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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 384/96

of 22 December 1995

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⁽¹⁾,

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

- (1) Whereas, by Regulation (EC) No 2423/88⁽³⁾, the Council adopted common rules for protection against dumped or subsidized imports from countries which are not members of the European Community;
- (2) Whereas those 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 referred to as '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);
- (3) 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 respectively, to have a separate body of Community rules in each of those two areas; whereas, consequently, the new rules on protection against subsidies and countervailing duties are contained in a separate Regulation;

- (4) Whereas, in applying the rules it is essential, in order to maintain the balance of rights and obligations which the GATT Agreement establishes, that the Community take account of how they are interpreted by the Community's major trading partners;
- (5) Whereas the new agreement on dumping, namely, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as 'the 1994 Anti-Dumping Agreement'), contains new and detailed rules, relating in particular to the calculation of dumping, procedures for initiating and pursuing an 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 a proper and transparent application of the new rules, the language of the new agreements should be brought into Community legislation as far as possible;
- (6) Whereas it is desirable to lay down clear and detailed rules on the calculation of normal value; whereas in particular such value should in all cases be based on representative sales in the ordinary course of trade in the exporting country; whereas, it is expedient to define the circumstances in which domestic sales may be considered to be made at a loss and may be disregarded, and in which recourse may be had to remaining sales, or to constructed normal value, or to sales to a third country;

⁽¹⁾ OJ No C 319, 30. 11. 1995.

⁽²⁾ OJ No C 17, 22. 1. 1996.

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

- whereas it is also desirable to provide for a proper allocation of costs, even in start-up situations; whereas it is also appropriate to lay down guidance as to 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 in determining the amounts for selling, general and administrative costs and the profit margin that should be included in such value;
- (7) Whereas when determining normal value for non-market economy countries, it appears prudent to set out rules 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 other reasonable basis;
- (8) 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;
- (9) 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 as to when and how the adjustments should be made, including the fact that any duplication of adjustments should be avoided; whereas it is also necessary to provide that comparison may be made using average prices although individual export prices may be compared to an average normal value where the former vary by customer, region or time period;
- (10) Whereas it is desirable to lay down clear and detailed guidance as to 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 prevailing market conditions in the Community;
- (11) Whereas it is advisable to define the term 'Community industry' and to 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 region;
- (12) Whereas it is necessary to lay 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 causation which such complaint should contain; whereas it is also expedient to specify the procedures for the rejection of complaints or the initiation of proceedings;
- (13) Whereas it is necessary to lay down the manner in which interested parties should be given notice of the information which the authorities require, and should have ample opportunity to present all relevant evidence and 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 the rules whereby interested parties are 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 in the collection of information;
- (14) Whereas it is necessary to lay down the conditions under which provisional duties may be imposed, including the condition that they may be imposed no earlier than 60 days from initiation and not later than nine months thereafter; 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;
- (15) 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 breach or withdrawal of undertakings and that provisional duties may be imposed in cases of suspected violation or where further investigation is necessary to supplement the findings; whereas, in accepting undertakings, care should be taken that the proposed undertakings, and their enforcement, do not lead to anti-competitive behaviour;
- (16) Whereas it is necessary to provide that the termination of cases should, irrespective of whether definitive measures are adopted or not, normally take place 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 those 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;
- (17) Whereas it is necessary to provide for retroactive collection of provisional duties if that is 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 breach or withdrawal of undertakings;
- (18) Whereas it is necessary to provide that measures are to lapse after five years unless a review 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 are not to 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;
- (19) 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;
- (20) 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 mere assembly of goods in the Community or a third country, which have as their main aim the circumvention of anti-dumping measures;
- (21) 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;
- (22) 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;
- (23) Whereas in order to ensure proper enforcement of measures, it is necessary that Member States monitor, and report to the Commission, the import trade of products subject to investigation or subject to measures, and also the amount of duties collected under this Regulation;
- (24) Whereas it is necessary to provide for consultation 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;
- (25) Whereas it is expedient to provide for verification visits to check information submitted on dumping and injury, such visits being, however, conditional on proper replies to questionnaires being received;
- (26) Whereas it is essential to provide for sampling in cases where the number of parties or transactions is large in order to permit completion of investigations within the appointed time limits;
- (27) Whereas it is necessary to provide that where parties do not cooperate satisfactorily other information may be used to establish findings and that such information may be less favourable to the parties than if they had cooperated;
- (28) Whereas provision should be made for the treatment of confidential information so that business secrets are not divulged;
- (29) Whereas it is essential that provision be made for proper disclosure of essential facts and considerations to parties which qualify for such treatment and that such disclosure be made, with due regard to the decision-making process in the Community, within a time period which permits parties to defend their interests;
- (30) Whereas it is prudent to provide for an administrative system under which arguments can be presented as to whether measures are in the Community interest, including the consumers' 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;
- (31) Whereas, by Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community⁽¹⁾, the Council repealed Regulation (EEC) No 2423/88 and instituted a new common system of defence against dumped imports

⁽¹⁾ OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).

from countries not members of the European Community;

- (32) Whereas significant errors in the text of Regulation (EC) No 3283/94 became apparent on publication;
- (33) Whereas, moreover, that Regulation has already been twice amended;
- (34) Whereas, in the interests of clarity, transparency and legal certainty, that Regulation should therefore be repealed and replaced, without prejudice to the anti-dumping proceedings already initiated under it or under Regulation (EEC) No 2423/88,

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, that is to say, 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.

However, 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.

Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship.

2. Sales of the like product intended for domestic consumption shall normally be used to determine normal value if such sales volume constitutes 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 on the basis of the export prices, in the ordinary course of trade, to an appropriate third country, provided that those 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 unit production costs (fixed and variable) 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 in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time.

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.

The extended period of time shall normally be one year but shall in no case be less than six months, and sales below 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. 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 that it is shown that the records reasonably reflect the costs associated with the production and sale of the product under consideration.

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 subparagraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production.

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 the second sub-paragraph of paragraph 4. 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 where it is submitted prior to verification visits and within three months of the initiation of the investigation.

6. 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:

- (a) 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;
- (b) 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;
- (c) 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⁽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 those 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.

An appropriate market economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. Account shall also be taken of time limits; where appropriate, a market economy third country which is subject to the same investigation shall be used.

The parties to the investigation shall be informed shortly after its initiation of the market economy third country envisaged and shall be given 10 days to comment.

B. EXPORT PRICE

8. The export price shall be the price actually paid or payable for the product when sold for export 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 an 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 are not resold in the condition in which they were imported, on any reasonable basis.

In these cases, adjustment for all costs, including duties and taxes, incurred between importation and resale, and for profits accruing, shall be made so as to establish a reliable export price, at the Community frontier level.

The items for which adjustment shall be made shall include those normally borne by an importer but paid by

⁽¹⁾ OJ No L 67, 10. 3. 1994, p. 89.

any party, either inside 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 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 as follows:

(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 intended for consumption in the exporting country and not collected or refunded in respect of the product exported to the Community.

(c) *Discounts, rebates and quantities*

An adjustment shall be made for differences in discounts and rebates, including those given for differences in quantities, if these are properly quantified and are directly linked to the sales under consideration. An adjustment may also be made for deferred discounts and rebates if the claim is based on consistent practice in prior periods, including compliance with the conditions required to qualify for the discount or rebates.

(d) *Level of trade*

An adjustment for differences in levels of trade, 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. Those costs shall include transport, insurance, handling, loading and ancillary costs.

(f) *Packing*

An adjustment shall be made for differences in the directly related packing costs for the product concerned.

(g) *Credit*

An adjustment shall be made for differences in the cost of any credit granted for the sales under consideration, provided that it is a factor taken into account in the determination of the prices charged.

(h) *After-sales costs*

An adjustment shall be made for differences in the direct costs of providing warranties, guarantees, technical assistance and services, as provided for by law and/or in the sales contract.

(i) *Commissions*

An adjustment shall be made for differences in commissions paid in respect of the sales under consideration.

(j) *Currency conversions*

When the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, except 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 shall 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 investigation period.

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 differs significantly among different purchasers, regions or time periods, and if 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.

Article 3

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 shall 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 those imports on the Community industry.

3. With regard to the volume of the dumped imports, consideration shall be given 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 to whether there has been 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 would otherwise have occurred, to a significant degree. No one or more 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 any one or more 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 the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, restrictive trade practices of, and competition between, third country 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 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.

In making a determination regarding the existence of a threat of material injury, consideration should be given to such factors as:

- (a) a significant rate of increase of dumped imports into the Community market indicating the likelihood of substantially increased imports;
- (b) sufficient freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Community, account being taken of the availability of other export markets to absorb any additional exports;
- (c) 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 probably increase demand for further imports; and
- (d) inventories of the product being investigated.

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 will occur.

Article 4

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 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:

- (a) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term 'Community industry' may be interpreted as referring to the rest of the producers;
- (b) 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 (i) the producers within such a market sell all or almost all of their production of the product in question in that market; and (ii) 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 paragraph 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.

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.

Where, in the absence of any complaint, a Member State is in possession of sufficient evidence of dumping and of resultant injury to 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:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) information on changes in the volume of the allegedly dumped imports, the effect of those 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, as far as 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 as to 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 seeking 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 such initiation.

7. The evidence of both dumping and injury shall be considered simultaneously in the decision on 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. 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 a proceeding, the Commission shall do so within 45 days of the lodging of the complaint and shall 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.

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 paragraph 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 may 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 proceeding, 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 proceeding. 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 to 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, due account being taken of the time limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances.

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 within 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 that the firms concerned give their consent and that 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 proceeding 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 confirmed 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 shall be taken into consideration, wherever they are sufficiently substantiated in the response.

8. Except in the circumstances provided for in Article 18, the information which is supplied by interested parties and upon which findings are based shall be examined for accuracy as far as 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 duties may be imposed if proceedings have been initiated in accordance with Article 5, if a 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), if a provisional affirmative determination has been made of dumping and consequent injury to the Community industry, and if the Community interest calls for intervention to prevent such injury. The provisional duties shall be imposed no earlier 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 duties shall be secured by a guarantee, and the release of the products concerned for free circulation in the Community shall be conditional upon the provision of such guarantee.

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 where the conditions in paragraph 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 shall be imposed.

6. The Commission shall forthwith inform the Council and the Member States of any decision taken under paragraphs 1 to 5. 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 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, if such as where 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 reasons for which it is proposed to reject 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 where 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 be deemed 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 it may be required 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 breach 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 breach 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 as to dumping and injury and that the exporter concerned has, except where he himself has withdrawn the undertaking, 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 breached, or in case of breach or withdrawal of an undertaking where the investigation which led to the undertaking has not been concluded.

Article 9

Termination without measures; imposition of definitive duties

1. Where the complaint is withdrawn, the proceeding 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 proceeding 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 proceeding be terminated. The proceeding shall be deemed terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

3. For a proceeding 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 proceeding, 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 proceeding 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 imposing the duty 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 in the circumstances referred to in Article 18. Individual duties shall be applied 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 but not prior to the initiation of the investigation, provided that imports have been registered in accordance with Article 14 (5), the Commission has allowed the importers concerned an opportunity to comment, and:

- (a) 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
- (b) 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 breach or withdrawal of undertakings, definitive duties may be levied 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 breach 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 that, it is 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.

An expiry review shall be initiated where the request contains sufficient evidence that the expiry 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.

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 documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.

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 the second sub-paragraph. 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.

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 that 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.

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 under Article 3. In these respects, account shall be taken in the final determination of all relevant and duly documented evidence.

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.

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 that it has actually exported to the Community following the abovementioned investigation period, or where it can demonstrate that it has entered into an irrevocable contractual obligation to export a significant quantity to the Community.

A review for a new exporter shall be initiated, and carried out on an accelerated basis, after consultation of the Advisory Committee and after 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 has imposed such duty, and by 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.

The provisions of this paragraph shall not apply where duties have been imposed under 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 proceeding 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.

In requesting 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.

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, of 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 associate with the exporter or producer concerned and such information is not immediately available, or where 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.

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, whereupon 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 circumstances 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 day of the abovementioned decision.

9. In all review or refund investigations carried out pursuant to this Article, the Commission shall, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the duty, with due account being taken of Article 2, and in particular paragraphs 11 and 12 thereof, and of Article 17.

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 it 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 a reinvestigation 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: if it is concluded that the measure should have led to movements in such prices, then, 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 has 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 Articles 5 and 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 under this Article where complete information on revised normal values, duly substantiated by evidence, is made available to the Commission within the time limits set out in the notice of initiation of an investigation. Where an investigation involves a re-examination of normal values, imports may be made subject to registration in accordance with Article 14 (5) pending the outcome of the reinvestigation.

Article 13

Circumvention

1. Anti-dumping duties imposed pursuant to this Regulation may be extended 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 where 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:

- (a) 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
- (b) 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
- (c) 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 on which registration was imposed pursuant to Article 14 (5) or on which 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 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, and 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 possible, or of the 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⁽¹⁾, may be adopted 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, acting 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

⁽¹⁾ OJ No L 302, 19. 10. 1992, p. 1.

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 those 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 shall not be made subject to registration for a period longer than nine months.

6. Member States shall report to the Commission every month, on the import trade in products subject to investigation and to measures, and on 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 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 adhered to.

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 that event, 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 adhered to.

4. Consultation shall cover, in particular:

- (a) the existence of dumping and the methods of establishing the dumping margin;
- (b) the existence and extent of injury;

(c) the causal link between the dumped imports and injury;

(d) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping and the ways and means of 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, that it notifies the representatives of the government of the country in question and that 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 made during the verification for further details to be provided in the light of information obtained.

4. In investigations carried out pursuant to paragraphs 1, 2 and 3, 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 of the investigation, 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 would prevent completion of the investigation in good time.

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 provided 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. Failure to give 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 submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

4. If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons therefor and shall 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 shall be disclosed and given in published findings.

5. If determinations, including those regarding normal value, are based on the provisions of paragraph 1, including the information supplied in the complaint, it shall, 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 cooperates only partially, so that relevant information is thereby withheld, the result may 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 would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information) or which is provided on a confidential basis by parties to an investigation shall, if good cause is shown, be treated as such by the authorities.

2. Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. Those 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 shall 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 is necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interests 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, 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, due regard being had 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. 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 as to 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. 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:

- (a) any special rules laid down in agreements concluded between the Community and third countries;
- (b) the Community Regulations in the agricultural sector and Council Regulations (EC) No 3448/93⁽¹⁾, (EEC)

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

Done at Brussels, 22 December 1995.

For the Council

L. ATIENZA SERNA

The President

No 2730/75⁽²⁾ and (EEC) No 2783/75⁽³⁾; this Regulation shall operate by way of complement to those Regulations and in derogation from any provisions thereof which preclude the application of anti-dumping duties;

- (c) special measures, provided that such action does not run counter to obligations pursuant to the GATT.

Article 23

Repeal of existing legislation and transitional measures

Regulation (EC) No 3283/94 is hereby repealed, with the exception of the first paragraph of Article 23 thereof.

However, the repeal of Regulation (EC) No 3283/94 shall not prejudice the validity of proceedings initiated thereunder.

References to Regulation (EEC) No 2423/88 and to Regulation (EC) No 3283/94 shall be construed as references to this Regulation, where appropriate.

Article 24

Entry into force

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

However, the time limits provided for in Articles 5 (9), 6 (9) and 7 (1) shall apply to complaints lodged under Article 5 (9) as from 1 September 1995 and investigations initiated pursuant to such complaints.

⁽¹⁾ OJ No L 318, 20. 12. 1993, p. 18.

⁽²⁾ OJ No L 281, 1. 11. 1975, p. 20. Regulation as 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 Regulation (EEC) No 3290/94 (OJ No L 349, 31. 12. 1994, p. 105).

COUNCIL REGULATION (EC) No 385/96

of 29 January 1996

on protection against injurious pricing of vessels

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⁽¹⁾,

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

- (1) Whereas multilateral negotiations conducted under the auspices of the Organization for Economic Cooperation and Development led to the conclusion, on 21 December 1994, of an Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry (hereinafter referred to as 'the Shipbuilding Agreement');
- (2) Whereas it has been recognized in the framework of the Shipbuilding Agreement that the special characteristics of ship-purchase transactions have made it impractical to apply countervailing and anti-dumping duties, as provided under Article VI of the General Agreement on Tariffs and Trade (GATT) 1994, the Agreement on Subsidies and Countervailing Measures, and the Agreement on the Implementation of Article VI of GATT 1994 annexed to the Agreement establishing the World Trade Organization; whereas the need to provide for an effective means of protection against sales of ships below their normal value which cause injury has led to the conclusion of a Shipbuilding Injurious Pricing Code which, together with its Basic Principles, constitutes Annex III to the Shipbuilding Agreement (hereinafter referred to as 'the IPI Code');
- (3) Whereas the text of this IPI Code is mainly based on the Agreement on Implementation of Article VI of GATT 1994, but deviates from this Agreement when warranted by the specific nature of ship-purchase transactions; whereas it is therefore appropriate to transpose the language of the IPI Code into Community legislation, to the extent possible on the basis of the text of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Communities⁽³⁾;
- (4) Whereas the Shipbuilding Agreement and the legislative provisions deriving therefrom are of significant importance for Community law;
- (5) Whereas, to maintain the balance of rights and obligations which the Shipbuilding Agreement establishes, action should be taken by the Community against any injuriously priced vessel whose sale at less than normal value causes injury to the Community industry;
- (6) Whereas, *vis-à-vis* shipbuilders from Parties to the Shipbuilding Agreement, the sale of a vessel may be subject to an investigation by the Community only when the buyer of the vessel is a Community buyer, and provided the ship is not a military vessel;
- (7) Whereas it is desirable to lay down clear and detailed rules on the calculation of normal value; whereas in particular such value should where possible be based on a representative sale of a like vessel in the ordinary course of trade in the exporting country; whereas it is expedient to define the circumstances in which a domestic sale may be considered to be made at a loss and may be disregarded and in which recourse may be had to sale of a like vessel to a third country or to constructed normal value; whereas it is also desirable to provide for a proper allocation of costs, even in start-up situations; whereas it is also necessary, when constructing normal value, to indicate the methodology that is to be applied in determining the amounts for selling, general and administrative costs and the profit margin that should be included in such value;
- (8) Whereas, in order to be able to apply correctly the new instrument for combating injurious pricing, the Commission must take all necessary steps to ascertain, in the large conglomerates and holdings of third countries, the validity of accounting charges when the cost price structure needs to be estimated;
- (9) Whereas, when determining normal value for non-market economy countries, it appears prudent to set out rules 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 other reasonable basis;

⁽¹⁾ OJ No C 13, 18. 1. 1996, p. 10.

⁽²⁾ OJ No C 17, 22. 1. 1996.

⁽³⁾ See page 1 of this Official Journal.

- (10) Whereas it is expedient to define the export price and to enumerate the adjustments which shall be made in those cases where a reconstruction of this price from the first open-market price is deemed necessary;
- (11) Whereas, for the purpose of ensuring a fair comparison between export price and normal value, it is advisable to list the factors, including contractual penalties, which may affect prices and price comparability;
- (12) Whereas it is desirable to lay down clear and detailed guidance as to the factors which may be relevant for the determination of whether the injuriously priced sale has caused material injury or is threatening to cause injury; whereas, in demonstrating that the price level of the sale concerned is responsible for injury sustained by a Community industry, attention should be given to the effect of other factors and in particular prevailing market conditions in the Community;
- (13) Whereas it is advisable to define the term 'Community industry' by reference to the capability to build a like vessel and to provide that parties related to exporters may be excluded from such industry and to define the term 'related';
- (14) Whereas it is necessary to lay down the procedural and substantive conditions for lodging a complaint against injurious pricing, including the extent to which it should be supported by the Community industry, and the information on the buyer of the vessel, injurious pricing, injury and causation which such complaint should contain; whereas it is also expedient to specify the procedures for the rejection of complaints or the initiation of proceedings;
- (15) Whereas, when the buyer of the injuriously priced vessel is established in the territory of another Contracting Party to the Shipbuilding Agreement, a complaint may also contain a request that an investigation be initiated by the authorities of that Contracting Party; whereas such request shall be transmitted to the authorities of the Contracting Party, where warranted;
- (16) Whereas, where appropriate, an investigation may also be initiated upon a written complaint by the authorities of a Contracting Party to the Shipbuilding Agreement, in accordance with this Regulation and under the conditions of the Shipbuilding Agreement;
- (17) Whereas it is necessary to lay down the manner in which interested parties should be given notice of the information which the authorities require, and should have ample opportunity to present all relevant evidence and 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 the rules whereby interested parties are 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 in the collection of information;
- (18) Whereas it is necessary to provide that the termination of cases should, irrespective of whether an injurious pricing charge is imposed or not, take place no later than one year from the date of initiation or the date of delivery of the vessel, as the case may be; whereas investigations or proceedings should be terminated where the margin of injurious pricing is de minimis;
- (19) Whereas the investigation may be terminated without the imposition of an injurious pricing charge if the sale of the injuriously priced vessel is definitively and unconditionally voided or if an alternative equivalent remedy is accepted; whereas the need to avoid jeopardizing achievement of the aim pursued under this Regulation should, however, be given special consideration;
- (20) Whereas an injurious pricing charge equal to the amount of the injurious pricing margin must be imposed by decision on the shipbuilder whose injuriously priced sale of a vessel has caused injury to the Community industry, where all the conditions provided for in this Regulation are fulfilled; whereas precise and detailed rules should be provided for the implementation of such decision, including all measures necessary for its actual enforcement, in particular the taking of countermeasures if the shipbuilder does not pay the injurious pricing charge within the applicable time limit;
- (21) Whereas it is necessary to lay down precise rules for the denial of the right to load and unload in Community ports to vessels built by shipbuilders subject to countermeasures;
- (22) Whereas the obligation to pay the injurious pricing charge expires only when such charge is fully paid or at the end of the period during which the countermeasures are applicable;

- (23) Whereas any action taken under this Regulation should not be contrary to the Community interest;
- (24) Whereas, in acting pursuant to this Regulation, the Community has to bear in mind the need for rapid and effective action;
- (25) Whereas it is necessary to provide for consultation 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;
- (26) Whereas it is expedient to provide for verification visits to check information submitted on injurious pricing and injury, such visits being, however, conditional on proper replies to questionnaires being received;
- (27) Whereas it is necessary to provide that, where parties do not cooperate satisfactorily, other information may be used to establish findings and that such information may be less favourable to the parties than if they had cooperated;
- (28) Whereas provision should be made for the treatment of confidential information so that business secrets are not divulged;
- (29) Whereas it is essential that provision be made for the proper disclosure of the essential facts and considerations to parties which qualify for such treatment and that such disclosure be made, with due regard to the decision-making process in the Community, within a time period which permits parties to defend their interests,
3. For the purpose of this Regulation,
- (a) the term 'vessel' shall mean any self-propelled sea-going vessel of 100 gross tonnes and above used for transportation of goods or persons or for performance of a specialized service (for example, ice breakers and dredgers) and any tug of 365 kW and over;
- (b) the term 'like vessel' shall mean any vessel of the same type, purpose and approximate size as the vessel under consideration and possessing characteristics closely resembling those of the vessel under consideration;
- (c) the term 'same general category of vessel' shall mean any vessel of the same type and purpose, but of a significantly different size;
- (d) the term 'sale' shall cover the creation or transfer of an ownership interest in the vessel, except for an ownership interest created or acquired solely for the purpose of providing security for a normal commercial loan;
- (e) the term 'ownership interest' shall include any contractual or proprietary interest which allows the beneficiary or beneficiaries of such interest to take advantage of the operation of the vessel in a manner substantially comparable to the way in which an owner may benefit from the operation of the vessel. In determining whether such substantial comparability exists, the following factors shall be considered, *inter alia*:
- (i) the terms and circumstances of the transaction,
- (ii) commercial practice within the industry,
- (iii) whether the vessel subject to the transaction is integrated into the operations of the beneficiary or beneficiaries, and
- (iv) whether in practice there is a likelihood that the beneficiary or beneficiaries of such interests will take advantage of, and the risk for, the operation of the vessel for a significant part of the life-time of the vessel;
- (f) the term 'buyer' shall mean any person who, or any company which, acquires an ownership interest, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the shipbuilder, either directly or indirectly, including a person who, or company which, owns or controls a buyer, or gives instructions to the buyer. A person or company owns a buyer when it has more than a 50% interest in the buyer. A person or company controls a buyer when the person or company is legally or operationally in a position to exercise restraint or direction over the buyer, which is presumed at a 25% interest. If ownership of a buyer is shown, a separate control of it is presumed not to exist unless established otherwise. There may be more than one buyer of any one vessel;

HAS ADOPTED THIS REGULATION:

Article 1

Principles and definitions

1. An injurious pricing charge may be imposed on the builder of any injuriously priced vessel whose sale to a buyer other than a buyer of the country in which the vessel originates causes injury.

2. A vessel is to be considered as being injuriously priced if the export price of the vessel sold is less than a comparable price for the like vessel, in the ordinary course of trade, when sold to a buyer of the exporting country.

- (g) the term 'company' shall mean any company or firm constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, including those which are non-profitmaking;
- (h) the term 'Contracting Party' shall mean any third country party to the Shipbuilding Agreement.

Article 2

Determination of injurious pricing

A. Normal value

1. The normal value shall normally be based on the price paid or payable, in the ordinary course of trade, for a like vessel by an independent buyer in the exporting country.
2. Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship.
3. When there are no sales of like vessels 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 vessel shall be calculated on the basis of the export price of a like vessel, in the ordinary course of trade, to an appropriate third country, provided that this price is representative. If such sales to any appropriate third country do not exist or do not permit a proper comparison, the normal value of the like vessels 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.
4. Sales of like vessels in the domestic market of the exporting country, or export sales to a third country, at prices below unit production costs (fixed and variable) 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 at prices which do not provide for the recovery of all costs within a reasonable period, which should normally be five years.
5. Costs shall normally be calculated on the basis of records kept by the shipbuilder under investigation, provided that such records are in accordance with the generally accepted accounting principles of the country concerned and that it is shown that the records reasonably reflect the costs associated with the production and sale of the vessel under consideration.

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 subparagraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs are affected by start-up operations.

6. The amounts for selling, general and administrative costs and for profits shall be based on actual data pertaining to production and sales, in the ordinary course of trade, of like vessels by the shipbuilder under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

- (a) the weighted average of the actual amounts determined for other shipbuilders of the country of origin in respect of production and sales of like vessels in that country's domestic market;
- (b) the actual amounts applicable to production and sales, in the ordinary course of trade, of the same general category of vessels for the shipbuilder in question in the domestic market of the country of origin;
- (c) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other shipbuilders on sales of vessels of the same general category in the domestic market of the country of origin.

Furthermore, the profit added in constructing value shall, in all instances, be based upon the average profit realized over a reasonable period of time of normally six months both before and after the sale under investigation and shall reflect a reasonable profit at the time of such sale. In making such calculation, any distortion which is demonstrated to result in a profit which is not a reasonable one at the time of the sale shall be eliminated.

7. Given the long lead time between contract and delivery of vessels, a normal value shall not include actual costs for which the shipbuilder demonstrates that they are due to *force majeure* and that they are significantly over the cost increase which the shipbuilder could reasonably have anticipated and taken into account when the material terms of sales were fixed.

8. In the case of sales 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 (EEC) No 3420/83⁽¹⁾ applies, normal value

⁽¹⁾ OJ No L 67, 10. 3. 1994, p. 89. Regulation as last amended by Regulation (EC) No 839/95 (OJ No L 85, 19. 4. 1995, p. 9).

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 those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like vessel, duly adjusted if necessary to include a reasonable profit margin.

An appropriate market economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. Account shall also be taken of time limits.

The parties to the investigation shall be informed shortly after its initiation of the market economy third country envisaged and shall be given 10 days to comment.

B. Export price

9. The export price shall be the price actually paid or payable for the vessel under consideration.

10. In cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement between the shipbuilder and the buyer or a third party, the export price may be constructed on the basis of the price at which the vessel is first resold to an independent buyer, or, if the vessel is not resold to an independent buyer or is not resold in the condition in which it was originally sold, on any reasonable basis.

In these cases, adjustment for all costs, including duties and taxes, incurred between the original sale and resale, and for profits accruing, shall be made so as to establish a reliable export price.

The items for which adjustment shall be made include those normally borne by a buyer but paid by any party, either inside or outside the Community, which appears to be associated or to have a compensatory arrangement with the shipbuilder or buyer, including: usual transport, insurance, handling, loading and ancillary costs; customs duties, and other taxes payable in the importing country by reason of the purchase of the vessel; and a reasonable margin for selling, general and administrative costs and profit.

C. Comparison

11. 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, which will normally mean sales within three months before or after the sale under investigation, or in the absence of such sales, any appropriate period. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, contractual penalties, taxation, level of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. Where, in cases referred to in paragraph 10, price comparability has been affected, the normal value shall be established at a level of trade equivalent to the level of trade of the constructed export price, or due allowance made, as warranted, under this paragraph. Any duplication when making adjustments shall be avoided, in particular in relation to discounts and contractual penalties. When the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, except 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. For the purpose of this provision, the date of sale shall be the date on which the material terms of sale are established, normally the date of contract. However, if the material terms of sale are significantly changed on another date, the rate of exchange on the date of the change should be applied. In such case, appropriate adjustments shall be made to take into account any unreasonable effect on the injurious pricing margin due solely to exchange rate fluctuations between the original date of sale and the date of this change.

D. Injurious pricing margin

12. Subject to the relevant provisions governing fair comparison, the existence of injurious pricing margins shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all sales, or by a comparison of individual normal values and individual export prices on a transaction-to-transaction basis. However, a normal value established on a weighted average basis may be compared to prices of all individual sales, if there is a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if the methods specified in the first sentence of this paragraph would not reflect the full degree of injurious pricing being practised.

13. The injurious pricing margin shall be the amount by which the normal value exceeds the export price. Where injurious pricing margins vary, a weighted average injurious pricing margin may be established.

Article 3

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 shall involve an objective examination of both (a) the effect of the sale at less than normal value on prices in the Community market for like vessels, and (b) the consequent impact of that sale on the Community industry.
 3. With regard to the effect of the sale at less than normal value on prices, consideration shall be given to whether there has been significant price undercutting by the sale at less than normal value as compared with the price of like vessels of the Community industry, or whether the effect of such sale is otherwise to depress prices to a significant degree or prevent price increases which would otherwise have occurred, to a significant degree. No one or more of these factors can necessarily give decisive guidance.
 4. Where sales of vessels from more than one country are simultaneously subject to injurious pricing investigations, the effects of such sales shall be cumulatively assessed only if it is determined that (a) the margin of injurious pricing established in relation to the purchases from each country is more than *de minimis* as defined in Article 7 (3) and that (b) a cumulative assessment of the effects of the sales is appropriate in the light of the conditions of competition between vessels sold by non-Community shipbuilders to the buyer and the conditions of competition between such vessels and the like Community vessels.
 5. The examination of the impact of the sale at less than normal value 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, injurious pricing or subsidization, the magnitude of the actual margin of injurious pricing, 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 any one or more 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 sale at less than normal value is causing, or has caused, injury within the meaning of this Regulation. Specifically, this shall entail a demonstration that the 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 sale at less than normal value 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 sale at less than normal value under paragraph 6. Factors which may be considered in this respect include the volume and prices of sales by shipbuilders of countries other than the exporting country not realized at less than normal value, contraction in demand or changes in the patterns of consumption, restrictive trade practices of, and competition between, third country and Community producers, developments in technology and the export performance and productivity of the Community industry.
 8. The effect of the sale at less than normal value shall be assessed in relation to the production of the Community industry of like vessels 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 sale at less than normal value shall be assessed by examination of the production of the narrowest group or range of vessels, which includes the like vessel, 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 sale at less than normal value would cause injury must be clearly foreseen and imminent.
- In making a determination regarding the existence of a threat of material injury, consideration should be given to, *inter alia*, such factors as:
- (a) sufficient freely disposable capacity of the shipbuilder or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased sales at less than normal value, account being taken of the availability of other export markets to absorb any additional exports; and
 - (b) whether vessels are being exported at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have

occurred, and would probably increase demand for further purchases from other countries.

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 sales at less than normal value are imminent and that, unless protective action is taken, material injury will occur.

Article 4

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 capable of producing a like vessel with their present facilities or whose facilities can be adapted in a timely manner to produce a like vessel, or to those of them whose collective capability to produce a like vessel constitutes a major proportion, as defined in Article 5 (6), of the total Community capability to produce a like vessel. However, when producers are related to the shipbuilder, exporters or buyers or are themselves buyers of the allegedly injuriously priced vessel, the term 'the Community industry' may be interpreted as referring to the rest of the producers.

2. For the purpose of paragraph 1, producers shall be considered to be related to the shipbuilder, exporters or buyers 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. The provisions of Article 3 (8) shall be applicable to this Article.

Article 5

Initiation of proceedings

1. Except as provided for in paragraph 8, an investigation to determine the existence, degree and effect of any alleged injurious pricing 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.

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.

Where, in the absence of any complaint, a Member State is in possession of sufficient evidence of injurious pricing and of resultant injury to the Community industry, it shall immediately communicate such evidence to the Commission.

2. A complaint under paragraph 1 shall be filed no later than:

- (a) six months from the time that the complainant knew, or should have known, of the sale of the vessel,
 - when the complainant was invited to tender a bid on the contract at issue through a broad multiple bid or any other bidding process,
 - when the complainant actually did so tender a bid, and
 - when the bid of the complainant substantially met bid specifications;
- (b) nine months from the time that the complainant knew, or should have known, of the sale of the vessel in the absence of an invitation to tender, provided that a notice of intent to apply, including information reasonably available to the complainant to identify the transaction concerned, had been submitted no later than six months from that time to the Commission or a Member State.

In no event shall a complaint be filed later than six months from the date of delivery of the vessel.

The complainant may be considered to have known of the sale of a vessel from the time of publication of the fact of the conclusion of the contract, along with very general information concerning the vessel, in the international trade press.

For the purpose of this Article, a broad multiple bid shall be interpreted to mean a bid in which the proposed buyer extends an invitation to bid to at least all the shipbuilders known to the buyer to be capable of building the vessel in question.

3. A complaint under paragraph 1 shall include evidence:

- (a) of injurious pricing;
- (b) of injury;
- (c) of a causal link between the injuriously priced sale and the alleged injury; and

- (d) (i) that, if the vessel was sold through a broad multiple bid, the complainant was invited to tender a bid on the contract at issue, it actually did so, and the bid of the complainant substantially met bid specifications (i.e., delivery date and technical requirements), or
- (ii) that, if the vessel was sold through any other bidding process and the complainant was invited to tender a bid on the contract at issue, it actually did so, and the bid of the complainant substantially met bid specifications, or
- (iii) that, in the absence of an invitation to tender a bid other than under a broad multiple bid, the complainant was capable of building the vessel concerned and, if the complainant knew, or should have known, of the proposed purchase, it made demonstrable efforts to conclude a sale with the buyer consistent with the bid specifications in question. The complainant may be considered to have known of the proposed purchase if it is demonstrated that the majority of the relevant industry has made efforts with that buyer to conclude a sale of the vessel in question, or if it is demonstrated that general information on the proposed purchase was available from brokers, financiers, classification societies, charterers, trade associations, or other entities normally involved in shipbuilding transactions with whom the complainant had regular contacts or dealings.
4. The complaint shall contain such information as is reasonably available to the complainant on the following:
- (a) identity of the complainant and a description of the volume and value of the Community production of the like vessel 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 capable of building the like vessel and, to the extent possible, a description of the volume and value of Community production of the like vessel accounted for by such producers;
- (b) a complete description of the allegedly injuriously priced vessel, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and the identity of the buyer of the vessel in question;
- (c) prices at which such vessels are sold in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which such vessel is sold from the country or countries of origin or export to a third country or countries or on the constructed value of the vessel) and information on export prices or, where appropriate, on the prices at which such vessel is first resold to an independent buyer;
- (d) the effect of the injuriously priced sale on prices of the like vessel on the Community market and the consequent impact of the sale 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).
5. The Commission shall, as far as 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.
6. An investigation shall not be initiated pursuant to paragraph 1 unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by Community producers capable of building the like vessel, 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 capacity to produce the like vessel constitutes more than 50% of the total capacity of 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 capacity of the Community producers capable of producing the like vessel.
7. The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the complaint seeking the initiation of an investigation. However, before proceeding to initiate an investigation, the government of the exporting country concerned shall be notified.
8. 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 injurious pricing, injury, a causal link, and that a member of the allegedly injured Community industry met the criteria of paragraph 3 (d) of this Article, to justify such initiation.
- Where appropriate, an investigation may also be initiated upon a written complaint by the authorities of a

Contracting Party. Such a complaint shall be supported by sufficient evidence to show that a vessel is being, or has been, injuriously priced and that the alleged sale to a Community buyer at less than normal value is causing, or has caused, injury to the domestic industry of the Contracting Party concerned.

9. The evidence of both injurious pricing and injury shall be considered simultaneously in the decision on whether or not to initiate an investigation. A complaint shall be rejected where there is insufficient evidence of either injurious pricing or of injury to justify proceeding with the case.

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

11. Without prejudice to Article 15 (2), where, after consultation, it is apparent that there is sufficient evidence to justify initiating a proceeding the Commission shall do so within 45 days of the lodging of the complaint, or, in case of initiation pursuant to paragraph 8, no later than six months from the time the sale of the vessel was known or should have been known, and shall 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.

12. The notice of initiation of the proceedings shall announce the initiation of an investigation, indicate the name and country of the shipbuilder and the buyer(s) and a description of the vessel 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).

13. The Commission shall advise the exporter, the buyer(s) of the vessel and representative associations of producers, exporters or buyers of such vessels known to it to be concerned, as well as representatives of the country the vessel of which is subject to such investigation 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 exporter, and to the authorities of the exporting country, and make it available upon request to other interested parties involved.

Article 6

The investigation

1. Following the initiation of the proceeding, the Commission, acting in cooperation with the Member States and, where appropriate, with the authorities of third countries, shall commence an investigation at Community level. Such investigation shall cover both injurious pricing and injury and these shall be investigated simultaneously.

2. Parties receiving questionnaires used in an injurious pricing investigation shall be given at least 30 days to 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, due account being taken of the time limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances.

3. The Commission may request the authorities of third countries, where appropriate, as well as the 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 the authorities of third countries, where appropriate, as well as the Member States, to carry out all necessary checks and inspections, particularly amongst Community producers, and to carry out investigations in third countries, provided that the firms concerned give their consent and that 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. Likewise, officials of the Commission may assist the officials of the authorities of third countries in carrying out their duties, upon agreement between the Commission and such authorities.

5. The interested parties which have made themselves known in accordance with Article 5 (12) 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 proceeding and that there are particular reasons why they should be heard.

6. Opportunities shall, on request, be provided for the shipbuilder, the buyer(s), representatives of the government of the exporting country, the complainants, and other interested parties which have made themselves known in accordance with Article 5 (12), 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 insofar as it is subsequently confirmed in writing.

7. The complainants, the shipbuilder, the buyer(s) and other interested parties which have made themselves known in accordance with Article 5 (12), 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 13, and that is used in the investigation. Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.

8. Except in the circumstances provided for in Article 12, the information which is supplied by interested parties and upon which findings are based shall be examined for accuracy as far as possible.

9. For proceedings involving price to price comparison, where a like vessel has been delivered, the investigation shall be concluded no later than one year from the date of initiation.

For proceedings in which the like vessel is under construction, the investigation shall be concluded no later than one year from the date of delivery of that like vessel.

Investigations involving constructed value shall be concluded within one year of their initiation or within one year of delivery of the vessel, whichever is the later.

These time limits are suspended to the extent that Article 15 (2) is applied.

Article 7

Termination without measures, imposition and collection of injurious pricing charges

1. Where the complaint is withdrawn, the proceeding may be terminated.

2. Where, after consultation, measures are unnecessary and there is no objection raised within the Advisory Committee, the investigation or proceeding 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 proceeding be terminated. The proceeding shall be deemed terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

3. There shall be immediate termination where it is determined that the margin of injurious pricing is less than 2%, expressed as a percentage of the export price.

4. Where the facts as finally established show that there is injurious pricing and injury caused thereby, an injurious pricing charge shall be imposed on the shipbuilder by the Council, acting by simple majority on a proposal submitted by the Commission after consultation of the Advisory Committee. The amount of the injurious pricing charge shall be equal to the margin of injurious pricing established. The Council shall take its decision not later than 30 working days after receiving the proposal. The Commission shall take the necessary measures for the implementation of the Council decision, in particular the collection of the injurious pricing charge.

5. The shipbuilder shall pay the injurious pricing charge within 180 days of notification to it of the imposition of the charge, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the shipbuilder. The Commission may give the shipbuilder a reasonably extended period of time to pay where the shipbuilder demonstrates that payment within 180 days would render it insolvent or would be incompatible with a judicially supervised reorganization, in which case interest shall accrue on any unpaid portion of the charge, at a rate equal to the secondary market yield on medium term ecu bond in the Luxembourg stock exchange plus 50 basis points.

Article 8

Alternative remedies

After consultation of the Advisory Committee, the investigation may be terminated without the imposition

of an injurious pricing charge if the shipbuilder definitively and unconditionally voids the sale of the injuriously priced vessel or complies with an alternative equivalent remedy accepted by the Commission.

A sale shall be considered to have been voided only where all contractual relationships between the parties concerned by the sale in question have been terminated, all consideration paid in connection with the sale is reimbursed and all rights in the vessel concerned or parts thereof are returned to the shipbuilder.

Article 9

Countermeasures — denial of loading and unloading rights

1. If the shipbuilder concerned does not pay the injurious pricing charge imposed under Article 7, countermeasures under the form of denial of loading and unloading rights shall be imposed by the Commission, after consultation of the Advisory Committee, on the vessels built by the shipbuilder in question.

2. The decision imposing the countermeasures shall enter into force 30 days after its publication in the *Official Journal of the European Communities* and shall be repealed on full payment of the injurious pricing charge by the shipbuilder. The countermeasure shall cover all vessels contracted for during a period of four years from the date of entry into force of the decision. Each vessel shall be subject to the countermeasure for a period of four years after its delivery. Such periods may be reduced only following and in accordance with the outcome of an international dispute settlement procedure concerning the countermeasures imposed.

The vessels subject to the denial of loading and unloading rights shall be specified by decision to be adopted by the Commission and published in the *Official Journal of the European Communities*.

3. The Member States' customs authorities shall not grant permission to load or unload to vessels subject to the denial of loading and unloading rights.

Article 10

Consultations

1. Any consultations provided for in this Regulation shall take place within an Advisory Committee, which shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately 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 adhered to.

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 that event, 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 adhered to.

4. Consultation shall cover, in particular:

- (a) the existence of injurious pricing and the methods of establishing the injurious pricing margin;
- (b) the existence and extent of injury;
- (c) the causal link between the injuriously priced sale and injury;
- (d) the measures which, in the circumstances, are appropriate to remedy the injurious pricing and the ways and means of putting such measures into effect.

Article 11

Verification visits

1. The Commission shall, where it considers it appropriate, carry out visits to examine the records of exporters, shipbuilders, traders, agents, producers, trade associations and organizations, to verify information provided on injurious pricing 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, that it notifies the representatives of the government of the country in question and that 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 under paragraphs 1, 2 and 3, the Commission shall be assisted by officials of those Member States who so request.

Article 12

Non-cooperation

1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided 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. Failure to give a computerized response shall not be deemed to constitute non-cooperation, provided that the interested party shows a presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost.

3. Where the information submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

4. If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons therefor and shall 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 shall be disclosed and given in published findings.

5. If determinations, including those regarding normal value, are based on the provisions of paragraph 1, including the information supplied in the complaint, it shall, 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 statistics of sales and customs returns, or information obtained from other interested parties during the investigation.

6. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated.

Article 13

Confidentiality

1. Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information) or which is provided on a confidential basis by parties to an investigation shall, if good cause is shown, be treated as such by the authorities.

2. Interested parties providing confidential information shall be required to furnish nonconfidential summaries thereof. Those 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 shall 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 insofar 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 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 10, 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 14***Disclosure**

1. The complainants, the shipbuilder, the exporter, the buyer(s) of the vessel and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations in the basis of which it is intended to recommend the imposition of an injurious pricing charge, or the termination of an investigation or proceedings without the imposition of a charge.

2. Requests for final disclosure, as defined in paragraph 1, shall be addressed to the Commission in writing and be received within time limits set by the Commission.

3. Disclosure shall be effected in writing. It shall be effected, due regard being had to the need to protect confidential information, as soon as possible and, normally, not less than one month before a definitive decision or the Commission's submission of any proposal for a definitive decision under Article 7. 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.

4. Representations made after 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.

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

Done at Brussels, 29 January 1996.

*Article 15***Final provisions**

1. This Regulation shall not preclude the application of:

- (a) any special rules laid down in agreements concluded between the Community and third countries;
- (b) special measures, provided that such action does not run counter to obligations pursuant to the Shipbuilding Agreement.

2. An investigation pursuant to this Regulation shall not be carried out nor measures be imposed or maintained when such measures would be contrary to the Community's obligations emanating from the Shipbuilding Agreement or any other relevant international agreement.

Nothing in this Regulation shall prevent the Community from fulfilling its obligations under the provisions of the Shipbuilding Agreement concerning dispute settlement.

*Article 16***Entry into force**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

It shall apply from the date of entry into force of the Shipbuilding Agreement⁽¹⁾.

It shall not apply to vessels contracted for before the date of entry into force of the Shipbuilding Agreement, except for vessels contracted for after 21 December 1994 and for delivery more than five years from the date of the contract. Such vessels shall be subject to this Regulation, unless the shipbuilder demonstrates that the extended delivery date was for normal commercial reasons and not to avoid the application of this Regulation.

For the Council

The President

S. AGNELLI

⁽¹⁾ The date of entry into force of the Shipbuilding Agreement will be published in the *Official Journal of the European Communities*, L series.