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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2423/88

of 11 July 1988

on protection against dumped or subsidized imports from countries not members of the European Economic Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Regulations establishing the common organization of agricultural markets and the Regulations adopted under Article 235 of the Treaty applicable to goods manufactured from agricultural products, and in particular the provisions of those Regulations which allow for derogation from the general principle that protective measures at frontiers may be replaced solely by the measures provided for in those Regulations,

Having regard to the proposal from the Commission,

Whereas by Regulation (EEC) No 2176/84 [1], as amended by Regulation (EEC) No 1761/87 [2], the Council adopted common rules for protection against dumped or subsidized imports from countries which are not members of the European Economic Community;

Whereas these rules were adopted in accordance with existing international obligations, in particular those arising from Article VI of the General Agreement on Tariffs and Trade (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);

Whereas in applying these rules it is essential, in order to maintain the balance of rights and obligations which these Agreements sought to establish, that the Community take account of their interpretation by the Community's major trading partners, as reflected in legislation or established practice;

Whereas it is desirable that the rules for determining normal value should be presented clearly and in sufficient detail; whereas it should be specifically provided that where sales on the domestic market of the country of export or origin do not for any reason form a proper basis for determining the existence of dumping, recourse may be had to a constructed normal value; whereas it is appropriate to give examples of situations which may be considered as not representing the ordinary course of trade, in particular where a product is sold at prices which are less than the costs of production, or where transactions take place between parties which are associated or which have a compensatory arrangement; whereas it is appropriate to list the possible methods of determining normal value in such circumstances;

Whereas it is expedient to define the export price and to enumerate the necessary adjustments to be made in those cases where reconstruction of this price from the first open-market price is deemed appropriate;

Whereas, for the purpose of ensuring a fair comparison between export price and normal value, it is advisable to establish guidelines for determining the adjustments to be made in respect of differences in physical characteristics, in quantities, in conditions and terms of sale and to draw attention to the fact that the burden of proof falls on any person claiming such adjustments;

Whereas the term 'dumping margin' should be clearly defined and the Community's established practice for methods of calculation, where prices or margins vary, codified;

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

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

Whereas it is necessary to lay down the procedures for anyone acting on behalf of a Community industry which considers itself injured or theatened by dumped or subsidized

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No L 167, 26. 6. 1987, p. 9.

imports to lodge a complaint; whereas it seems appropriate to make it clear that in the case of withdrawal of a complaint, proceedings may, but need not necessarily, be terminated;

Whereas there should be cooperation between the Member States and the Commission, both as regards information about the existence of dumping or subsidization and injury resulting therefrom, and as regards the subsequent examination of the matter at Community level; whereas, to this end, consultations should take place within an advisory committee;

Whereas it is appropriate to lay down clearly the rules of procedure to be followed during the investigation, in particular the rights and obligations of the Community authorities and the parties involved, and the conditions under which interested parties may have access to information and may ask to be informed of the essential facts and considerations on the basis of which it is intended to recommend definitive measures;

Whereas it is desirable to state explicitly that the investigation of dumping or subsidization should normally cover a period of not less than six months immediately prior to the initiation of the proceeding and that final determinations must be based on the facts established in respect of the investigation period;

Whereas to avoid confusion, the use of the terms 'investigation' and 'proceeding' in this Regulation should be clarified;

Whereas it is necessary to require that when information is to be considered as being confidential, a request to this effect must be made by the supplier, and to make clear that confidential information which could be summarized but of which no non-confidential summary has been submitted may be disregarded;

Whereas, in order to avoid undue delays and for administrative convenience, it is advisable to introduce time limits within which undertakings may be offered;

Whereas it is necessary to lay down more explicit rules concerning the procedure to be followed after withdrawal or violation of undertakings;

Whereas it is necessary that the Community's decision-making process permit rapid and efficient action, in particular through measures taken by the Commission, as for instance the imposition of provisional duties;

Whereas, in order to discourage dumping, it is appropriate to provide, in cases where the facts as finally established show that there is dumping and injury, for the possibility of definitive collection of provisional duties even if the imposition of a definitive anti-dumping duty is not decided on, on particular grounds;

Whereas it is essential, in order to ensure that anti-dumping and countervailing duties are levied in a correct and uniform manner, that common rules for the application of such duties be laid down; whereas, by reason of the nature of the said duties, such rules may differ from the rules for the levying of normal import duties;

Whereas experience gained from the implementation of Regulation (EEC) No 2176/84 has shown that assembly in the Community of products whose importation in a finished state is subject to anti-dumping duty may give rise to certain difficulties;

Whereas in particular:

— where assembly or production is carried out by a party which is related or associated to any of the manufacturers whose exports of the like product are subject to an anti-dumping duty, and

— where the value of the parts or materials used in the assembly or production operation and originating in the country of origin of the product subject to an anti-dumping duty exceeds the value of all other parts or materials used,

such assembly or production is considered likely to lead to circumvention of the anti-dumping duty;

Whereas, in order to prevent circumvention, it is necessary to provide for the collection of an anti-dumping duty on products thus assembled or produced;

Whereas it is necessary to lay down the procedures and conditions for the collection of duty in such circumstances;

Whereas the amount of anti-dumping duty collected should be limited to that necessary to prevent circumvention;

Whereas provision should be made for the review of regulations and decisions to be carried out, where appropriate, in part only;

Whereas, in order to avoid abuse of Community procedures and resources, it is appropriate to lay down a minimum period which must elapse after the conclusion of a proceeding before such a review may be conducted, and to ensure that there is evidence of a change in circumstances sufficient to justify a review;

Whereas it is necessary to provide that, after a certain period of time, anti-dumping and countervailing measures will lapse unless the need for their continued existence can be shown;

Whereas appropriate procedures should be established for examining applications for refunds of anti-dumping duties; whereas there is a need to ensure that refund procedures apply only in respect of definitive duties or amounts of any provisional duty which have been definitively collected, and to streamline the existing procedures for refunds;

Whereas this Regulation should not prevent the adoption of special measures where this does not run counter to the Community's obligations under the GATT;

Whereas agricultural products and products derived therefrom might also be dumped or subsidized; whereas it is, therefore, necessary to supplement the import rules generally applicable to these products by making provision for protective measures against such practices;

Whereas, in addition to the above considerations, which, in essence, led to the adoption of Regulation (EEC) No 2176/84, experience has shown that it is necessary to define more precisely certain of the rules to be applied and the procedures to be followed in the context of anti-dumping proceedings;

Whereas, for the determination of normal value, it is appropriate to ensure that when this is based on domestic prices, the price should be that actually paid or payable in the ordinary course of trade in the exporting country or country of origin and, therefore, the treatment of discounts and rebates should be clarified, in particular, with regard to deferred discounts which may be recognized if evidence is produced that they were not introduced to distort the normal value. It is also desirable to state more explicitly how normal value is established on the basis of constructed value, in particular, that the selling, general and administrative expenses and profit should be calculated, depending on the circumstances, by reference to the expenses incurred and the profit realized on profitable sales made by the exporter concerned or by other producers or exporters or on any reasonable basis. In addition, it is appropriate to state that, where the exporter neither produces nor sells the like product in the country or origin, the normal value shall normally be established by reference to the prices or costs of the exporter's supplier. Finally, it is considered necessary to define more precisely the conditions under which sales at a loss may be considered as not having been made in the ordinary course of trade;

Whereas, for the determination of export prices, it is advisable to ensure that this is based on the price actually paid or payable and, therefore, the treatment of discounts and rebates should be clarified. In cases where the export price has to be reconstructed, it is necessary to state that the costs to be used in this reconstruction include those normally borne by an importer but paid by any party which appears to be associated with the importer or exporter;

Whereas, for the comparison of normal value and export prices, it is necessary to ensure that this is not distorted by claims for adjustments relating to factors which are not directly related to the sales under consideration or by claims for factors already taken into account. It is therefore appropriate to define precisely the differences which affect price comparability and to lay down more explicit rules on how any adjustment should be made, in particular, for differences in physical characteristics, transport, packing, credit, warranties and other selling expenses. With regard to such selling expenses, it is appropriate, for reasons of clarity, to specify that no allowance should be made for general selling expenses since such expenses are not directly related to the sales under consideration with the exception of salesmen's salaries which should not be treated differently to commissions paid. For reasons of administrative convenience, it is also appropriate to specify that claims for individual adjustments which are insignificant should be disregarded;

Whereas, it is expedient to clarify Community practice with regard to the use of averaging and sampling techniques;

Whereas, in order to avoid undue disruption to proceedings, it is advisable to clarify that the supply of false or misleading information may lead to such information being disregarded and any claims to which it refers being disallowed;

Whereas, experience has shown that, it is necessary to prevent the effectiveness of anti-dumping duties being eroded by the duty being borne by exporters. It is appropriate to confirm that, in such circumstances, additional anti-dumping duties may be imposed, where necessary retroactively;

Whereas, experience has also shown that the rules relating to the expiry of anti-dumping and countervailing measures should be clarified. For this purpose and in order to facilitate the administration of these rules, provision should be made for the publication of a notice of intention to carry out a review;

Whereas, it is appropriate to state more explicitly the methods to be used in the calculation of the amount to any refund, thus confirming the consistent practice of the Commission, as regards refunds and the relevant principles countained in the notice which the Commission has published concerning the reimbursement of anti-dumping duties [1];

Whereas, it is appropriate to take advantage of this opportunity to proceed to a consolidation of the provisions in question,

HAS ADOPTED THIS REGULATION:

Article 1

Applicability

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

[1] OJ No C 266, 22. 10. 1986, p. 2.

Article 2

Dumping

A. PRINCIPLE

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 shall be considered to have been dumped if its export price to the Community is less than the normal value of the like product.

B. NORMAL VALUE

3. For the purposes of this Regulation, the normal value shall be:

(a) the comparable price actually paid or payable in the ordinary course of trade for the like product intended for consumption in the exporting country or country of origin. This price shall be net of all discounts and rebates directly linked to the sales under consideration provided that the exporter claims and supplies sufficient evidence that any such reduction from the gross price has actually been granted. Deferred discounts may be recognized if they are directly linked to the sales under consideration and if evidence is produced to show that these discounts were based on consistent practice in prior periods or on an undertaking to comply with the conditions required to qualify for the deferred discount.

(b) when there are no sales of the like product in the ordinary course of trade on the domestic market of the exporting country or country of origin, or when such sales do not permit a proper comparison:

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

(ii) the constructed value, determined by adding cost of production and a reasonable margin of profit. The cost of production shall be computed on the basis of all costs, in the ordinary course of trade, both fixed and variable, in the country of origin, of materials and manufacture, plus a reasonable amount for selling, administrative and other general expenses. The amount for selling, general and administrative expenses and profit shall be calculated by reference to the expenses incurred and the profit realized by the producer or exporter on the profitable sales of like products on the domestic market. If such data is unavailable or unreliable or is not suitable for use they shall be calculated by reference to the expenses incurred and profit realized by other producers or exporters in the country of origin or export on profitable sales of the like product. If neither of these two methods can be applied the expenses incurred and the profit realized shall be calculated by reference to the sales made by the exporter or other producers or exporters in the same business sector in the country of origin or export or on any other reasonable basis.

(c) Where the exporter in the country of origin neither produces nor sells the like product in the country of origin, the normal value shall be established on the basis of prices or costs of other sellers or producers in the country of origin in the same manner as mentioned in subparagraphs (a) and (b). Normally the prices or costs of the exporter's supplier shall be used for this purpose.

4. Whenever there are reasonable grounds for believing or suspecting that the price at which a product is actually sold for consumption in the country of origin is less than the cost of production as defined in paragraph 3 (b) (ii), sales at such prices may be considered as not having been made in the ordinary course of trade if they:

(a) have been made in substantial quantities during the investigation period as defined in Article 7 (1) (c); and

(b) are not at prices which permit recovery, in the normal course of trade and within the period referred to in paragraph (a), of all costs reasonably allocated.

In such circumstances, the normal value may be determined on the basis of the remaining sales on the domestic market made at a price which is not less than the cost of production or on the basis of export sales to third countries or on the basis of the constructed value or by adjusting the sub-production-cost price referred to above in order to eliminate loss and provide for a reasonable profit. Such normal value calculations shall be based on available information.

5. In the case of imports from non-market economy countries and, in particular, those to which Regulations (EEC) No 1765/82 [1] and (EEC) No 1766/82 [2] apply, normal value shall be determined in an appropriate and not unreasonable manner on the basis of one of the following criteria:

(a) the price at which the like product of a market economy third country is actually sold:

(i) for consumption on the domestic market of that country; or

(ii) to other countries, including the Community;

or

[1] OJ No L 195, 5. 7. 1982, p. 1.
[2] OJ No L 195, 5. 7. 1982, p. 21.

(b) the constructed value of the like product in a market economy third country;

(c) if neither price nor constructed value as established under (a) or (b) provides an adequate basis, the price actually paid or payable in the Community for the like product, duly adjusted, if necessary, to include a reasonable profit margin.

6. Where a product is not imported directly from the country of origin but is exported to the Community from an intermediate country, the normal value shall be the comparable price actually paid or payable for the like product on the domestic market of either the country of export or the country of origin. The latter basis might be appropriate *inter alia*, where the product is merely transhipped through the country of export, where such products are not produced in the country of export or where no comparable price for it exists in the country of export.

7. For the purpose of determining normal value transactions between parties which appear to be associated or to have a compensatory arrangement with each other may be considered as not being in the ordinary course of trade unless the Community authorities are satisfied that the prices and costs involved are comparable to those involved in transactions between parties which have no such link.

C. EXPORT PRICE

8. (a) The export price shall be the price actually paid or payable for the product sold for export to the Community net of all taxes, discounts and rebates actually granted and directly related to the sales under consideration. Deferred discounts shall also be taken into consideration if they are actually granted and directly related to the sales under consideration.

(b) In cases where there is no export price or where it appears that there is an association or a compensatory arrangement between the exporter and the importer or a third party, or that for other reasons the price actually paid or payable for the product sold for export to the Community is unreliable, the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the product is not resold to an independent buyer, or not resold in the condition imported, on any reasonable basis. In such cases, allowance shall be made for all costs incurred between importation and resale and for a reasonable profit margin. These costs shall include those normally borne by an importer but paid by any party either in or outside the Community which appears to be associated or to have a compensatory arrangement with the importer or exporter.

Such allowances shall include, in particular, the following:

(i) usual transport, insurance, handling, loading and ancillary costs;

(ii) customs duties,any anti-dumping duties and other taxes payable in the importing country by reason of the importation or sale of the goods;

(iii) a reasonable margin for overheads and profit and/or any commission usually paid or agreed.

D. COMPARISON

9. (a) The normal value, as established under paragraphs 3 to 7, and the export price, as established under paragraph 8, shall be compared as nearly as possible at the same time. For the purpose of ensuring a fair comparison, due allowance in the form of adjustments shall be made in each case, on its merits, for the differences affecting price comparability, i. e. for differences in:

(i) physical characteristics;

(ii) import charges and indirect taxes;

(iii) selling expenses resulting from sales made:

— at different levels of trade, or

— in different quantities, or

— under different conditions and terms of sale.

(b) Where an interested party claims an adjustment it must prove that its claim is justified.

10. Any adjustments to take account of the differences affecting price comparability listed in paragraph 9 (a) shall, where warranted, be made pursuant to the rules specified below.

(a) *Physical characteristics:*

The normal value as established under paragraphs 3 to 7 shall be adjusted by an amount corresponding to a reasonable estimate of the value of the difference in the physical characteristics of the product concerned.

(b) *Import charges and indirect taxes:*

Normal value shall be reduced by an amount corresponding to any import charges or indirect taxes,

as defined in the notes to the Annex, borne by the like product and by materials physically incorporated therein, when destined for consumption in the country of origin or export and not collected or refunded in respect of the product exported to the Community.

(c) *Selling expenses* (i. e.):

(i) Transport, insurance, handling, loading and ancillary costs:

Normal value shall be reduced by the directly related costs incurred for conveying the product concerned from the premises of the exporter to the first independent buyer. The export price shall be reduced by any directly related costs incurred by the exporter for conveying the product concerned from its premises in the exporting country to its destination in the Community. In both cases these costs comprise transport, insurance, handling, loading and ancillary costs.

(ii) Packing:

Normal value and export price shall be reduced by the respective, directly related costs of the packing for the product concerned.

(iii) Credit:

Normal value and export price shall be reduced by the cost of any credit granted for the sales under consideration.

The amount of the reduction shall be calculated by reference to the normal commercial credit rate applicable in the country of origin or export in respect of the currency expressed on the invoice.

(iv) Warranties, guarantees, technical assistance and other after-sales services:

Normal value and export price shall be reduced by an amount corresponding to the direct costs of providing warranties, guarantees, technical assistance and services.

(v) Other selling expenses:

Normal value and export price shall be reduced by an amount corresponding to the commissions paid in respect of the sales under consideration. The salaries paid to salesmen, i. e. personnel wholly engaged in direct selling activities, shall also be deducted.

(d) *Amount of the adjustment*

The amount of any adjustment shall be calculated on the basis of relevant data for the investigation period or the data for the last available financial year.

(e) *Insignificant adjustments:*

Claims for adjustments which are insignificant in relation to the price or value of the affected transactions shall be disregarded. Ordinarily, individual adjustments having an *ad valorem* effect of less than 0,5 % of that price or value shall be considered insignificant.

E. ALLOCATION OF COSTS

11. In general, all cost calculations shall be based on available accounting data, normally allocated, where necessary, in proportion to the turnover for each product and market under consideration.

F. LIKE PRODUCT

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

G. AVERAGING AND SAMPLING TECHNIQUES

13. Where prices vary:

— normal value shall normally be established on a weighted average basis,

— export prices shall normally be compared with the normal value on a transaction-by-transaction basis except where the use of weighted averages would not materially affect the results of the investigation,

— sampling techniques, e. g. the use of the most frequently occurring or respresentative prices may be applied to establish normal value and export prices in cases in which a significant volume of transactions is involved.

H. DUMPING MARGIN

14. (a) 'Dumping margin' means the amount by which the normal value exceeds the export price.

(b) Where dumping margins vary, weighted averages may be established.

Article 3

Subsidies

1. A countervailing duty may be imposed for the purpose of offsetting any subsidy bestowed, directly or indirectly, in the country of origin or export, upon the manufacture, production, export or transport of any product whose release for free circulation in the Community causes injury.

2. Subsidies bestowed on exports include, but are not limited to, the practices listed in the Annex.

3. The exemption of a product from import charges or indirect taxes, as defined in the notes to the Annex, effectively borne by the like product and by materials physically incorporated therein, when destined for consumption in the country of origin or export, or the refund of such charges or taxes, shall not be considered as a subsidy for the purposes of this Regulation.

4. (a) The amount of the subsidy shall be determined per unit of the subsidized product exported to the Community.

(b) In establishing the amount of any subsidy the following elements shall be deducted from the total subsidy:

(i) any application fee, or other costs necessarily incurred in order to qualify for, or receive benefit of, the subsidy;

(ii) export taxes, duties or other charges levied on the export of the product to the Community specifically intended to offset the subsidy.

Where an interested party claims a deduction, it must prove that the claim is justified.

(c) Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount shall be determined by allocating the value of the subsidy, as appropriate, over the level of production or exports of the products concerned during a suitable period. Normally this period shall be the accounting year of the beneficiary.

Where the subsidy is based upon the acquisition or future acquisition of fixed assets, the value of the subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned. Where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan.

(d) In the case of imports from non-market economy countries and in particular those to which Regulations (EEC) No 1765/82 and (EEC) No 1766/82 apply, the amount of any subsidy may be determined in an appropriate and not unreasonable manner, by comparing the export price as calculated in accordance with Article 2 (8) with the normal value as determined in accordance with Article 2 (5). Article 2 (10) shall apply to such a comparison.

(e) Where the amount of subsidization varies, weighted averages may be established.

Article 4

Injury

1. A determination of injury shall be made only if the dumped or subsidized imports are, through the effects of dumping or subsidization, causing injury i.e., causing or threatening to cause material injury to an established Community industry or materially retarding the establishment of such an industry. Injuries caused by other factors, such as volume and prices of imports which are not dumped or subsidized, or contraction in demand, which, individually or in combination, also adversely affect the Community industry must not be attributed to the dumped or subsidized imports.

2. An examination of injury shall involve the following factors, no one or several of which can necessarily give decisive guidance:

(a) volume of dumped or subsidized imports, in particular whether there has been a significant increase, either in absolute terms or relative to production or consumption in the Community;

(b) the prices of dumped or subsidized imports, in particular whether there has been a significant price undercutting as compared with the price of a like product in the Community;

(c) the consequent impact on the industry concerned as indicated by actual or potential trends in the relevant economic factors such as:

— production,

— utilization of capacity,

— stocks,

— sales,

— market share,

— prices (i.e., depression of prices or prevention of price increases which otherwise would have occurred),

— profits,

— return on investment,

— cash flow,

— employment.

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

(a) rate of increase of the dumped or subsidized exports to the Community;

(b) export capacity in the country of origin or export, already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to the Community;

(c) the nature of any subsidy and the trade effects likely to arise therefrom.

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

5. The term 'Community industry' shall be interpreted as referring to the Community producers as a whole of the like product or to those of them whose collective output of the products constitutes a major proportion of the total Community production of those products except that:

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

— in exceptional circumstances the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market regarded as a Community industry if,

(a) the producers within such market sell all or almost all their production of the product in question in that market, and

(b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Community.

In such circumstances injury may be found to exist even where a major proportion of the total Community industry is not injured, provided there is a concentration of dumped or subsidized imports into such an isolated market and provided further that the dumped or subsidized imports are causing injury to the producers of all or almost all of the production within such market.

Article 5

Complaint

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

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

3. The complaint may be submitted to the Commission, or a Member State, which shall forward it to the Commission. The Commission shall send Member States a copy of any complaint it receives.

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

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

6. Where, in the absence of any complaint, a Member State is in possession of sufficient evidence both of dumping or subsidization and of injury resulting therefrom for a Community industry, it shall immediately communicate such evidence to the Commission.

Article 6

Consultations

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

2. The Committee shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, with all relevant information.

3. Where necessary, consultation may be in writing only; in such case the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation.

4. Consultation shall in particular cover:

(a) the existence of dumping or of a subsidy and the methods of establishing the dumping margin or the amount of the subsidy;

(b) the existence and extent of injury;

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

(d) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping or the subsidy and the ways and means for putting such measures into effect.

Article 7

Initiation and subsequent investigation

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

(a) announce the initiation of a proceeding in the *Official Journal of the European Communities;* such announcements shall indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the Commission in accordance with paragraph 5;

(b) so advise the exporters and importers known to the Commission to be concerned as well as representatives of the exporting country and the complainants;

(c) commence the investigation at Community level, acting in cooperation with the Member States; such investigation shall cover both dumping or subsidization and injury resulting therefrom and shall be carried out in accordance with paragraphs 2 to 8; the investigation of dumping or subsidization shall normally cover a period of not less than six months immediately prior to the initiation of the proceeding.

2. (a) The Commission shall seek all information it deems to be necessary and, where it considers it appropriate, examine and verify the records of importers, exporters, traders, agents, producers, trade associations and organizations.

(b) Where necessary the Commission shall carry out investigations in third countries, provided that the firms concerned give their consent and the government of the country in question has been officially notified and raises no objection. The Commission shall be assisted by officials of those Member States who so request.

3. (a) The Commission may request Member States:

— to supply information,

— to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers,

— to carry out investigations in third countries, provided the firms concerned give their consent and the government of the country in question has been officially notified and raises no objection.

(b) Member States shall take whatever steps are necessary in order to give effect to requests from the Commission. They shall send to the Commission the information requested together with the results of all inspections, checks or investigations carried out.

(c) 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.

(d) 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.

4. (a) The complainant and the importers and exporters known to be concerned, as well as the representatives of the exporting country, may inspect all information made available to the Commission by any party to an investigation as distinct from internal documents prepared by the authorities of the Community or its Member States, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 8 and that it is used by the Commission in the investigation. To this end, they shall address a written request to the Commission indicating the information required.

(b) Exporters and importers of the product subject to investigation and, in the case of subsidization, the representatives of the country of origin, may request to be informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive duties or the definitive collection of amounts secured by way of a provisional duty.

(c) (i) requests for information pursuant to (b) shall:

(aa) be addressed to the Commission in writing,

(bb) specify the particular issues on which information is sought,

(cc) be received, in cases where a provisional duty has been applied, not later than one month after publication of the imposition of that duty;

(ii) the information may be given either orally or in writing as considered appropriate by the Commission. It shall not prejudice any subsequent decision which may be taken by the Commission or the Council. Confidential information shall be treated in accordance with Article 8;

(iii) information shall normally be given no later than 15 days prior to the submission by the

Commission of any proposal for final action pursuant to Article 12. Representations made after the information 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.

5. The Commission may hear the interested parties. It shall so hear them if they have, within the period prescribed in the notice published in the *Official Journal of the European Communities,* made a written request for a hearing showing that they are an interested party likely to be affected by the result of the proceeding and that there are particular reasons why they should be heard orally.

6. Furthermore the Commission shall, on request, give the parties directly concerned an opportunity to meet, so that opposing views may be presented and any rebuttal argument put forward. In providing this opportunity the Commission shall take account of the need to preserve confidentiality and of the convenience of 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.

7. (a) This Article shall not preclude the Community authorities from reaching preliminary determinations or from applying provisional measures expeditiously.

(b) In cases in which any interested party or third country refuses access to, or otherwise does not provide, necessary information within a reasonable period, or significantly impedes the investigation, preliminary or final findings, affirmative or negative, may be made on the basis of the facts available. Where the Commission finds that any interested party or third country has supplied it with false or misleading information, it may disregard any such information and disallow any claim to which this refers.

8. Anti-dumping or countervailing proceedings shall not constitute a bar to customs clearance of the product concerned.

9. (a) An investigation shall be concluded either by its termination or by definitive action. Conclusion should normally take place within one year of the initiation of the proceeding.

(b) A proceeding shall be concluded either by the termination of the investigation without the imposition of duties and without the acceptance of undertakings or by the expiry or repeal of such duties or by the termination of undertakings in accordance with Articles 14 or 15.

Article 8

Confidentiality

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

2. (a) Neither the Council, nor the Commission, nor Member States, nor the officials of any of these, shall reveal any information received pursuant to this Regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier.

(b) Each request for confidential treatment shall indicate why the information is confidential and shall be accompanied by a non-confidential summary of the information, or a statement of the reasons why the information is not susceptible of such summary.

3. Information will ordinarily be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

4. However, if it appears that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the information in question may be disregarded.

The information may also be disregarded where such request is warranted and where the supplier is unwilling to submit a non-confidential summary, provided that the information is susceptible of such summary.

5. This Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken pursuant to this Regulation are based, or disclosure of the evidence relied on by the Community authorities in so far as necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interest of the parties concerned that their business secrets should not be divulged.

Article 9

Termination of proceedings where protective measures are unnecessary

1. If it becomes apparent after consultation that protective measures are unnecessary, then, where no objection is raised within the Advisory Committee referred to

in Article 6 (1), the 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 stand terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

2. The Commission shall inform any representatives of the country of origin or export and the parties known to be concerned and shall announce the termination in the *Official Journal of the European Communities*, setting forth its basic conclusions and a summary of the reasons therefor.

Article 10

Undertakings

1. Where, during the course of an investigation, undertakings are offered which the Commission, after consultation, considers acceptable, the investigation may be terminated without the imposition of provisional or definitive duties.

Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made under Article 7 (4) (c) (iii). The termination shall be decided in conformity with the procedure laid down in Article 9 (1) and information shall be given and notice published in accordance with Article 9 (2). Such termination does not preclude the definitive collection of amounts secured by way of provisional duties pursuant to Article 12 (2).

2. The undertakings referred to under paragraph 1 are those under which:

(a) the subsidy is eliminated or limited, or other measures concerning its injurious effects taken, by the government of the country of origin or export; or

(b) prices are revised or exports cease to the extent that the Commission is satisfied that either the dumping margin or the amount of the subsidy, or the injurious effects thereof, are eliminated. In case of subsidization the consent of the country of origin or export shall be obtained.

3. Undertakings may be suggested by the Commission, but the fact that such undertakings are not offered or an invitation to do so is not accepted, shall not prejudice consideration of the case. However, the continuation of dumped or subsidized imports may be taken as evidence that a threat of injury is more likely to be realized.

4. If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the Commission, after consultation, so decides or if request is made, in the case of dumping, by exporters representing a significant percentage of the trade involved or, in the case of subsidization, by the country of origin or export. In such a case, if the Commission, after consultation, makes a determination of no injury, the undertaking shall automatically lapse. However, where a determination of no threat of injury is due mainly to the existence of an undertaking, the Commission may require that the undertaking be maintained.

5. The Commission may require any party from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a violation of the undertaking.

6. Where an undertaking has been withdrawn or where the Commission has reason to believe that it has been violated and where Community interests call for such intervention, it may, after consultations and after having offered the exporter concerned an opportunity to comment, apply provisional anti-dumping or countervailing duties forthwith on the basis of the facts established before the acceptance of the undertaking.

Article 11

Provisional duties

1. Where preliminary examination shows that dumping or a subsidy exists and that there is sufficient evidence of injury caused thereby and the interests of the Community call for intervention to prevent injury being caused during the proceeding, the Commission, acting at the request of a Member State or on its own initiative, shall impose a provisional anti-dumping or countervailing duty. In such cases, release of the products concerned for free circulation in the Community shall be conditional upon the provision of security for the amount of the provisional duty, definitive collection of which shall be determined by the subsequent decision of the Council under Article 12 (2).

2. The Commission shall take such 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.

3. Where a Member State requests immediate intervention by the Commission, the Commission shall within a maximum of five working days of receipt of the request, decide whether a provisional anti-dumping or countervailing duty should be imposed.

4. The Commission shall forthwith inform the Council and the Member States of any decision taken under this Article. The Council, acting by a qualified majority, may decide differently. A decision by the Commission not to impose a provisional duty shall not preclude the imposition of such duty at a later date, either at the request of a Member State, if new factors arise, or on the initiative of the Commission.

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

6. Any proposal for definitive action, or for extension of provisional measures, shall be submitted to the Council by the Commission not later than one month before expiry of the period of validity of provisional duties. The Council shall act by a qualified majority.

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

Article 12

Definitive action

1. Where the facts as finally established show that there is dumping or subsidization during the period under investigation and injury caused thereby, and the interests of the Community call for Community intervention, a definitive anti-dumping or countervailing duty shall be imposed by the Council, acting by qualified majority on a proposal submitted by the Commission after consultation.

2. (a) Where a provisional duty has been applied, the Council shall decide, irrespective of whether a definitive anti-dumping or countervailing duty is to be imposed, what proportion of the provisional duty is to be definitively collected. The Council shall act by a qualified majority on a proposal from the Commission.

(b) The definitive collection of such amount shall not be decided upon unless the facts as finally established show that there has been dumping or subsidization, and injury. For this purpose, 'injury' shall not include material retardation of the establishment of a Community industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury.

Article 13

General provisions on duties

1. Anti-dumping or countervailing duties, whether provisional or definitive, shall be imposed by Regulation.

2. Such Regulation shall indicate in particular the amount and type of duty imposed, the product covered, the country of origin or export, the name of the supplier, if practicable, and the reasons on which the Regulation is based.

3. The amount of such duties shall not exceed the dumping margin provisionally estimated or finally established or the amount of the subsidy provisionally estimated or finally established; it should be less if such lesser duty would be adequate to remove the injury.

4. (a) Anti-dumping and countervailing duties shall be neither imposed nor increased with retroactive effect. The obligation to pay the amount of these duties is incurred in accordance with Directive 79/623/EEC [1].

(b) However, where the Council determines:

(i) for dumped products:

— that there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and

— that the injury is caused by sporadic dumping i.e., massive dumped imports of a product in a relatively short period, to such an extent that, in order to preclude it recurring, it appears necessary to impose an anti-dumping duty retroactively on those imports;

or

(ii) for subsidized products:

— in critical circumstances that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from export subsidies paid or bestowed inconsistently with the provisions of the GATT and of the

[1] OJ No L 179, 17. 7. 1979, p. 31.

Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT, and

— that it is necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on these imports;

or

(iii) for dumped or subsidized products:

— that an undertaking has been violated,

the definitive anti-dumping or countervailing duties may be imposed on products in relation to which the obligation to pay import duties under Directive 79/623/EEC has been or would have been incurred not more than 90 days prior to the date of application of provisional duties, except that in the case of violation of an undertaking such retroactive assessment shall not apply to imports which were released for free circulation in the Community before the violation.

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

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

7. In the absence of any special provisions to the contrary adopted when a definitive or provisional anti-dumping or countervailing duty was imposed, the rules on the common definition of the concept of origin and the relevant common implementing provisions shall apply.

8. Anti-dumping or countervailing duties shall be collected by Member States in the form, at the rate and according to the other criteria laid down when the duties were imposed, and independently of the customs duties, taxes and other charges normally imposed on imports.

9. 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 the granting of any subsidy.

10. (a) Definitive anti-dumping duties may be imposed, by way of derogation from the second sentence of paragraph 4 (a), on products that are introduced into the commerce of the Community after having been assembled or produced in the Community, provided that:

— assembly or production is carried out by a party which is related or associated to any of the manufacturers whose exports of the like product are subject to a definitive anti-dumping duty,

— the assembly or production operation was started or substantially increased after the opening of the anti-dumping investigation,

— the value of parts or materials used in the assembly or production operation and originating in the country of exportation of the product subject to the anti-dumping duty exceeds the value of all other parts or materials used by at least 50 %.

In applying this provision, account shall be taken of the circumstances of each case, and, *inter alia,* of the variable costs incurred in the assembly or production operation and of the research and development carried out and the technology applied within the Community.

In that event the Council shall, at the same time, decide that parts or materials suitable for use in the assembly or production of such products and originating in the country of exportation of the product subject to the anti-dumping duty can only be considered to be in free circulation in so far as they will not be used in an assembly or production operation as specified in the first subparagraph.

(b) Products thus assembled or produced shall be declared to the competent authorities before leaving the assembly or production plant for their introduction into the commerce of the Community. For the purposes of levying an anti-dumping duty, this declaration shall be considered to be equivalent to the declaration referred to in Article 2 of Directive 79/695/EEC (1).

(c) The rate of the anti-dumping duty shall be that applicable to the manufacturer in the country of origin of the like product subject to an anti-dumping duty to which the party in the Community carrying out the assembly or production is related or associated. The amount of duty collected shall be proportional to that resulting from the application of the rate of the anti-dumping duty applicable to the exporter of the complete product on the cif value of the parts or materials imported; it shall not exceed that required to prevent circumvention of the anti-dumping duty.

(d) The provisions of this Regulation concerning investigation, procedure, and undertakings apply to all questions arising under this paragraph.

(1) OJ No L 205, 13. 8. 1979, p. 19.

11. (a) Where the exporter bears the anti-dumping duty, an additional anti-dumping duty may be imposed to compensate for the amount borne by the exporter.

(b) When any party directly concerned submits sufficient evidence showing that the duty has been borne by the exporter, e.g. that the resale price to the first independent buyer of the product subject to the anti-dumping duty is not increased by an amount corresponding to the anti-dumping duty, the matter shall be investigated and the exporters and importers concerned shall be given an opportunity to comment.

Where it is found that the anti-dumping duty has been borne by the exporter, in whole or in part, either directly or indirectly and where Community interests call for intervention, an additional anti-dumping duty shall, after consultation, be imposed in accordance with the procedures laid down in Articles 11 and 12.

This duty may be applied retroactively. It may be imposed on products in relation to which the obligation to pay import duties under Directive 79/623/EEC has been incurred after the imposition of the definitive anti-dumping duty, except that such assessment shall not apply to imports which were released for free circulation in the Community before the exporter bore the anti-dumping duty.

(c) Insofar as the results of the investigation show that the absence of a price increase by an amount corresponding to the anti-dumping duty is not due to a reduction in the costs and/or profits of the importer for the product concerned then the absence of such price increase shall be considered as an indicator that the anti-dumping duty has been borne by the exporter.

(d) Article 7 (7) (b) applies within the context of investigations under this paragraph.

Article 14

Review

1. Regulations imposing anti-dumping or countervailing duties and decisions to accept undertakings shall be subject to review, in whole or in part, where warranted.

Such review may be held either at the request of a Member State or on the initiative of the Commission. A review shall also be held where an interested party so requests and submits evidence of changed circumstances sufficient to justify the need for such review, provided that at least one year has elapsed since the conclusion of the investigation. Such requests shall be addressed to the Commission which shall inform the Member States.

2. Where, after consultation, it becomes apparent that review is warranted, the investigation shall be re-opened in accordance with Article 7, where the circumstances so require. Such re-opening shall not *per se* affect the measures in operation.

3. Where warranted by the review, carried out either with or without re-opening of the investigation, the measures shall be amended, repealed or annulled by the Community institution competent for their introduction. However, where measures have been taken under the transitional provisions of an Act of Accession the Commission shall itself amend, repeal or annul them and shall report this to the Council; the latter may, acting by a qualified majority, decide that different action be taken.

Article 15

1. Subject to the provisions of paragraphs 3, 4 and 5, anti-dumping or countervailing duties and undertakings shall lapse after five years from the date on which they entered into force or were last modified or confirmed.

2. The Commission shall normally, after consultation and within six months prior to the end of the five year period, publish in the *Official Journal of the European Communities* a notice of the impending expiry of the measure in question and inform the Community industry known to be concerned. This notice shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the Commission in accordance with Article 7 (5).

3. Where an interested party shows that the expiry of the measure would lead again to injury or threat of injury, the Commission shall, after consultation, publish in the *Official Journal of the European Communities* a notice of its intention to carry out a review of the measure. Such notice shall be published prior to the end of the relevant five year period. The measure shall remain in force pending the outcome of this review.

However, where the initiation of the review has not been published within six months after the end of the relevant five year period the measure shall lapse at the end of that six month period.

4. Where a review of a measure under Article 14 is in progress at the end of the relevant five year period, the measure shall remain in force pending the outcome of such review. A notice to this effect shall be published in the *Official Journal of the European Communities* before the end of the relevant five year period.

5. Where anti-dumping or countervailing duties and undertakings lapse under this Article the Commission shall publish a notice to that effect in the *Official Journal of the European Communities*. Such notice shall state the date of expiry of the measure.

Article 16

Refund

1. Where an importer can show that the duty collected exceeds the actual dumping margin or the amount of the subsidy, consideration being given to any application of weighted averages, the excess amount shall be reimbursed. This amount shall be calculated in relation to the changes which have occurred in the dumping margin or the amount of the subsidy which were established in the original investigation for the shipments to the Community of the importer's supplier. All refund calculations shall be made in accordance with the provisions of Articles 2 or 3 and shall be based, as far as possible, on the same method applied in the original investigation, in particular, with regard to any application of averaging or sampling techniques.

2. In order to request the reimbursement referred to in paragraph 1, the importer shall submit an application to the Commission. The application shall be submitted via the Member State in the territory of which the products were released for free circulation and within three 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.

The Member State shall forward the application to the Commission as soon as possible, either with or without an opinion as to its merits.

The Commission shall inform the other Member States forthwith and give its opinion on the matter. If the Member States agree with the opinion given by the Commission or do not object to it within one month of being informed, the Commission may decide in accordance with the said opinion.

In all other cases, the Commission shall, after consultation, decide whether and to what extent the application should be granted.

Article 17

Final provisions

This Regulation shall not preclude the application of:

1. any special rules laid down in agreements concluded between the Community and third countries;

2. the Community Regulations in the agricultural sector and of Regulation (EEC) No 1059/69 (1), (EEC) 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 or countervailing duties;

3. special measures, provided that such action does not run counter to obligations under the GATT.

Article 18

Repeal of existing legislation

Regulation (EEC) No 2176/84 is hereby repealed.

References to the repealed Regulation shall be construed as references to this Regulation.

Article 19

Entry into force

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

It shall apply to proceedings already initiated.

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

Done at Brussels, 11 July 1988.

For the Council

The President

P. ROUMELIOTIS

(1) OJ No L 141, 12. 6. 1969, p. 1.
(2) OJ No L 281, 1. 11. 1975, p. 20.
(3) OJ No L 282, 1. 11. 1975, p. 104.

ANNEX

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

(b) Currency retention schemes or any similar practices which involve a bonus on exports.

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

(d) The delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for delivery of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters.

(e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises. Notwithstanding the foregoing, deferral of taxes and charges referred to above need not amount to an export subsidy where, for example, appropriate interest charges are collected.

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

(g) The exemption or remission in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption. The problem of the excessive remission of value added tax is exclusively covered by this paragraph.

(h) The exemption, remission or deferral or prior stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral or like prior stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on goods that are physically incorporated (making normal allowance for waste) in the exported product. This paragraph does not apply to value added tax systems and border tax adjustments related thereto.

(i) The remission or drawback of import charges in excess of those levied on imported goods that are physically incorporated (making normal allowance for waste) in the exported product; provided, however, that in particular cases a firm may use a quantity of home market goods equal to, and having the same quality and characteristics as, the imported good as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, normally not to exceed two years. This paragraph does not apply to value added tax systems and border tax adjustments related thereto.

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the costs of exported products or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes.

(k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and denominated at the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if the country of origin or export is a party to an international undertaking on official export credits to which at least 12 original signatories to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice the country of origin or export applies the interest rate provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy.

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

Notes:

For the purposes of this Annex the following definitions apply:

1. The term 'direct taxes' shall mean taxes on wages, profits, interest, rents, royalties, and all other forms of income, and taxes on the ownership of real property.

2. The term 'import charges' shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in these notes that are levied on imports.

3. The term 'indirect taxes' shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges.

4. 'Prior stage' indirect taxes are those levied on goods or services used directly or indirectly in making the product.

5. 'Cumulative' indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production.

6. 'Remission' of taxes includes the refund or rebate of taxes.