levies determined by tendering shall be fixed in accordance with the procedure laid down in Article 41.

Article 21

1. If, by reason of 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.

The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt the general rules for implementing this paragraph and shall define the cases and limits within which the Member States may take protective measures.

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. 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 shall be amended as follows:

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

'Articles 8, 9, 17 and 20 shall not apply to such sugar and Articles 9, 17 and 20 to such isoglucose and insulin syrup'.

(b) The reference to 'Article 18' in paragraph 2 shall be replaced by a reference to 'Article 20'.

3. Article 35 (1) shall be amended as follows:

(a) Paragraph 1 shall be replaced by the following:

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

(b) In paragraph 2, 'referred to in Article 21 (2)' shall be replaced by 'referred to in Article 19 (2)'.

II. *Council Regulation (EEC) No 431/68 of 9 April 1968 (OJ No L 89, 10. 4. 1968, p. 3).*

Article 2 shall be 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 shall be repealed.

ANNEX V

OILS AND FATS

- I. Council Regulation No 136/66/EEC of 22 September 1966 (OJ No 172, 30. 9. 1966, p. 3025), 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 of any of the products listed in Article 1 (2) (c) or of the products falling within CN codes 0709 90 39, 0711 20 90, 2306 90 19, 1522 00 31, 1522 00 39 shall be subject to presentation of an import licence.

Exports of olive oil from the Community shall be subject to presentation of an export licence.

Exports from the Community of other products listed in Article 1 (2) may be subject to presentation of export licences.

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 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; save 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 38.

Article 2a

Save as otherwise provided for in this Regulation, the rates of duty in the Common Customs Tariff shall apply to the products listed in Article 1 (2).

Article 2b

1. Without prejudice to Article 10 (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, imports of one or more of such products at the rate of duty laid down in Article 10 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional import duty may be imposed shall be those notified by the Community to the World Trade Organization.

The trigger volumes which must be exceeded for an additional import duty to be imposed shall be determined in particular on the bases of Community imports over the three years preceding the year in which the adverse effects referred to in paragraph 1 have occurred or are likely to occur.

3. The import prices to be taken into account for the imposition of an additional import duty shall be determined on the basis of the cif import prices of the shipment concerned.

The cif import prices shall be verified for that purpose on the basis of representative prices for the product concerned on the world market or on the Community import market for the product.

4. 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 shall be applied, in accordance with Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary for application of paragraph 1 in accordance with Article 5 of the said Agreement.

Article 3

1. To the extent necessary to enable the olive oil and colza and rape seed 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. For the allocation of the quantities which may be exported with refunds, a method shall be established which:

- (a) is the best suited to the nature of the product and to the situation on the market in question, enabling the most efficient use possible to be made of the available resources, taking account of the efficiency and structure of Community imports without, however, creating discrimination between large and small operators;
- (b) is the least cumbersome administratively for operators, having regard to management imperatives;
- (c) precludes discrimination between the operators concerned.

3. Refunds shall be the same for the whole Community.

They may vary according to destination where the situation on the world market or the specific requirements of certain markets make this necessary. Where olive oil is concerned, the refund may also be fixed at different levels according to quality and presentation where the situation on the world market or the specific requirements of certain markets make this necessary.

Refunds shall be fixed in accordance with the procedure laid down in Article 38. For olive oil, refunds may be fixed in particular:

- (a) at regular intervals;
- (b) by invitation to tender if the market situation so warrants. For olive oil the invitation to tender may be restricted to certain countries of destination, certain quantities and qualities and presentations.

Except where fixed by invitation to tender, the amount of the refund shall be fixed at least once a month. Where necessary, refunds may be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

4. Refunds for olive oil shall be fixed in the light of:

- (a) the situation and likely trends:
 - on the Community market, with respect to olive oil prices and supplies,
 - on the world market, with respect to olive oil prices;
- (b) the limits resulting from the agreements concluded in accordance with Article 228 of the Treaty.

However, where the situation on the world market does not allow the most favourable prices for olive oil to be determined, account may be taken of the price on that market of the main competing vegetable oils and of the gap recorded over a representative period between that price and the price for olive oil.

The amount of the refund may not exceed the difference between the price of olive oil in the Community and that on the world market, adjusted if appropriate to take account of the costs of exporting the products to that market.

5. Refunds for colza and rape seed shall be fixed in the light of:
- (a) the prices obtaining in the Community on the different representative markets for processing and export and the level of market prices in the Community for colza and rape seed and the likely trends in these prices;
 - (b) the situation in the Community regarding the supply of these products in relation to demand;
 - (c) the most favourable prices recorded on the various markets of the importing third countries;
 - (d) shipment costs on the world market;
 - (e) the economic aspects of the exports proposed;
 - (f) the limits arising out of the agreements concluded pursuant to Article 228 of the Treaty.
6. Refunds shall be granted only on request and on presentation of the relevant export licence.
7. The refund applicable to exports of olive oil and colza and rape seed 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:
- (a) for the destination indicated on the licence, or, if appropriate;
 - (b) for the actual destination, if it differs from that indicated on the licence. In that case the amount applicable may not exceed the amount applicable to the destination indicated on the licence.
- Appropriate measures may be taken to preclude abuse of the flexibility provided for in this paragraph.
8. Paragraphs 6 and 7 may be waived in the case of olive oil and colza and rape seed on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 38.
9. Compliance with the limits on volumes arising from agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export certificates issued for the reference periods provided for therein and applicable to the products concerned. With regard to compliance with the obligations arising under the Agreement on Agriculture, the ending of a reference period shall not affect the validity of export licences.
10. Detailed rules for the application of this Article, including provisions concerning redistribution of unallocated or unused exportable quantities, 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 in provisions adopted pursuant thereto, 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 imports or exports, the Community market in one or more of the products listed in Article 1 (2) is affected by or its 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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt general rules for the implementation of this paragraph.

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. 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 criteria to be established under the procedure laid down in Article 38, may be considered as substantial, a decision shall 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 shall be deleted.

4. Article 20 shall be 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. For olive oil which has not undergone a refining process, the amount of the levy may not exceed the cif price for olive oil less the representative market price fixed pursuant to Articles 4 and 6. The cif price shall be determined on the basis of the most favourable purchasing possibilities on the world market, the prices being adjusted in the light of any differences in relation to the denomination or quality of the products concerned.

For olive oil which has undergone a refining process, the amount of the levy may not exceed the cif price referred to in the first subparagraph less the representative market price, the amount of the difference being weighted, as appropriate, by a weighting of 111 representing the quantity of virgin olive oil needed to produce 100 kg of refined olive oil or by a weighting of 149 representing the quantity of raw olive-residue oil needed to produce 100 kg of refined olive-residue oil.

3. The export levy shall be fixed by the Commission.

4. The detailed 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

1. Olive oil used for the manufacture of preserved fish falling within CN code 1604, with the exception of subheading 1604 30, preserved crustaceans and molluscs falling within CN code 1605 and preserved vegetables falling within CN codes 2001, 2002, 2003, 2004 and 2005, shall benefit from a system of production refunds.

2. The amount of the refund shall be fixed on the basis of the difference between the prices obtaining on the world market and on the Community market. To that end the following shall be taken into account:

- the import charge applicable to olive oil falling within subheading CN 1509 90 00 during a reference period;
- the factors taken into consideration when fixing the export refunds valid for olive oil falling within subheading CN 1509 90 00 during a reference period.

However, where the olive oil used in the manufacture of the preserves was produced in the Community, the refund shall be equal to the amount referred to in the previous subparagraph, plus an amount equal to the consumption aid applicable on the day on which the refund was applied.

3. The refund previously fixed shall be maintained where the difference between that refund and the new one does not exceed an amount to be determined.

4. In the event of a significant change in the representative market price at the beginning of the period of validity of the refund, account may also be taken, when fixing the refund, of the difference between the new representative price and that previously valid.

5. Entitlement to the refund shall be acquired at the time the oil is used in the manufacture of preserves. The Member States shall ensure, by means of monitoring arrangements, that the refund is granted solely for olive oil used for the manufacture of the preserves referred to in paragraph 1.

6. The production refund shall be fixed every two months by the Commission.

7. The detailed rules for the application of this Article, and in particular those concerning the monitoring arrangements referred to in paragraph 5, shall be adopted in accordance with the procedure laid down in Article 38.'

6. Articles 20b and 28 shall be deleted.

II. *Regulation (EEC) No 142/67 of 21 June 1967 (OJ No L 125, 26. 6. 1967, p. 2461), 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), as last amended by Regulation (EEC) No 2077/71 (OJ No L 220, 30. 9. 1972, 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.

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 in provisions adopted pursuant thereto, 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. This Article shall apply without prejudice to more restrictive provisions adopted by Member States.

2. Raw true hemp falling within CN code 5302 10 00 and coming from third countries may be imported only if the product meets the conditions laid down in Article 4 (1) and if evidence is produced that its tetrahydrocannabinol content is no higher than that referred to in Article 4 (4).

3. Only seed or hemp varieties falling with CN code 1207 99 10 coming from third countries which offer the guarantees provided for in Article 4 (1) and which are included in the list to be drawn up may be imported. That list shall be drawn up in accordance with the conditions to be laid down in accordance with Article 4 (4).

4. Community imports of the products specified in paragraphs 2 and 3 shall be subject to checks to determine whether the terms of this Article have been complied with.

Where the said terms have been complied with, the importing Member State shall issue a certificate indicating such compliance.

5. Only the following shall be authorized to import hemp seed falling within CN code 1207 99 91:

- research organizations and institutes,
- natural or legal persons who can provide proof of a sufficient level of activity in the sector concerned.

6. All imports, by persons referred to in the second indent of paragraph 5 of seeds referred to in that paragraph shall be subject to a system of control which shall apply until the seeds are used for a purpose other than sowing.

7. Member States shall communicate to the Commission the provisions adopted by them to ensure the control provided for in paragraph 6 before applying them. Where these provisions do not enable such control to be carried out effectively, the amendments which the Member State concerned is to make to them shall be decided in accordance with the procedure laid down in Article 12.

8. Detailed rules for the implementation of this paragraph shall be adopted in accordance with the procedure provided for in Article 12.

Article 8a

1. If, by reason of 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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt general rules for the implementation of the paragraph and define the cases and limits in which Member States may take precautionary measures.

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 of 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. 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 1430/82 of 18 May 1982 (OJ No L 162, 12. 6. 1982, p. 27), as last amended by Regulation (EEC) No L 2058/84 (OJ No L 191, 19. 7. 1984, p. 5).*

Article 2 is deleted.

- III. *Council Regulation (EEC) No 2059/84 of 16 July 1984 (OJ No L 191, 19. 7. 1984, p. 6)*

Articles 2, 3 and 4 are deleted.

- IV. *Council Regulation (EEC) No 1054/72 of 19 May 1972 (OJ No L 120, 25. 5. 1972, p. 1)*

The above Regulation is repealed.

ANNEX VII

MILK PRODUCTS

I. Council Regulation (EEC) No 804/68 of 27 June 1968 (OJ No L 148, 27. 6. 1968, p. 13), as last amended by Regulation (EC) No 2807/94 (OJ No L 298, 19. 11. 1994, p. 1).

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; except 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 carried out only 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 export licences are required;
- (b) the term of validity of the licences; and
- (c) the other detailed rules for the application of this Article.

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 Article 10 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional duty may be imposed shall be those which are forwarded by the Community to the World Trade Organization.

The trigger volumes to be exceeded in order to have the additional import duty imposed shall be determined particularly on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment under consideration.

Cif import prices shall be checked to that end against the representative prices for the product on the world market or on the Community import market for that product.

4. 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 shall be applied under the terms of Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary to ensure application of paragraph 1 in accordance with Article 5 of the Agreement on Agriculture.

Article 16

1. Tariff quotas for the products listed in Article 1 resulting from agreements concluded in the framework of the Uruguay Round of multilateral trade negotiations shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 30.

2. Quotas may be administered by applying one of the following methods or a combination of them:

- method based on the chronological order of the lodging of applications (using the 'first come, first served' principle),
- method of distribution in proportion to the quantities requested when the applications were lodged (using the 'simultaneous examination' method),
- method based on taking traditional trade patterns into account (using the 'traditional/new arrivals' method).

Other appropriate methods may be adopted.

They must avoid any discrimination between the operators concerned.

3. The method of administration adopted shall, where appropriate, give due weight to the supply requirements on the Community market and the need to safeguard the equilibrium of that market, whilst at the same time possibly drawing on methods which may have been applied in the past to quotas corresponding to those referred to in paragraph 1, without prejudice to the rights resulting from agreements concluded in the framework of the Uruguay Round negotiations.

4. The detailed rules referred to in paragraph 1 shall provide for annual quotas, suitably phased over the year, if necessary, to be opened, determine the administrative method to be applied and, where appropriate, include provisions regarding:

- (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 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. The method to be adopted for the allocation of the quantities which may be exported with a refund shall be the method which:

- (a) is most suited to the nature of the product and the situation on the market in question, allowing the most efficient possible use of the resources available, account being taken of the efficiency and structure of Community exports without, however, creating discrimination between large and small operators;
- (b) is least cumbersome administratively for operators, account being taken of administration requirements;
- (c) prevents any discrimination between the operators concerned.

3. Refunds shall be the same for the whole Community.

They may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.

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 for products for which that procedure was provided for in the past.

Except where fixed by tender, the list of products on which an export refund is granted and the amount of such refund shall be fixed at least once every four weeks. The amount of the refund may, however, remain at the same level for more than four weeks and may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative. However, for products listed in Article 1 and exported in the form of goods listed in the Annex, the refund may be fixed according to another timetable determined in accordance with the procedure referred to in Article 16 of Regulation (EC) No 3448/93.

4. The following shall be taken into account when refunds are being fixed for the products listed in Article 1 and exported without further processing:

- (a) the existing situation and future trends with regard to:
 - prices and availabilities for milk and milk products on the Community market;
 - prices of milk and milk products on the world market;
- (b) the most favourable marketing costs and transport costs from Community markets to Community ports or other places of export together with forwarding costs to the countries of destination; demand on the Community market;
- (c) the objectives of the common organization of the markets in milk and milk products, which are to ensure a balanced situation and natural development regarding prices and trade on these markets;
- (d) limits resulting from agreements concluded in accordance with Article 228 of the Treaty;
- (e) the importance of avoiding disturbances on the Community market;
- (f) the economic aspect of the proposed exports.

Account shall also 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.

5. For the products referred to in Article 1 and exported as such:

- (a) the prices in the Community referred to in paragraph 1 shall be determined taking account of the prices prevailing which prove to be the most favourable as regards export;
- (b) the prices on the world market referred to in paragraph 1 shall be determined taking account in particular of:
 - (a) the prices on third-country markets;
 - (b) the most favourable prices in third countries of destination for third-country imports;
 - (c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries;
 - (d) free-at-frontier offer prices.

6. Refunds shall be granted for the products referred to in paragraph 1 only on application and on presentation of the relevant export licence.

7. The refund applicable to exports of products listed in Article 1 and exported as such 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:

- (a) the destination indicated on the licence, or where appropriate
- (b) the actual destination if it differs from the destination indicated on the licence. In that case, the amount applicable may not exceed the amount applicable or the destination indicated on the licence.

Appropriate measures may be taken to prevent abuse of the flexibility provided for in this paragraph.

8. Paragraphs 6 and 7 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.

9. Paragraphs 6 and 7 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.

10. The refund shall be paid upon proof that:

- the products are of Community origin, except where paragraph 11 applies,
- the products have been exported from the Community, and
- in the case of a differentiated refund, the products have reached the destination indicated on the licence or another destination for which a refund was fixed, without prejudice to paragraph 7 (b). Exceptions may be made to this rule in accordance with the procedure laid down in Article 30, provided conditions are laid down which offer equivalent guarantees.

11. No export refund shall be granted on products which are imported from third countries and re-exported to third countries, unless the exporter proves that:

- the product to be exported and the product previously imported are one and the same, and
- all import duties were collected on importation.

In such cases the refund on each product shall be equal to the levy collected on importation where that levy is equal to or lower than the refund applicable; the refund shall be equal to the refund applicable where the levy collected on importation is higher than this refund.

12. As regards the products referred to in Article 1 and exported in the form of the goods listed in the Annex, paragraphs 10 and 11 shall apply only to goods falling within the following CN codes:

- 1806 90 60 to 1806 90 90 (certain products containing cocoa),
- 1901 (certain food preparations of flour, etc.),
- 2106 90 99 (certain food preparations not elsewhere specified),

having a high milk-product content.

13. Compliance with the limits on volumes arising from agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export certificates issued for the reference periods provided for therein and applicable to the products concerned. With regard to compliance with the obligations arising under the Agreement of Agriculture, the ending of a reference period shall not affect the validity of export licences.

14. Detailed rules for the application of this Article, including the arrangements for redistributing unallocated or unused exportable quantities, shall be adopted in accordance with the procedure laid down in Article 30. However, the detailed rules on the application of paragraphs 8, 10, 11 and 12 for products referred to in Article 1 and exported in the form of goods listed in the Annex shall be adopted in accordance with the procedure laid down in Article 16 of Regulation (EEC) No 3448/93.

Article 18

1. To the extent necessary for the proper working of the common organization of the market in milk and milk products, the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, may, in special cases, 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.
2. By way of derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by the inward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within a week following receipt of the request.
3. Measures decided on by the Commission may be referred to the Council by any Member State within a week of the day on which they were notified. The Council, acting by a qualified majority, may confirm, amend or repeal the Commission decision. If the Council has not acted within three months, the Commission decision shall be deemed to have been repealed.

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 in provisions adopted pursuant thereto, 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, for one or more of the products listed in Article 1, the free-at-frontier price significantly exceeds the level of Community prices and where that situation is likely to continue, thereby disturbing or threatening to disturb the Community market, the measures provided for in paragraph 5 may be taken.
2. A significant excess within the meaning of paragraph 1 shall exist when the free-at-frontier price exceeds the intervention price fixed for the product in question, increased by 15 %, or, as regards products for which there is no intervention price, a price derived from the intervention price, to be determined in accordance with the procedure laid down in Article 30, taking account of the nature and composition of the product in question.
3. The situation in which the free-at-frontier price significantly exceeds the level of prices is likely to continue when an imbalance exists between supply and demand and that imbalance is likely to continue, in view of foreseeable trends in production and market prices.
4. The Community market is disturbed or under threat of disturbance by the situation referred to in this Article when the high level of prices in international trade:
 - hinders imports of milk products into the Community, or
 - causes milk products to leave the Community,so that security of supply is no longer ensured or threatens to be no longer ensured in the Community.
5. Where the conditions listed in the previous paragraphs are met, total or partial suspension of the levies and/or collection of export charges may be decided on in accordance with the procedure laid down in Article 30. Detailed rules for the application of this Article shall be adopted in accordance with the same procedure.

Article 21

1. If, by reason of 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.

The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt general rules for the application of this paragraph and shall define the cases in which and the limits within which Member States may take protective measures.

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. 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.

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; except 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 carried out only 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 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 products listed in Article 1, imports of one or more of such products at the rate of duty laid down in Article 10 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below on which an additional duty may be imposed shall be those which are forwarded by the Community to the World Trade Organization.

The trigger volumes to be exceeded in order to have the additional import duty imposed shall be determined particularly on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment under consideration.

Cif import prices shall be checked to that end against the representative prices for the product on the world market or on the Community import market for that product.

4. 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 under the terms of Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary to ensure application of paragraph 1 in accordance with Article 5 of the Agreement on Agriculture.

Article 12

1. Tariff quotas for the products listed in Article 1 resulting from agreements concluded in the framework of the Uruguay Round of multilateral trade negotiations shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 27.

With regard to the import quota of 50 000 tonnes of frozen meat coming under CN codes 0202 20 30, 0202 30 and 0206 29 91 and intended for processing, the Commission shall submit a report on the balance before December each year. The Council, acting on a proposal from the Commission by a qualified majority, may lay down that all or part of the quota shall cover equivalent quantities of quality meat, applying a conversion rate of 4,375.

2. Quotas shall be administered by applying one of the following methods or a combination of them:

- method based on chronological order of the lodgement of applications ('first come, first served' principle),
- method of distribution in proportion to the quantities requested when the applications were lodged (using the 'simultaneous examination' method),
- method based on taking traditional trade patterns into account (using the 'traditional/new arrivals' method).

Other appropriate methods may be adopted.

They must avoid any discrimination between the operators concerned.

3. The method of administration adopted shall, where appropriate, give due weight to the supply requirements of the Community market and the need to safeguard the equilibrium of that market, whilst at the same time possibly drawing on methods which may have been applied in the past to quotas corresponding to those referred to in paragraph 1, without prejudice to the rights resulting from agreements concluded as part of the Uruguay Round trade negotiations.

4. The detailed rules referred to in paragraph 1 shall provide for annual quotas, suitably phased over the year and, if necessary, shall determine the administrative method to be used and, where appropriate, shall include:

- (a) guarantees covering the nature, provenance and origin of the product, and, where appropriate, the maintenance of traditional trade patterns;
- (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 prices or 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. The method to be adopted for the allocation of the quantities which may be exported with a refund shall be the method which:

- (a) is most suited to the nature of the product and the situation on the market in question, allowing the most efficient possible use of the resources available, account being taken of the efficiency and structure of Community exports without, however, creating discrimination between large and small operators;
- (b) is least cumbersome administratively for operators, account being taken of administration requirements;
- (c) prevents any discrimination between the operators concerned.

3. Refunds shall be the same for the whole Community. They may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary. Refunds shall be fixed in accordance with the procedure laid down in Article 27. Refunds may be fixed:

- (a) at regular intervals;
- (b) in addition and for limited quantities, by invitation to tender for products for which that procedure seems appropriate.

Except where fixed by tender, the list of products on which an export refund is granted and the amount of such refund shall be fixed at least once every three months. The amount of the refund may, however, remain at the same level for more than three months and may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

4. The following shall be taken into account when refunds are being fixed:

- (a) the existing situation and the future trend with regard to:
 - prices and availabilities of beef and veal sector products on the Community market;
 - prices for beef and veal sector products on the world market;
- (b) the aims of the common organization of the market in beef and veal, which are to ensure equilibrium and the natural development of prices and trade on this market;
- (c) the limits resulting from agreements concluded in accordance with Article 228 of the Treaty;
- (d) the need to avoid disturbances on the Community market;
- (e) the economic aspect of the proposed exports.

Account shall also be taken in particular of the need to establish a balance between the use of Community basic products in the manufacture of processed goods exported to third countries and the use of products from these countries admitted to inward processing arrangements.

In addition, in calculating the amount of the refund for products listed in sections (a), (c) and (d) of the Annex, and in section (b) under subheadings 0202 20 30, 0202 20 50, 0202 20 90, 0202 30 and 0206 29 91, the flat-rate coefficients set for each of the products concerned may be taken into account.

5. When prices within the Community listed in paragraph 1 are being determined the following shall be taken into account:

- prices ruling on the representative Community markets,
- prices ruling at export.

When prices in international trade listed in paragraph 1 are being determined account shall be taken of:

- prices ruling on third-country markets,
- the most favourable prices in third countries of destination for third-country imports,

- producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries,
- free-at-Community-frontier offer prices.

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

7. 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:

- (a) for the destination indicated on the licence; or
- (b) for the actual destination if it differs from the destination indicated on the licence. In that case, the amount applicable may not exceed the amount applicable for the destination indicated on the licence.

Appropriate measures may be taken to prevent abuse of the flexibility provided for in this paragraph.

8. Paragraphs 63 and 47 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.

9. The refund shall be paid upon proof that:

- the products are of Community origin, except where paragraph 10 applies,
- the products have been exported from the Community, and
- in the case of a differentiated refund the products have reached the destination indicated on the licence or another destination for which the refund was fixed, without prejudice to paragraph 3 (b). Exceptions may be made to this rule in accordance with the procedure laid down in Article 27, provided conditions are laid down which offer equivalent guarantees.

10. In the absence of a derogation granted in accordance with the procedure laid down in Article 27, no export refund shall be granted on products which are imported from third countries and re-exported to third countries.

11. Observance of the volume limits resulting from the agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export licences issued for the reference periods provided for therein which apply to the products concerned. With regard to compliance with the obligations arising in the framework of the Uruguay Round multilateral trade negotiations, the ending of a reference period shall not affect the validity of export licences.

12. Detailed rules for the application of this Article, including provisions on the redistribution of exportable quantities which have not been allocated or utilized, shall be adopted in accordance with the procedure laid down in Article 27.

Article 14

1. To the extent necessary for the proper working of the common organization of the market in beef and veal, the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, may, in special cases, prohibit in whole or in part the use of inward or outward processing arrangements in respect of products listed in Article 1.

2. However, by way of derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by the inward or outward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within a week following receipt of the request.

3. Measures decided on by the Commission may be referred to the Council by any Member State within a week of the day on which they were notified. The Council, acting by a qualified majority, may confirm, amend or repeal the Commission decision. If the Council has not acted within three months, the Commission decision shall be deemed to have been repealed.

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 into the Common Customs tariff.
2. Save as otherwise provided for in this Regulation or in provisions adopted pursuant thereto, 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 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.

The Council, acting on a proposal from the Commission, in accordance with the voting procedure laid down in Article 43 of the Treaty, shall adopt general rules for the application of this paragraph and shall define the circumstances and limits within which Member States may adopt protective measures.

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. 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 (2) is replaced by the following:

'2. The Council, acting on a Commission proposal in accordance with the voting procedure laid down in Article 43 of the Treaty, shall adopt general rules for the application of this Article.'

- 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 1892/87; 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.

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; except 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 carried out only partially, within that period.

2. The list of products for which export licences are required, 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 Article 10 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below on which an additional duty may be imposed shall be those which are forwarded by the Community to the World Trade Organization.

The trigger volumes to be exceeded in order to have the additional import duty imposed shall be determined particularly on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment under consideration.

Cif import prices shall be checked to that end against the representative prices for the product on the world market or on the Community import market for that product.

4. 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 under the terms of Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary to ensure application of paragraph 1 in accordance with Article 5 of the Agreement on Agriculture.

Article 12

1. Tariff quotas for the products listed in Article 1 resulting from agreements concluded in the framework of the Uruguay Round of multilateral trade negotiations shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 30.

2. Quotas shall be administered by applying one of the following methods or a combination of them:

- method based on chronological order of the lodgement of applications ('first-come, first served' principle),
- method of distribution in proportion to the quantities requested when the applications were lodged (using the 'simultaneous examination' method),
- method based on taking traditional trade patterns into account (using the 'traditional/new arrivals' method).

Other appropriate methods may be adopted.

They must avoid any discrimination between the operators concerned.

3. The methods of administration adopted shall, where appropriate, give due weight to the supply requirements of the Community market and the need to safeguard the equilibrium of that market, whilst at the same time possibly drawing on methods which may have been applied in the past to quotas corresponding to those referred to in paragraph 1, without prejudice to the rights resulting from agreements concluded in the framework of the Uruguay Round negotiations.

4. The detailed rules referred to in paragraph 1 shall provide for annual quotas, suitably phased over the year, if necessary, shall determine the administrative method to be used and, where appropriate, shall include:

- (a) guarantees covering the nature, provenance and origin of the product and, where appropriate, the maintenance of traditional trade patterns;
- (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 milk and milk products, the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, may, in special cases, prohibit in whole or in part the use of inward processing arrangements in respect of products listed in Article 1.

2. However, by way of derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by the inward or outward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within a week following receipt of the request.

3. Measures decided on by the Commission may be referred to the Council by any Member State within a week of the day on which they were notified. The Council, acting by a qualified majority, may confirm, amend or repeal the Commission decision. If the Council has not acted within three months, the Commission decision shall be deemed to have been repealed.

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 into the Common Customs Tariff.

2. Save as otherwise provided for in this Regulation or in provisions adopted pursuant thereto, 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.

The Council, acting on a Commission proposal in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt general rules for the application of this paragraph and shall define the circumstances and limits within which Member States may adopt protective measures.

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. 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).

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 carcasses, buying-in prices shall be derived from the buying-in price for pig carcasses on the basis of the ratio existing between the commercial value of these products to the commercial value of pig carcasses.’
 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 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; except 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 carried out only 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

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, imports of one or more of such products at the rate of duty laid down in Article 10 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional duty may be imposed shall be those which are forwarded by the Community to the World Trade Organization.

The trigger volumes to be exceeded in order to have the additional import duty imposed shall be determined particularly on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

Cif import prices shall be checked to that end, against the representative prices for the product on the world market or on Community import market for that product.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment under consideration.

4. 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 shall be applied under the terms of Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary to ensure application of paragraph 1 in accordance with Article 5 of that Agreement.

Article 11

1. Tariff quotas for the products listed in Article 1, resulting from agreements concluded in the framework of the Uruguay Round of multilateral trade negotiations, shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 24.

2. Quotas shall be administered by applying one of the following methods or a combination of them:

- method based on the chronological order of the lodging of applications ('first come, first served' principle),
- method of distribution in proportion to the quantities requested when the applications were lodged (using the 'simultaneous examination' method),
- method based on taking traditional trade patterns into account (using the 'traditional/new arrivals' method).

Other appropriate methods may be adopted.

They must avoid any discrimination between the operators concerned.

3. The method of administration adopted shall, where appropriate, give due weight to the supply requirements of the Community market and the need to safeguard the equilibrium of that market, whilst at the same time possibly drawing on methods which may have been applied in the past to quotas corresponding to those referred to in paragraph 1, without prejudice to the rights resulting from agreements concluded in the framework of the Uruguay Round negotiations.

4. The detailed rules referred to in paragraph 1 shall provide for annual quotas, suitably phased over the year, if necessary 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

1. Where prices on the Community market rise significantly and where that situation is likely to continue, thereby disturbing or threatening to disturb that market, the measure provided for in paragraph 4 may be taken.

2. A significant rise in prices within the meaning of paragraph 1 exists when, following a general price rise in all Community regions, the average price of pig carcasses on the Community representative markets given in the Annex to Regulation (EEC) No 2123/89 is at a higher level than the average of those prices established for the previous period of three marketing years, from 1 July to 30 June, adjusted if necessary on the basis of cyclical trends in the prices in question, with the addition of the difference between that average and the average of basic prices in force during the period under consideration, taking into account any amendment of the basic price by comparison with the price emerging from the average for the said period.

3. The significant rise in prices is likely to continue within the meaning of paragraph 1 when an imbalance between pigmeat supply and demand exists and is likely to continue, particularly in view of:

- (a) cyclical trends in the number of sows covered and in the prices for piglets;
- (b) surveys and estimates carried out pursuant to Directive 93/23/EEC of 1 June 1993 on the statistical surveys to be carried out on pig production;
- (c) foreseeable trends in market prices for pig carcasses.

4. Where the conditions listed in the previous paragraphs are met, total or partial suspension of import duties may be decided on in accordance with the procedure laid down in Article 24. Detailed rules for the application of this Article shall, if necessary, be adopted in accordance with the same procedure.

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. The method to be adopted for the allocation of the quantities which may be exported with a refund shall be the method which:

- (a) is most suited to the nature of the product and the situation on the market in question, allowing the most efficient possible use of the resources available, account being taken of the efficiency and structure of Community exports without, however, creating discrimination between large and small operators;
- (b) is least cumbersome administratively for operators, account being taken of administration requirements;
- (c) avoids any discrimination between the operators concerned.

3. Refunds shall be the same for the whole Community. They may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.

Refunds shall be fixed in accordance with the procedure laid down in Article 24. Refunds shall be fixed at regular intervals, without recourse, however, to the tendering procedure.

The list of products on which an export refund is granted and the amount of such refund shall be fixed at least once every three months. The amount of the refund may, however, remain at the same level for more than three months and may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

4. The following shall be taken into account when refunds are being fixed:

- (a) the existing situation and the future trend with regard to:
 - prices and availabilities of pigmeat products on the Community market,
 - prices for pigmeat products on the world market;
- (b) the need to avoid disturbances likely to cause a prolonged imbalance between supply and demand on the Community market;

- (c) the economic aspect of the proposed exports;
- (d) the limits resulting from agreements concluded in accordance with Article 228 of the Treaty.

When the refund is being fixed, particular account shall also be taken of the need to establish a balance between the use of Community basic products in the manufacture of processed goods for export to third countries, and the use of third-country products brought in under processing arrangements.

When the refund on the products listed in Article 1 is being calculated, account shall be taken of the difference between prices within the Community and prices on the world market for the quantity of feed grain required for the production in the Community of one kilogram of pigmeat, the coefficients referred to in Article 5 (2) also being taken into account in the case of products other than pig carcasses.

5. The Community price referred to in paragraph 1 shall be established on the following basis:

- (a) prices obtaining at the various stages of marketing in the Community;
- (b) prices obtaining for exports.

The world market prices referred to in paragraph 1 shall be established on the following basis:

- (a) prices obtaining on third-country markets;
- (b) the most favourable prices in third countries of destination for third-country imports;
- (c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries; and
- (d) free-at-Community-frontier offer prices.

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

7. 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:

- (a) for the destination indicated on the licence, or, where appropriate;
- (b) for the actual destination if it differs from the destination indicated on the licence. In that case, the amount applicable may not exceed the amount applicable for the destination indicated on the licence.

Appropriate measures may be taken to prevent abuse of the flexibility provided for in this paragraph.

8. Paragraphs 6 and 7 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 24.

9. The refund shall be paid upon proof:

- that the products have been exported from the Community,
- that the products are of Community origin, except where paragraph 10 applies, and
- that in the case of a differentiated refund the products have reached the destination indicated on the licence or another destination for which the refund was fixed, without prejudice to paragraph 7 (b). Exceptions may be made to this rule in accordance with the procedure laid down in Article 24, provided conditions are laid down which offer equivalent guarantees.

10. No export refund shall be granted on products listed in Article 1 which are imported from third countries and re-exported to third countries, unless the exporter proves:

- that the product to be exported and the product previously imported are one and the same, and
- that all import duties were collected on importation.

In such cases the refund on each product shall be equal to the duty collected on importation where that duty is equal to or lower than the refund applicable; the refund shall be equal to the refund applicable where the duty collected on importation is higher than that refund.

11. Compliance with the limits on volumes arising from agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export certificates issued for the reference periods provided for therein and applicable to the products concerned. With regard to compliance with the obligations arising under the Agreement on Agriculture, the ending of a reference period shall not affect the validity of export licences.

12. Detailed rules for the application of this Article, including the arrangements for redistributing unallocated or unused exportable quantities, 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 Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, may, in special cases, 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.

2. In derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by the inward or outward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within a week following receipt of the request.

3. Measures decided on by the Commission may be referred to the Council by any Member State within a week of the day on which they were notified. The Council, acting by a qualified majority, may confirm, amend or repeal the Commission decision. If the Council has not acted within three months, the Commission decision shall be deemed to have been repealed.

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 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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for the application of this paragraph and define the cases in which and the limits within which Member States may take protective measures.

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. 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 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; except 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 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, imports of one or more of such products at the rate of duty laid down in Article 10 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional import duty may be imposed shall be those notified by the Community to the World Trade Organization.

The trigger volumes which must be exceeded for an additional import duty to be imposed shall be determined specifically on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment in question.

Cif import prices shall be checked to that end against the representative prices for the product on the world market or on the Community import market for that product.

4. 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 shall be applied under the terms of Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary to ensure application of paragraph 1 in accordance with Article 5 of that Agreement.

Article 6

1. Tariff quotas for the products listed in Article 1 (1) resulting from agreements concluded in the Uruguay Round of multilateral trade negotiations shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 17.

2. Quotas shall be administered by applying one of the following methods or a combination of them:

- method based on the chronological order of the lodging of applications ('first come, first served' principle),
- method of distribution in proportion to the quantities requested when the applications were lodged (using the 'simultaneous examination' method),
- method based on taking traditional trade patterns into account (using the 'traditional/new arrivals' method).

Other appropriate methods may be adopted.

They must avoid any discrimination between the operators concerned.

3. The method of administration adopted shall, where appropriate, give due weight to the supply requirements of the Community market and the need to safeguard the equilibrium of that market, whilst at the same time possibly drawing on methods which may have been applied in the past to quotas corresponding to those referred to in paragraph 1, without prejudice to the rights resulting from agreements concluded in the framework of the Uruguay Round negotiations.

4. The detailed rules referred to in paragraph 1 shall provide for annual quotas, suitably phased over the year if necessary, 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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for application of this Article.

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. The method to be adopted for the allocation of the quantities which may be exported with a refund shall be the method which:

- (a) is most suited to the nature of the product and the situation on the market in question, allowing the most efficient possible use of the resources available, account being taken of the efficiency and structure of Community exports without, however, creating discrimination between large and small operators;
- (b) is least cumbersome administratively for operators, account being taken of administration requirements;
- (c) prevents any discrimination between the operators concerned.

3. Refunds shall be the same for the whole Community.

They may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.

Refunds shall be fixed in accordance with the procedure laid down in Article 17. Refunds shall be fixed at regular intervals, without recourse, however, to the tendering procedure.

The list of products on which an export refund is granted and the amount of such refund shall be fixed at least once every three months. The amount of the refund may, however, remain at the same level for more than three months and may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

4. The following shall be taken into account when refunds are being fixed:

- (a) the existing situation and the future trend with regard to:
 - prices and availabilities of poultrymeat products on the Community market,
 - prices for poultrymeat products on the world market;
- (b) the importance of avoiding disturbances likely to bring about a prolonged imbalance between supply and demand on the Community market;
- (c) the economic aspect of the proposed exports;
- (d) limits arising from agreements concluded in accordance with Article 228 of the Treaty.

When the amount of the refund is set, account shall also 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.

In addition, for the purpose of calculating the refund for the products referred to in Article 1 (1), account shall be taken of the difference between Community and world market prices for the amount of feed-grains required to produce one kilogram of slaughtered poultry in the Community, allowing, in the case of products other than slaughtered poultry, for the differences in the weight of the different products and/or the average of their commercial values.

5. The Community price referred to in paragraph 1 shall be established on the following basis:

- (a) prices obtaining at the various stages of marketing in the Community;
- (b) prices obtaining for exports.

The world market prices referred to in paragraph 1 shall be established on the following basis:

- (a) the prices on third-country markets;
- (b) the most favourable prices in third countries of destination for third-country imports;
- (c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries;
- (d) free-at-Community-frontier offer prices.

6. Refunds shall be granted only on application and on presentation of the relevant export licence, except in this case of day-old chicks for which a licence may be granted *ex-post*.

7. 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:

- (a) for the destination indicated on the licence or, where appropriate;
- (b) for the actual destination if it differs from the destination indicated on the licence. In that case, the amount applicable may not exceed the amount applicable for the destination indicated on the licence.

Appropriate measures may be taken to prevent abuse of the flexibility provided for in this paragraph.

8. Paragraphs 6 and 7 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.

9. The refund shall be paid upon proof:

- that the products have been exported from the Community,
- that the products are of Community origin, except where paragraph 10 applies, and
- that, in the case of a differentiated refund, the products have reached the destination indicated on the licence or another destination for which a refund was fixed, without prejudice to paragraph 7 (b). Exceptions may be made to this rule in accordance with the procedure laid down in Article 17, provided conditions are laid down which offer equivalent guarantees.

10. No export refund shall be granted on products listed in Article 1 (1) which are imported from third countries and re-exported to third countries, unless the exporter proves:

- that the product to be exported and the product previously imported are one and the same, and
- that all import duties were collected on importation.

In such cases the refund on each product shall be equal to the duty collected on importation where that duty is equal to or lower than the refund applicable; the refund shall be equal to the refund applicable where the duty collected on importation is higher than that refund.

11. Compliance with the limits on volumes arising from agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export certificates issued for the reference periods provided for therein and applicable to the products concerned. With regard to compliance with the obligations arising under the Agreement on Agriculture, the ending of a reference period shall not affect the validity of export licences.

12. Detailed rules for the application of this Article, including the arrangements for redistributing unallocated and unused quantities, shall be adopted in accordance with the procedure laid down in Article 17.

Article 9

1. To the extent necessary for the proper working of the common organization of the market in poultrymeat, the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, may, in special cases, prohibit in whole or in part the use of inward or outward processing arrangements in respect of products listed in Article 1 (1) which are intended for the manufacture of products listed in Article 1 (1).

2. In derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by the inward or outward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within a week following receipt of the request.

3. Measures decided on by the Commission may be referred to the Council by any Member State within a week of the day on which they were notified. The Council, acting by a qualified majority, may confirm, amend or repeal the Commission decision. If the Council has not acted within three months, the Commission decision shall be deemed to have been repealed.

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 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.

The Council, acting on a Commission proposal in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for the application of this paragraph and define the cases in which and the limits within which Member States may take protective measures.

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. 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

A. EGGS

1. 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 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; except 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 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, imports of one or more of such products at the rate of duty laid down in Article 10 shall be subject to payment of an additional import duty if the conditions set out in Article 5 of the Agreement of Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional import duty may be imposed shall be those notified which are in conformity with the prices notified by the Community to the World Trade Organization.

The trigger volumes which must be exceeded for an additional import duty to be imposed shall be determined specifically on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment under consideration.

Cif import prices shall be checked to that end against the representative prices for the product on the world market or on the Community import market for that product.

4. 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 shall be applied under the terms of Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary to ensure application of paragraph 1 in accordance with Article 5 of the said Agreement.

Article 6

1. Tariff quotas for the products listed in Article 1 (1) resulting from agreements concluded in the Uruguay Round of multilateral trade negotiations shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 17.

2. Quotas shall be administered by applying one of the following methods or a combination of them:

- method based on the chronological order of the lodging of applications (first come, first served principle),
- method of distribution in proportion to the quantities requested when the applications were lodged (using the simultaneous examination method),
- method based on taking traditional trade patterns into account (using the traditional/new arrivals method).

Other appropriate methods may be adopted.

They must avoid any discrimination between the operators concerned.

3. The method of administration adopted shall, where appropriate, give due weight to the supply requirements of the Community market and the need to safeguard the equilibrium of that market, whilst at the same time possibly drawing on methods which may have been applied in the past to quotas corresponding to those referred to in paragraph 1 without prejudice to the rights resulting from agreements concluded in the framework of the Uruguay Round negotiations.

4. The detailed rules referred to in paragraph 1 shall provide for annual quotas, suitably phased over the year if necessary, 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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for application of this Article.

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. The method to be adopted for the allocation of the quantities which may be exported with a refund shall be the method which:

- (a) is most suited to the nature of the product and the situation on the market in question, allowing the most efficient possible use of the resources available, account being taken of the efficiency and structure of Community exports without, however, creating discrimination between large and small operators;
- (b) is least cumbersome administratively for operators, account being taken of administration requirements;
- (c) prevents any discrimination between the operators concerned.

3. Refunds shall be the same for the whole Community.

They may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.

Refunds shall be fixed in accordance with the procedure laid down in Article 17. Refunds shall be fixed at regular intervals without recourse, however, to the tendering procedure.

The list of products on which an export refund is granted and the amount of such refund shall be fixed at least once every three months. The amount of the refund may, however, remain at the same level for more than three months and may, where necessary, be adjusted in the intervening period by the Commission at the request of a Member State or on its own initiative.

4. The following shall be taken into account when refunds are being fixed:

- (a) the existing situation and the future trend with regard to:
 - prices and availabilities of egg-sector products on the Community market,
 - prices of egg-sector products on the world market;
- (b) the need to avoid disturbances likely to lead to a prolonged imbalance between supply and demand on the Community market;
- (c) the economic aspect of the proposed exports;
- (d) the limits resulting from agreements concluded in accordance with Article 228 of the Treaty.

When the amount of the refund is set, account shall also 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.

Moreover, when the amount of the refund is calculated, account shall be taken, in the case of the products listed in Article 1 (1), of the difference between the prices in the Community on the one hand and on the world market on the other of the quantity of feed-grain needed in the Community to produce one kilogram of eggs in shell and having regard, in the case of products other than eggs in shell, to the quantity of eggs in shell used in the manufacture of such products and/or the average ratio between the commercial values of the egg constituents.

5. When prices in the Community referred to in paragraph 1 are being determined account shall be taken of:

- (a) prices obtaining at the various stages of marketing in the Community;
- (b) prices obtaining for exports.

When prices on the world market referred to in paragraph 1 are being determined, account shall be taken of:

- (a) prices obtaining on third-country markets;
- (b) the most favourable prices in third countries of destination for third-country imports;
- (c) producer prices recorded in exporting third countries, account being taken where appropriate, of subsidies granted by those countries;
- (d) free-at-Community-frontier offer prices.

6. 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, except in the case of eggs for hatching where a licence may be granted *ex post*.

7. 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:

- (a) the destination indicated on the licence, or where appropriate;
- (b) the actual destination if it differs from the destination indicated on the licence. In that case, the amount applicable may not exceed the amount applicable for the destination indicated on the licence.

Appropriate measures may be taken to prevent abuse of the flexibility provided for in this paragraph.

8. Paragraphs 6 and 7 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.

9. Paragraphs 6 and 7 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.

10. The refund shall be paid upon proof that:

- the products have been exported from the Community,
- the products are of Community origin, except where paragraph 11 applies, and
- in the case of a differentiated refund, the products have reached the destination for which the refund was fixed, without prejudice to paragraph 7 (b). Exceptions may be made to this rule in accordance with the procedure laid down in Article 17, provided conditions are laid down which offer equivalent guarantees.

11. No export refund shall be granted on products listed in Article 1 (1) which are imported from third countries and re-exported to third countries, unless the exporter proves that:

- the product to be exported and the product previously imported are one and the same, and
- the levy was collected on importation.

In such cases the refund on each product shall be equal to the levy collected on importation where this levy is equal to or lower than the refund applicable; the refund shall be equal to the refund applicable where the levy collected on importation is higher than this refund.

12. Compliance with the limits on volumes arising from agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export certificates issued for the reference periods provided for therein and applicable to the products concerned. With regard to compliance with the obligations arising under the Agreement on Agriculture, the ending of a reference period shall not affect the validity of export licences.

13. Detailed rules for the application of this Article, including the arrangements for redistributing unallocated and unused quantities, shall be adopted in accordance with the procedure laid down in Article 17. Annex I shall be amended in accordance with the same procedure. However, detailed rules for the application of paragraph 8 to the products referred to in Article 1 (1) exported in the form of goods listed in Annex I shall be adopted in accordance with the procedure laid down in Article 16 of Regulation (EC) No 3448/93.

Article 9

1. To the extent necessary for the proper working of the common organization of the market in eggs, the Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, may in special cases prohibit in whole or in part the use of inward processing traffic 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, products listed in Article 1 (1) which are intended for the manufacture of goods listed in Annex I.

2. In derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by the inward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within a week following receipt of the request.

3. Measures decided on by the Commission may be referred to the Council by any Member State within a week of the day on which they were notified. The Council, acting by a qualified majority, may confirm, amend or repeal the Commission decision. If the Council has not acted within three months, the Commission decision shall be deemed to have been repealed.

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 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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for the application of this paragraph and shall define in what cases and within what limits Member States may take protective measures.

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. 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 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.

B. OVALBUMIN AND LACTALBUMIN

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, of any of the products listed in Article 1 shall 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 and without prejudice to measures taken for the application of Article 4.

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; except in cases of *force majeure*, the security shall be forfeited on 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 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 Article 10 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional duty may be imposed shall be those notified by the Community to the World Trade Organization.

The trigger volumes to be exceeded in order to have the additional import duty imposed shall be determined particularly on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment under consideration.

Cif import prices shall be checked to that end against the representative prices for the product on the world market or on the Community import market for that product.

4. 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 shall be applied under the terms of Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary to ensure application of paragraph 1 in accordance with Article 5 of the Agreement on Agriculture.

4. Article 4 is replaced by the following:

Article 4

1. Tariff quotas for the products listed in Article 1 resulting from agreements concluded in the framework of the Uruguay Round of multilateral trade negotiations 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.

2. Quotas shall be administered by applying one of the following methods or a combination of them:

- method based on chronological order of the lodging of applications (first come, first served principle),
- method of distribution in proportion to the quantities requested when the applications were lodged (using the simultaneous examination method),
- method based on taking traditional trade patterns into account (using the traditional/new arrivals method).

Other appropriate methods may be adopted.

They must avoid any discrimination between the operators concerned.

3. Compliance with the limits on volumes arising from agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export certificates issued for the reference periods provided for therein and applicable to the products concerned. With regard to compliance with the obligations arising under the Agreement on Agriculture, the ending of a reference period shall not affect the validity of export licences.

4. The detailed rules referred to in paragraph 1 shall provide for annual quotas, suitably phased over the year, if necessary 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.

The Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, shall, if necessary, adopt detailed rules for the application of this Article.'

6. Article 7 is replaced by the following:

'Article 7

1. To the extent necessary for the proper working of the common organization of the market in eggs and this Regulation, the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, may, in special cases, 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.

2. In derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by the inward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within a week following receipt of the request.

3. Measures decided on by the Commission may be referred to the Council by any Member State within a week of the day on which they were notified. The Council, acting by a qualified majority, may confirm, amend or repeal the Commission decision. If the Council has not acted within three months, the Commission decision shall be deemed to have been repealed.'

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 in provisions adopted pursuant thereto, 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.'

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 shall be 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; except 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. Save as otherwise provided for in this Regulation, the rates of duty in the Common Customs Tariff shall apply to the products listed in Article 1 (2).

2. Should the application of the rates of duty in the Common Customs Tariff depend on the entry price of the imported consignment, the veracity of this price shall be checked using a flat-rate import value calculated by the Commission depending on the origin and product on the basis of the weighted average prices for the products in question on Member States' representative import markets or on other markets where applicable.

3. Where the declared entry price of the consignment in question is higher than the flat-rate import value, increased by a margin set in accordance with paragraph 5 which may not exceed the flat-rate value by more than 10 %, the lodging of a security equal to the import duties determined on the basis of the flat-rate import value shall be required.

4. If the entry price of the consignment in question is not declared at the time of customs clearance, the application of the rates of duty in the Common Customs Tariff depends on the flat-rate import value or the application of the relevant provisions of customs legislation under conditions to be determined in accordance with paragraph 5.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 33.

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, imports of one or more of such products at the rate of duty laid down in Article 10 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional duty may be imposed shall be those notified by the Community to the World Trade Organization.

The trigger volumes to be exceeded in order to have the additional import duty imposed shall be determined particularly on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment under consideration.

The cif import prices shall be checked to that end on the basis of the representative prices for the product in question on the world market or on the Community import market for the product.

4. 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 pursuant to Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary for application of paragraph 1 in accordance with Article 5 of the Agreement on Agriculture.

Article 25

1. Tariff quotas for the products listed in Article 1 (2) resulting from agreements concluded in the framework of the Uruguay Round of multilateral trade negotiations shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 33.

2. Quotas may be administered using one of the following methods or by a combination thereof:

- method based on the order in which applications are submitted (on a 'first come, first served' basis);
- method allocating quotas in proportion to the quantities requested when applications are submitted (using the 'simultaneous examination' method),
- method based on traditional trade flows (using the 'traditional/new arrivals' method).

Other appropriate methods may be adopted.

They must avoid discrimination between the operators concerned.

3. The management method shall take account, where appropriate, of supply needs on the Community market and the need to safeguard balance on that market, and may draw on methods applied in the past to quotas corresponding to those referred to in paragraph 1, without prejudice to any levies arising from agreements concluded in the course of the Uruguay Round of trade negotiations.

4. The detailed rules referred to in paragraph 1 shall provide for annual quotas, suitably phased over the year, if necessary, shall determine the administrative method to be used and, where appropriate, shall include:

- (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 economically significant quantities of 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. The method to be adopted for the allocation of the quantities which may be exported with a refund shall be the method which:

- (a) is most suited to the nature of the product and the situation on the market in question, allowing the most efficient possible use of the resources available and taking account of the efficiency and structure of Community exports without, however, creating discrimination between large and small operators;
- (b) is least cumbersome administratively for operators, taking account of administration requirements;
- (c) prevents any discrimination between the operators concerned.

3. Refunds shall be the same for the whole Community.

Where the international trade situation or the specific requirements of certain markets make this necessary, the refund for a given product may vary according to the destination of the product.

Refunds shall be fixed in accordance with the procedure laid down in Article 33. Refunds shall be fixed at regular intervals.

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.

4. The following shall be taken into account when refunds are being fixed:

- (a) the existing situation and future trends with regard to:
 - prices and availabilities of fruit and vegetables on the Community market,
 - prices for fruit and vegetables in international trade;
- (b) marketing costs and the minimum transport charges from Community markets to ports and other points of export in the Community, as well as costs incurred in placing goods on the market of the country of destination;
- (c) the economic aspect of the proposed exports;
- (d) limits resulting from agreements concluded in accordance with Article 228 of the Treaty

5. When prices on the Community market referred to in paragraph 1 are being determined the prices which are most favourable from the exportation point of view shall be taken into account.

When the world market prices referred to in paragraph 1 are being determined particular account shall be taken of:

- (a) prices recorded on third-country markets;
- (b) the most favourable prices in third countries of destination for third-country imports;
- (c) producer prices recorded in exporting third countries;
- (d) free-at-Community-frontier offer prices.

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

7. 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:

- (a) for the destination indicated on the licence; or
- (b) for the actual destination if it differs from the destination indicated on the licence. In that case, the amount applicable may not exceed the amount applicable for the destination indicated on the licence.

Appropriate measures may be taken to prevent abuse of the flexibility provided for in this paragraph.

8. Paragraphs 6 and 7 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.

9. The refund shall be paid upon proof:

- that the products have been exported from the Community,
- that the products are of Community origin, and
- that, in the case of a differentiated refund, the products have reached the destination indicated on the licence or another destination for which a refund was fixed, without prejudice to paragraph 7 (b). Exceptions may be made to this rule in accordance with the procedure laid down in Article 33, provided conditions are laid down which offer equivalent guarantees.

10. Compliance with the limits on volumes arising from agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export certificates issued for the reference periods provided for therein and applicable to the products concerned. With regard to compliance with the obligations arising under the Agreement on Agriculture, the ending of a reference period shall not affect the validity of export licences.

11. Detailed rules for the application of this Article, including provisions for the redistribution of exportable quantities not allocated or not used, shall be adopted in accordance with the procedure laid down in Article 24.

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 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,

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.

The Council, acting on a proposal from the Commission in accordance with the procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for application of this paragraph and shall define in what cases and within what limits Member States may take protective measures.

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. 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 shall be 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, 13, 14 and 14a.

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; except 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 otherwise, the rates of duty in the Common Customs Tariff shall apply to the products listed in Article 1 (1).
2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 22.

Article 10a

1. 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.

2. The minimum import price for dried grapes shall be fixed before the beginning of the marketing year.

A minimum import price shall be fixed for currants and for other dried grapes. For each of the two groups of products, the minimum import price may be fixed for products in immediate packing of a net weight to be determined and for products in immediate packing of a net weight exceeding that weight.

3. The minimum import price for processed cherries shall be fixed before the beginning of the marketing year. The price may be fixed for products in immediate packing of a determined net weight.

4. The minimum import price to be observed for dried grapes shall be that applicable on the day of importation. The countervailing charge to be levied, if any, shall be that which is applicable on the same day.

5. The minimum price to be observed for import of sour cherries and processed cherries shall be that applicable on the day of acceptance of entry for free circulation.

6. Countervailing charges for dried grapes shall be fixed by reference to a scale of import prices. The difference between the minimum import price and each step of the scale shall be:

- 1 % of the minimum price for the first step,
- 3, 6 and 9 %, respectively, of the minimum price for the second, third and fourth steps.

The fifth step of the scale shall cover all cases where the import price is lower than that applied for the fourth step.

The maximum countervailing charge to be fixed for dried grapes shall not exceed the difference between the minimum price and an amount determined on the basis of the most favourable prices applied on the world market for significant quantities by the most representative non-member countries.

7. Where the import price for sour cherries and processed cherries is less than the minimum price for those products, a countervailing charge equal to the difference between those prices shall be levied.

8. The minimum import price, the amount of the countervailing charge and the other rules for the implementation of this Article shall be adopted in accordance with the procedure laid down in Article 22.

Article 11c

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 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional duty may be imposed shall be those forwarded by the Community to the World Trade Organization in accordance with its offer tabled during the Uruguay Round of multilateral negotiations.

The trigger volumes to be exceeded in order to have the additional import duty imposed shall be determined particularly on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment in question.

The cif import prices shall be verified for this purpose on the basis of representative prices for the product in question on the world market or on the Community import market for the product.

4. 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 under the terms of Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary to ensure application of paragraph 1 in accordance with Article 5 of the Agreement on Agriculture.

Article 12

1. Tariff quotas for the products listed in Article 1 (1) resulting from agreements concluded in the framework of the Uruguay Round of multilateral trade negotiations shall be opened and administered in accordance with detailed rules adopted under the procedure laid down in Article 22.

2. Quotas shall be administered by applying one of the following methods or a combination of them:

- method based on chronological order of the lodgment of applications ('first come, first served' principle),
- method of distribution in proportion to the quantities requested when the applications were lodged (using the 'simultaneous examination' method),
- method based on taking traditional trade patterns into account (using the 'traditional/new arrivals' method).

Other appropriate methods may be adopted.

They must avoid any discrimination between the operators concerned.

3. The method of administration adopted shall, where appropriate, give due weight to the supply requirements of the Community market and the need to safeguard the equilibrium of that market, whilst at the same time possibly drawing on methods which may have been applied in the past to quotas corresponding to those referred to in paragraph 1, without prejudice to the rights resulting from agreements concluded in the framework of the Uruguay Round negotiations.

4. The detailed rules referred to in paragraph 1 shall provide for annual quotas, suitably phased over the year, shall determine the administrative method to be used and, where appropriate, shall include:

- (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 export of:

- (a) economically significant quantities of the products without added sugar referred to in Article 1 (1);
- (b) white and raw sugar falling with CN code 1701,
 - glucose and glucose syrup falling within CN codes 1702 30 51, 1702 30 59, 1702 30 91, 1702 30 99 and 1702 40 90,
 - isoglucose falling within CN codes 1702 30 10, 1702 40 10, 1702 60 10 and 1702 90 30, and
 - beet and cane syrups falling within CN code 1702 90 90,used in the products listed in Article 1 (1) (b),

on the basis of prices for those 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. The method to be adopted for the allocation of the quantities which may be exported with a refund shall be the method which:

- (a) is most suited to the nature of the product and the situation on the market in question, allowing the most efficient possible use of the resources available and having regard to the effectiveness and structure of Community exports without, however, creating discrimination between large and small operators;
- (b) is least cumbersome administratively for operators, taking account of administration requirements;
- (c) prevents any discrimination between the operators concerned.

3. Refunds shall be the same for the whole Community.

Where the situation in international trade or the specific requirements of certain markets make this necessary, the refund on a given product may be varied according to destination.

Refunds shall be fixed in accordance with the procedure laid down in Article 22. Refunds shall be fixed at regular intervals.

Refunds fixed at regular intervals, may, if necessary, be amended in the interval by the Commission at the request of a Member State or on its own initiative.

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

5. The refund applicable to exports 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:

- (a) for the destination indicated on the licence; or
- (b) for the actual destination if it differs from the destination indicated on the licence. In that case, the amount applicable may not exceed the amount applicable for the destination indicated on the licence.

Appropriate measures may be taken to prevent abuse of the flexibility provided for in this paragraph.

6. Paragraphs 4 and 5 may be waived in the case of products on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 22.

7. Compliance with the limits on volumes arising from agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export certificates issued for the reference periods provided for therein and applicable to the products concerned. With regard to compliance with the obligations arising under the Agreement on Agriculture, the ending of a reference period shall not affect the validity of export licences.

8. Detailed rules for the application of this Article, including provisions on redistribution of unallocated or unused exportable quantities, shall be adopted in accordance with the procedure laid down in Article 22.

Article 14

1. This Article shall apply to the refunds referred to in Article 13 (1) (a).

2. The following shall be taken into account when refunds are being fixed:

- (a) the existing situation and future trends with regard to:
 - prices and availability on the Community market of products processed from fruit and vegetables,
 - prices ruling in international trade;
- (b) minimum marketing and transport costs from the Community markets to ports or other points of export in the Community, as well as costs of shipment to the countries of destination;
- (c) the economic aspect of the proposed exports;
- (d) limits resulting from the agreements concluded in accordance with Article 228 of the Treaty.

3. When prices on the Community market are being determined for the products referred to in Article 13 (1) (a), account shall be taken of the ruling prices which are most favourable from the point of view of exportation.

The following shall be taken into account when prices in international trade are being determined:

- (a) prices ruling on third-country markets;

- (b) the most favourable prices in third countries of destination for imports from third countries;
 - (c) producer prices recorded in exporting third countries;
 - (d) offer prices at the Community frontier.
4. The refund shall be paid upon proof that:
- the products have been exported from the Community,
 - the products are of Community origin, and
 - in the case of a differentiated refund the products have reached the destination indicated on the licence or another destination for which the refund was fixed, without prejudice to Article 13 (5) (b). However, exceptions may be made to this rule in accordance with the procedure laid down in Article 22, provided conditions are laid down which offer equivalent guarantees.
5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 22.

Article 14a

1. This Article shall apply to the refunds referred to in Article 13 (1) (b).
2. The amount of the refund shall equal:
- for raw sugar, white sugar and beet and cane syrup, the amount of the export refund for such products in the unprocessed state, fixed in accordance with Article 17 of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector and its implementing provisions,
 - for isoglucose, the amount of the export refund for that product in its unprocessed state, fixed in accordance with Article 17 of Regulation (EEC) No 1785/81 and its implementing provisions,
 - for glucose and glucose syrup, the amount of the export refund for such products in their unprocessed state, fixed for each of those products in accordance with Article 13 of Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the markets in cereals, and its implementing provisions.
3. In order to benefit from the refund, processed products must be accompanied, upon export, by a declaration from the applicant stating the quantities of raw and white sugar and beet and cane syrups, isoglucose, glucose and glucose syrup used in manufacture.
- The accuracy of the declaration referred to in the first paragraph shall be subject to checking by the competent authorities of the Member States concerned.
4. If the refund is insufficient to allow export of the products listed in Article 1 (1) (b), the provisions laid down for the refund referred to in Article 13 (1) (a) shall apply to those products instead of those in Article 13 (1) (b).
5. The refund shall be granted on exports of products:
- (a) which are of Community origin;
 - (b) which have been imported from third countries and on which the import duties referred to in Article 10 have been paid, provided the exporter proves:
 - that the product to be exported and the product previously imported are one and the same, and
 - that the import duties were collected on importation.

In the case covered by subparagraph (b), the refund on each product shall be equal to the duties collected on importation where the latter are lower than the refund applicable; where the duties collected on importation are higher than that refund, the latter shall apply.

6. The refund shall be paid upon proof that:
- the products fulfil either of the two conditions set out in the preceding paragraph,
 - the products have been exported from the Community, and

— in the case of a differentiated refund the products have reached the destination indicated on the licence or another destination for which the refund was fixed, without prejudice to Article 13 (5) (b). However, exceptions may be made to this rule in accordance with the procedure laid down in Article 22, provided conditions are laid down which offer equivalent guarantees.

7. 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 organization of the markets in cereals, sugar and fruit and vegetables, the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, may, in particular cases, prohibit in whole or in part the use of inward processing arrangements in respect of:

- the products referred to in Article 13 (1) (b), and
- fruit and vegetables,

intended for the manufacture of the products listed in Article 1 (1).

2. However, by way of derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by the inward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative decide upon the necessary measures; the Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within a week following receipt of the request.

3. The Commission's decision may be referred to the Council by any Member State within a week of the day on which it was notified. The Council, acting by a qualified majority, may confirm, amend or repeal the Commission's decision. If the Council has not acted within three months, the Commission's decision shall be deemed to have been repealed.

Article 16

1. Where pursuant to Article 20 of Regulation (EEC) No 1785/81 a levy exceeding ECU 5 per 100 kilograms is charged on exports of white sugar, the imposition of a charge on exports of the products specified in Article 1 (1) containing a minimum of 35 % added sugar may be decided in accordance with the procedure laid down in Article 22.

2. The amount of the export charge shall be fixed taking into account:

- the nature of the product processed from fruit of vegetables which contains added sugar,
- the added sugar content of the product in question,
- the prices of white sugar in the Community and on the world market,
- the export levy applicable to white sugar,
- the economic implications of applying the said charge.

3. The added sugar content shall be considered to be given by the figure shown against the product in question in column 1 of Annex III to this Regulation.

However, at the request of the exporter, if the added sugar content per 100 kilograms net weight of product, established in accordance with paragraph 4, is two kilograms or more below the content expressed by the figure for the product in question appearing in column 1 of Annex III, the content established in accordance with paragraph 4 shall be used.

4. The added sugar content of the products listed in Annex III shall be considered to mean the reading obtained by using a refractometer, multiplied by 0,93 in the case of products falling within CN code 2008, excluding CN codes 2008 11 10, 2008 91 00, 2008 99 85 and 2008 99 91, and by 0,95 in the case of other products listed in Annex III and reduced by the figure for the product in question appearing in column 2 of Annex III.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 22.

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 shall be incorporated in the Common Customs Tariff.

2. Save as otherwise provided for in this Regulation or in provisions adopted pursuant thereto, 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 18

1. If, by reason of 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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for application of this paragraph and shall determine the cases in which and limits within which Member States may take protective measures.

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. 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 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.

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, imports of one or more of such products at the rate of duty laid down in Article 10 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.
3. The trigger prices below which an additional import duty may be imposed shall be those notified by the Community to the World Trade Organization.

The trigger volumes which must be exceeded for an additional import duty to be imposed shall be determined in particular on the basis of Community imports over the three years preceding the year in which the adverse effects referred to in paragraph 2 have occurred or are likely to occur.

4. The import prices to be taken into account for the imposition of an additional import duty shall be determined on the basis of the cif import prices of the shipment concerned.

The cif import prices shall be verified for this purpose on the basis of representative prices for the product in question on the world market or on the Community import market for the product

5. 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 shall be applied, in accordance with Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary for application of paragraph 1 in accordance with Article 5 of the said Agreement.

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:

- (a) "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";
- (b) "non-traditional imports from ACP States" means the quantities of bananas exported by the ACP States which exceed the quantity defined in 1; such bananas shall be referred to as "non-traditional bananas";
- (c) "imports from non-ACP third countries" means quantities exported by other third countries; such bananas shall be referred to as "third-country-bananas";

- (d) "Community bananas" means bananas produced in the Community;
- (e) "to market" and "marketing" mean placing on the market, not including making the product available to the final consumer.'

3. In Article 17, the second paragraph is replaced by the following:

'Import licences shall be valid throughout the Community. Save where derogations are adopted under the procedure laid down in Article 27, such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported in compliance with this Regulation, during the term of validity of the licence; save in cases of *force majeure*, 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.'

4. 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.'

5. 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 288 of the Treaty.'

6. Article 22 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.'

7. Article 23 is replaced by the following:

'Article 23

1. If, by reason of 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 taken in trade with third countries until such disturbance or threat of disturbance has ceased.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt general rules for the application of this paragraph and shall determine the cases in and limits within which Member States may take interim protective measures.

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 import or 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; save 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.

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 import or 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. For musts falling within CN code 2204 30 for which application of the duties in the Common Customs Tariff depends on the import price of the product imported, the accuracy of that price shall be checked by means of a flat-rate import value calculated by the Commission depending on the origin and product on the basis of the weighted average prices for the products in question on Member States' representative import market or on other markets where applicable.

Where the declared entry price of the consignment in question is higher than the flat-rate import value, increased by a margin set in accordance with paragraph 3 which may not exceed the flat-rate value by more than 10 %, the lodging of a security equal to the import duties determined on the basis of the flat-rate import value shall be required.

If the entry price of the consignment in question is not declared at the time of customs clearance, the application of the rates of duty in the Common Customs Tariff depends on the flat-rate import value or the application of the relevant provisions of customs legislation under conditions to be determined in accordance with paragraph 3.

3. 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 products listed in Article 1, imports of one or more of such products

at the rate of duty laid down in Article 10 shall be subject to payment of an additional import duty if 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 have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional import duty may be imposed shall be those forwarded by the Community to the World Trade Organization.

The trigger volumes which must be exceeded for an additional import duty to be imposed shall be determined in particular on the basis of Community imports over the three years preceding the year in which the adverse effects referred to in paragraph 1 have occurred or are likely to occur.

3. The import prices to be taken into account for the imposition of an additional import duty shall be determined on the basis of the cif import prices of the shipment concerned.

The cif import prices shall be verified for this purpose on the basis of representative prices for the product in question on the world market or on the Community import market for the product.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in the Article 83. Such detailed rules shall specify in particular:

- (a) the products to which additional import duties shall be applied, in accordance with Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary for application of paragraph 1 in accordance with Article 5 of the said Agreement.

Article 55

1. To the extent necessary to enable the export of:

- (a) products listed in Article 1 (2) (a), (b) and (c);
- (b) sugars falling with CN code 1701, glucose and glucose syrup falling within CN codes 1702 30 91, 1702 30 99, 1702 40 90 and 1702 90 50, including in the form of products falling within CN codes 1702 30 51 and 1702 30 59, incorporated into products falling within CN codes 2009 60 11, 2009 60 71, 2009 60 79 and 2204 30 99;

on the basis of prices for those 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. For the allocation of the quantities which may be exported with refunds, the method shall be established which:

- (a) is the best suited to the nature of the product and to the situation on the market in question, enabling the most efficient use possible to be made of the available resources, and having regard to the efficiency and structure of Community exports without, however, creating discrimination between large and small operators;
- (b) is the least cumbersome administratively for operators, having regard to management imperatives;
- (c) precludes discrimination between the operators concerned.

3. Refunds shall be the same for the whole Community. They may vary according to destination where the situation on the international market or the specific requirements of certain markets make this necessary.

The refunds referred to in paragraph 1 (a) shall be fixed in accordance with the procedure laid down in Article 83. They shall be fixed at regular intervals.

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.

The provisions of Article 56 regarding the products referred to therein shall apply on a supplementary basis.

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 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:

- (a) for the destination indicated on the licence or, if appropriate;
- (b) for the actual destination, if it differs from that indicated on the licence. In that case the amount applicable may not exceed the amount applicable to the destination indicated on the licence.

Appropriate measures may be taken to preclude abuse of the flexibility provided for in this paragraph.

6. 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.

7. Compliance with the limits on volumes arising from agreements concluded in accordance with Article 228 of the Treaty shall be ensured on the basis of the export certificates issued for the reference periods provided for therein and applicable to the products concerned. With regard to compliance with the obligations arising under the Agreement on Agriculture, the ending of a reference period shall not affect the validity of export licences.

With regard to compliance with the obligations arising under agreements concluded in the framework of the Uruguay Round of trade negotiations, the ending of a reference period shall not affect the validity of export licences.

8. Detailed rules for the application of this Article, including provisions on redistribution of unallocated or unused exportable quantities, shall be adopted in accordance with the procedure laid down in Article 83.

Article 56

1. This Article shall apply to the refunds referred to in Article 55 (1).
2. The amount of the refund for products referred to in Article 55 (1) (b) shall be:
 - in the case of raw sugar and white sugar, the amount of refund for export of these products unprocessed as fixed in accordance with Article 17 of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in the sugar sector and with the provisions adopted for its application;
 - in the case of glucose and glucose syrup, the amount of the refund for export of these products unprocessed as fixed for each of these products in accordance with Article 13 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.

To qualify for the refund, 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.

3. The following shall be taken into account when refunds are being fixed:
 - (a) the existing situation and likely trends with regard to:
 - prices and availability of the products listed in Article 55 (1) on the Community market;
 - world market prices for those products;
 - (b) the most advantageous marketing and transport costs from the Community markets to the ports or other export points of the Community as well as the costs of shipment to the country of destination;
 - (c) the objectives of the common organization of the market in wine, which are to ensure balance on the market and natural development in respect of prices and trade;

- (d) limits arising out of agreements concluded in accordance with Article 228 of the Treaty;
- (e) the need to avoid disturbances on the Community market;
- (f) the economic aspect of the proposed exports.

4. Community market prices referred to in Article 55 (1) shall be determined on the basis of the most advantageous export prices.

The following shall be taken into account the prices in international trade referred to in Article 55 (1) are being determined:

- (a) prices recorded on third-country markets;
- (b) the most advantageous prices in third countries of destination for imports from third countries;
- (c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries;
- (d) free-at-Community-frontier offer prices.

5. Without prejudice to the third subparagraph of Article 55 (3), the intervals at which the list of products for which a refund is actually granted is to be fixed and the amount at which that refund is to be fixed shall be determined in accordance with the procedure laid down in Article 83.

6. The refund shall be paid upon proof that the products:

- are of Community origin, save where paragraph 7 applies;
- have been exported from the Community, and
- in case of a differentiated refund, have reached the destination indicated on the licence or another destination for which the refund was fixed, without prejudice to Article 55 (5) (b). However, exceptions may be made to this rule in accordance with the procedure laid down in Article 83, provided that conditions are laid down which offer equivalent guarantees.

Additional provisions may be adopted in accordance with the procedure laid down in Article 83.

7. No export refund shall be granted on products imported from third countries and re-exported to third countries, unless the exporter proves that:

- the product to be exported and the product previously imported are one and the same;
- import duties have been collected on importation.

In such cases the refund on each product shall be equal to the duties collected on importation where these are equal to or lower than the refund applicable; where the duties collected on importation are higher than the refund applicable, the refund shall equal the latter.

Article 57

1. To the extent necessary for the proper working of the common organization of the market in wine, the Council, acting on a proposal from the Commission in accordance with the voting procedure set out in Article 43 (2) of the Treaty, may in particular cases prohibit the use of inward processing arrangements wholly or partially in respect of the products listed in Article 1.

2. By way of derogation from paragraph 1, if the situation referred to in that paragraph occurs with particular urgency and if the Community market is, or is likely to be, disturbed by outward or inward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Council and the Member States shall be notified of such measures, the period of validity of which may not exceed six months and which shall apply immediately. If the Commission receives a request from a Member State, it shall take a decision thereon within one week of receipt of the request.

3. The Commission's decision may be referred to the Council by any Member State within one week of the day on which it was notified. The Council, acting by a qualified majority, may confirm, amend or annul the Commission's decision. If the Council has not reached a decision within three months, the Commission's decision shall be deemed to have been repealed.

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 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 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 has ceased.

In order to assess whether the situation justifies the application of such measures, the following in particular 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 intervention.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt general rules for the application of this paragraph and define the cases in which and the limits within which Member States may take interim protective measures.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or in 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. 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 a 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 geographical 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, if necessary, 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

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.
2. Save as otherwise provided for in this Regulation or in provisions adopted pursuant thereto, 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 16a

1. If, by reason of 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 objective 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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for the application of this paragraph and shall define in what cases and within what limits Member States may take protective measures.

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. 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

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.
2. Save as otherwise provided for in this Regulation or in provisions adopted pursuant thereto, 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 15a

1. If, by reason of 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 objective 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 or disturbance has ceased.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for the application of this paragraph and shall define in what cases and within what limits Member States may take protective measures.

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. 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 the the products are imported during the term of validity of the licence; except in cases of *force majeure*, 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 licenses 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

1. The general rule 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 in provisions adopted pursuant thereto, 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 10a

1. If, by reason of 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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for the application of this paragraph and shall define in what cases and within what limits Member States may take protective measures.

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 3280/75 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 (EEC) 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

Save as otherwise provided for in this Regulation or in provisions adopted pursuant thereto, 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 7

1. If, by reason of 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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for the application of this paragraph and shall define in what cases and within what limits Member States may take protective measures.

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. 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 last 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 provide for in this Regulation or in provisions adopted pursuant thereto 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

1. If, by reason of 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.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt the general rules for the application of this paragraph and shall define in what cases and within what limits Member States may take protective measures.

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. 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, measures 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 organization 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 OUTERMOST 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 paragraph, 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 last 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 of 27 June 1968 on the common organization of the market in beef and veal' are deleted.
3. In Article 7, the words 'the levy/and or' 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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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 22 December 1994

on the extension of the legal protection of topographies of semiconductor products to persons from a Member of the World Trade Organization

(94/824/EC)

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⁽¹⁾, 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 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 Directive 87/54/EEC concerns the legal protection of topographies of semiconductor products; 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 (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 (7) of the Directive to this end,

HAS DECIDED AS FOLLOWS:

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 WTO Agreement, shall be treated as nationals of a Member State;

⁽¹⁾ OJ No L 24, 27. 1. 1987, p 36.

(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 WTO Agreement 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 1 January 1995.
2. It shall apply from 1 January 1996.
3. Council Decision 90/510/EEC of 9 October 1990 on the extension of the legal protection of topographies of

semiconductor products to persons from certain countries and territories ⁽¹⁾ is replaced as from the date of application of the present Decision, in so far as it concerns the extension of the protection under Directive 87/54/EEC to countries or territories Members of the WTO Agreement.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

⁽¹⁾ OJ No L 258, 17. 10. 1990, p 29. Decision as amended by Decision 93/17/EEC (OJ No L 11, 19. 1. 1993, p. 22).