Competition law in the European Communities

Volume IIIA
Rules in the international field

Situation at 31 December 1996

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Foreword

With the opening-up of international trade, the globalization of economies and the internationalization of markets, competition is taking on a worldwide dimension. For many economic operators and States, the temptation exists to replace the State barriers which have been so carefully dismantled by other means of limiting access to markets for foreign competitors or protecting national champions. This is clearly not in the interest of consumers who will be deprived of the certain benefits of competition, nor in the interests of industry which, in the absence of new competitive pressures, will have no incentives to innovate.

Furthermore, in the field of competition policy, many difficulties arise for national authorities, whose jurisdiction is limited by territory, in addressing activities which span several countries. A worldwide approach to competition policy is needed. What form this should take is, for the time being, an open question. There are several options including, at the bilateral level, the creation of a network of cooperation agreements and, at the multilateral level, the adoption of common international principles and the creation of a body aimed at settling disputes between national authorities whenever they arise. All the options deserve careful consideration. In any case, there is no doubt that we in the European Union will become more and more involved with our partner countries in implementing competition law.

This conviction is shared by a growing number of partners of the European Union. A network of bilateral arrangements had been set up with European neighbour countries and with the United States of America, and we expect further arrangements in the future. We have decided to publish a collection of the competition rules as they currently exist in the international field (for instance, in the framework of the OECD, Unctad, and the WTO) which are of relevance to the European Union and the texts of the bilateral agreements signed by the European Union in the belief that this will make the international aspects of competition policy better known and more accessible to all concerned.

Karel Van Miert

I – Agreement on the European Economic Area

Decision of the Council and the Commission of 13 December 1993

on the conclusion of the Agreement on the European Economic Area between the European Communities, their Member States and the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation

(94/1/ECSC, EC) [1]

[...]

Article 1

1. The aim of this Agreement of association is to promote a continuous and balanced strengthening of trade and economic relations between the Contracting Parties with equal conditions of competition, and the respect of the same rules, with a view to creating a homogeneous European Economic Area, hereinafter referred to as the EEA.

2. In order to attain the objectives set out in paragraph 1, the association shall entail, in accordance with the provisions of this Agreement:

(a) the free movement of goods;

(b) the free movement of persons;

(c) the free movement of services;

(d) the free movement of capital;

(e) the setting-up of a system ensuring that competition is not distorted and that the rules thereon are equally respected; as well as

(f) closer cooperation in other fields, such as research and development, the environment, education and social policy.

[...]

Article 16

1. The Contracting Parties shall ensure that any State monopoly of a commercial character be adjusted so that no discrimination regarding the conditions under which goods are procured and marketed will exist between nationals of EC Member States and EFTA States.

[1] OJ L 1, 3.1.1994, p. 1.

2. The provisions of this Article shall apply to any body through which the competent authorities of the Contracting Parties, in law or in fact, either directly or indirectly supervise, determine or appreciably influence imports or exports between Contracting Parties. These provisions shall likewise apply to monopolies delegated by the State to others.

[...]

Article 26

Anti-dumping measures, countervailing duties and measures against illicit commercial practices attributable to third countries shall not be applied in relations between the Contracting Parties, unless otherwise specified in this Agreement.

CHAPTER 5

COAL AND STEEL PRODUCTS

Article 27

Provisions and arrangements concerning coal and steel products are set out in Protocols 14 and 25.

[...]

RULES APPLICABLE TO UNDERTAKINGS

Article 53

1. The following shall be prohibited as incompatible with the functioning of this Agreement: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Contracting Parties and which have as their objects or effect the prevention, restriction or distortion of competition within the territory covered by this Agreement, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreement between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 54

Any abuse by one or more undertakings of a dominant position within the territory covered by this Agreement or in a substantial part of it shall be prohibited as incompatible with the functioning of this Agreement in so far as it may affect trade between Contracting Parties.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 55

1. Without prejudice to the provisions giving effect to Articles 53 and 54 as contained in Protocol 21 and Annex XIV of this Agreement, the EC Commission and the EFTA Surveillance Authority provided for in Article 108(1) shall ensure the application of the principles laid down in Articles 53 and 54.

The competent surveillance authority, as provided for in Article 56, shall investigate cases of suspected infringement of these principles, on its own initiative, or on application by a State within the respective territory or by the other surveillance authority. The competent

surveillance authority shall carry out these investigations in cooperation with the competent national authorities in the respective territory and in cooperation with the other surveillance authority, which shall give it its assistance in accordance with its internal rules.

If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.

2. If the infringement is not brought to an end, the competent surveillance authority shall record such infringement of the principles in a reasoned decision.

The competent surveillance authority may publish its decision and authorize States within the respective territory to take the measures, the conditions and details of which it shall determine, needed to remedy the situation. It may also request the other surveillance authority to authorize States within the respective territory to take such measures.

Article 56

1. Individual cases falling under Article 53 shall be decided upon by the surveillance authorities in accordance with the following provisions:

(a) individual cases where only trade between EFTA States is effected shall be decided upon by the EFTA Surveillance Authority;

(b) without prejudice to subparagraph (c), the EFTA Surveillance Authority decides, as provided for in the provisions set out in Article 58, Protocol 21 and the rules adopted for its implementation, Protocol 23 and Annex XIV, on cases where the turnover of the undertakings concerned in the territory of the EFTA States equals 33% or more of their turnover in the territory covered by this Agreement;

(c) the EC Commission decides on the other cases as well as on cases under (b) where trade between EC Member States is affected, taking into account the provisions set out in Article 58, Protocol 21, Protocol 23 and Annex XIV.

2. Individual cases falling under Article 54 shall be decided upon by the surveillance authority in the territory of which a dominant position is found to exist. The rules set out in paragraph 1(b) and (c) shall apply only if dominance exists within the territories of both surveillance authorities.

3. Individual cases falling under subparagraphs (c) of paragraph 1, whose effects on trade between EC State Members or on competition within the Community are not appreciable, shall be decided upon by the EFTA Surveillance Authority.

4. The terms 'undertaking' and 'turnover' are, for the purposes of this Article, defined in Protocol 22.

Article 57

1. Concentrations the control of which is provided for in paragraph 2 and which create or strengthen a dominant position as a result of which effective competition would be significantly impeded within the territory covered by this Agreement or a substantial part of it, shall be declared incompatible with this Agreement.

2. The control of concentrations falling under paragraph 1 shall be carried out by:

(a) the EC Commission in cases falling under Regulation (ECC) No 4064/89 in accordance with that Regulation and in accordance with Protocols 21 and 24 and Annex XIV to this Agreement. The EC Commission shall, subject to the review of the EC Court of Justice, have sole competence to take decisions on these cases;

(b) the EFTA Surveillance Authority in cases not falling under subparagraph (a) where the relevant thresholds set out in Annex XIV are fulfilled in the territory of the EFTA States in accordance with Protocols 21 and 24 and Annex XIV. This is without prejudice to the competence of EC Member States.

Article 58

With a view to developing and maintaining a uniform surveillance throughout the European Economic Area in the field of competition and to promoting a homogeneous implementation, application and interpretation of the provisions of this Agreement to this end, the competent authorities shall cooperate in accordance with the provisions set out in Protocols 23 and 24.

Article 59

1. In the case of public undertakings and undertakings to which EC Member States or EFTA States grant special or exclusive rights, the Contracting Parties shall ensure that there is neither enacted nor maintained in force any measure contrary to the rules contained in this Agreement, in particular to those rules provided for in Articles 4 and 53 to 63.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Agreement, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Contracting Parties.

3. The EC Commission as well as the EFTA Surveillance Authority shall ensure within their respective competence the application of the provisions of this Article and shall, where necessary, address appropriate measures to the States falling within their respective territory.

Article 60

Annex XIV contains specific provisions giving effect to the principles set out in Articles 53, 54, 57 and 59.

[...]

STATE AID

Article 61

1. Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.

2. The following shall be compatible with the functioning of this Agreement:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the functioning of this Agreement:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of an EC Member State or an EFTA State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) such other categories of aid as may be specified by the EEA Joint Committee in accordance with Part VII.

Article 62

1. All existing systems of State aid in the territory of the Contracting Parties, as well as any plans to grant or alter State aid, shall be subject to constant review as to their compatibility with Article 61. This review shall be carried out:

(a) as regards the EC Member States, by the EC Commission according to the rules laid down in Article 93 of the Treaty establishing the European Economic Community;

(b) as regards the EFTA States, by the EFTA Surveillance Authority according to the rules set out in an agreement between the EFTA States establishing the EFTA Surveillance Authority which is entrusted with the powers and functions laid down in Protocol 26.

2. With a view to ensuring a uniform surveillance in the field of State aid throughout the territory covered by this Agreement, the EC Commission and the EFTA Surveillance Authority shall cooperate in accordance with the provisions set out in Protocol 27.

Article 63

Annex XV contains specific provisions on State aid.

Article 64

1. If one of the surveillance authorities considers that the implementation by the other surveillance authority of Articles 61 and 62 of this Agreement and Article 5 of Protocol 14 is not in conformity with the maintenance of equal conditions of competition within the territory covered by this Agreement, exchange of views shall be held within two weeks according to the procedure of Protocol 27, paragraph (f).

If a commonly agreed solution has not been found in the end of this two-week period, the competent authority of the affected Contracting Party may immediately adopt appropriate interim measures in order to remedy the resulting distortion of competition.

Consultations shall then be held in the EEA Joint Committee with a view to finding a commonly acceptable solution.

If within three months the EEA Joint Committee has not been able to find such a solution, and if the practice in question causes, or threatens to cause, distortion of competition affecting trade between the Contracting Parties, the interim measures may be replaced by definitive measures, strictly necessary to offset the effect of such distortion. Priority shall be given to such measures that will least disturb the functioning of the EEA.

2. The provisions of this Article will also apply to State monopolies, which are established after the date of signature of the Agreement.

[...]

Surveillance procedure

Article 108

1. The EFTA States shall establish an independent surveillance authority (EFTA Surveillance Authority) as well as procedures similar to those existing in the Community including procedures for ensuring the fulfilment of obligations under this Agreement and for control of the legality of acts of the EFTA Surveillance Authority regarding competition.

2. The EFTA States shall establish a court of justice (EFTA Court).

The EFTA Court shall, in accordance with a separate agreement between the EFTA States, with regard to the application of this Agreement be competent, in particular, for:

(a) actions concerning the surveillance procedure regarding the EFTA States;

(b) appeals concerning decisions in the field of competition taken by the EFTA Surveillance Authority;

(c) the settlement of disputes between two or more EFTA States.

Article 109

1. The fulfilment of the obligations under this Agreement shall be monitored by, on the one hand, the EFTA Surveillance Authority and, on the other, the EC Commission acting in conformity with the Treaty establishing the European Economic Community, the Treaty establishing the European Coal and Steel Community and this Agreement.

2. In order to ensure a uniform surveillance throughout the EEA, the EFTA Surveillance Authority and the EC Commission shall cooperate, exchange information and consult each other on surveillance policy issues and individual cases.

3. The EC Commission and the EFTA Surveillance Authority shall receive any complaints concerning the application of this Agreement. They shall inform each other of complaints received.

4. Each of these bodies shall examine all complaints falling within its competence and shall pass to the other body any complaints which fall within the competence of that body.

5. In case of disagreement between these two bodies with regard to the action to be taken in relation to a complaint or with regard to the result of the examination, either of the bodies may refer the matter to the EEA Joint Committee which shall deal with it in accordance with Article 111.

Article 110

Decisions under this Agreement by the EFTA Surveillance Authority and the EC Commission which impose a pecuniary obligation on persons other than States shall be enforceable. The same shall apply to such judgments under this Agreement by the Court of Justice of the European Communities, the Court of First Instance of the European Communities and the EFTA Court.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the authority which each Contracting Party shall designate for this purpose and shall make known to the other Contracting Parties, the EFTA Surveillance Authority, the EC Commission, the Court of Justice of the European Communities, the Court of First Instance of the European Communities and the EFTA Court.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement, in accordance with the law of the State in the territory of which enforcement is to be carried out, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice of the European Communities, as far as decisions by the EC Commission, the Court of First Instance of the European Communities or the Court of Justice of the European Communities are concerned, or by a decision of the EFTA Court as far as decisions by the EFTA Surveillance Authority or the EFTA Court are concerned. However, the courts of the States concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

[...]

PROTOCOL 8 ON STATE MONOPOLIES

1. Article 16 of the Agreement shall be applicable at the latest from 1 January 1995 in the case of the following State monopolies of a commercial character:
   - Austrian monopoly on salt;
   - Icelandic monopoly on fertilizers;
   - Swiss and Liechtenstein monopolies on salt and gunpowder.

2. Article 16 shall also apply to wine (HS heading No 22.04).

PROTOCOL 9 ON TRADE IN FISH AND OTHER MARINE PRODUCTS

[...]

Article 4

1. Aid granted through State resources to the fisheries sector which distorts competition shall be abolished.

2. Legislation relating to the market organization in the fisheries sector shall be adjusted so as not to distort competition.

3. The Contracting Parties shall endeavour to ensure conditions of competition which will enable the other Contracting Parties to refrain from the application of anti-dumping measures and countervailing duties.

[...]

PROTOCOL 13 ON THE NON-APPLICATION OF ANTI-DUMPING AND COUNTERVAILING MEASURES

The application of Article 26 of the Agreement is limited to the areas covered by the provisions of the Agreement and in which the Community *acquis* is fully integrated into the Agreement.

Moreover, unless other solutions are agreed upon by the Contracting Parties, its application is without prejudice to any measures which may be introduced by the Contracting Parties to avoid circumvention of the following measures aimed at third countries:

- anti-dumping measures;
- countervailing duties;
- measures against illicit commercial practices attributable to third countries.

PROTOCOL 14 ON TRADE ON COAL AND STEEL PRODUCTS

[...]

Article 4

The substantive competition rules applicable to undertakings concerning products covered by this Protocol are included in Protocol 25. Secondary legislation is set out in Protocol 21 and Annex XIV.

Article 5

The Contracting Parties shall comply with the rules for aid to the steel industry. They recognize in particular the relevance of, and accept, the Community rules for aid to the steel industry as laid down in Commission Decision 322/89/ECSC which expires on 31 December 1991. The Contracting Parties declare their commitment to integrate into the EEA Agreement new Community rules for aid to the steel industry by the entry into force of this Agreement, provided that they are substantially similar to those of the aforementioned act.

Article 6

1. The Contracting Parties shall exchange information on markets. The EFTA States shall use their best endeavours in order to ensure that steel producers, consumers and merchants provide such information.

2. The EFTA States shall use their best endeavours in order to ensure that the steel-producing undertakings established within their territories will participate in annual surveys concerning investment referred to in Article 15 of Commission Decision 3302/81/ECSC of 18 November 1991. The Contracting Parties will exchange, without prejudice to the requirements of business confidentiality, information on significant investment or disinvestment projects.

3. All matters relating to the exchange of information between the Contracting Parties shall be covered by the general institutional provisions of this Agreement.

Article 7

The Contracting Parties note that the rules of origin laid down in Protocol 3 of the Free Trade Agreements concluded between the European Economic Community and individual EFTA States are replaced by Protocol 4 to this Agreement.

[...]

PROTOCOL 21 ON THE IMPLEMENTATION OF COMPETITION RULES APPLICABLE TO UNDERTAKINGS

Article 1

The EFTA Surveillance Authority shall, in agreement between the EFTA States, be entrusted with equivalent powers and similar functions to those of the EC Commission, at the time of the signature of the Agreement, for the application of the competition rules of the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community, enabling the EFTA Surveillance Authority to give effect to the principles laid down in Articles 1(2)(e) and 53 to 60 of the Agreement, and in Protocol 25.

The Community shall, where necessary, adopt the provisions giving effect to the principles laid down in Articles 1(2)(e) and 53 to 60 of the Agreement, and in Protocol 25, in order to ensure that the EC Commission has equivalent powers and similar functions under this Agreement to those which it has, at the time of the signature of the Agreement, for the application of the competition rules of the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community.

Article 2

If, following the procedures set out in Part VII of the Agreement, new acts for the implementation of Articles 1(2)(e) and 53 to 60 and of Protocol 25, or on amendments of the acts listed in Article 3 of this Protocol are adopted, corresponding amendments shall be made in the agreement setting up the EFTA Surveillance Authority so as to ensure that the EFTA Surveillance Authority will be entrusted simultaneously with equivalent powers and similar functions to those of the EC Commission.

Article 3

1. In addition to the acts listed in Annex XIV, the following acts reflect the powers and functions of the EC Commission for the application of the competition rules of the Treaty establishing the European Economic Community:

Control of concentrations

1. 389 R 4064: Articles 6 to 25 of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395, 30.12.1989, p. 1), as corrected by OJ L 257, 21.9.1990, p. 13.

2. 390 R 2367: Commission Regulation (EEC) No 2367/90 of 25 July 1990 on the notifications time-limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ L 219, 14.8.1990, p. 5).

General procedural rules

3. 362 R 0017: Council Regulation No 17/62 of 6 February 1962. First Regulation implementing Articles 85 and 86 of the Treaty (OJ 13, 21.2.1962, p. 204/62), as amended by:
   - 362 R 0059: Regulation No 59/62 of 3 July 1962 (OJ 58, 10.7.1962, p. 1655/62),
   - 363 R 0118: Regulation No 118/63 of 5 November 1963 (OJ 162, 7.11.1963, p. 2696/63),
   - 371 R 2822: Regulation (EEC) No 2822/71 of 20 December 1971 (OJ L 285, 29.12.1971, p. 49),
   - 172 B: Act concerning the conditions of accession and the Adjustments to the Treaties – Accession to the European Communities of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ L 73, 27.3.1972, p. 92),
   - 179 H: Act concerning the conditions of accession and the Adjustments to the Treaties – Accession to the European Communities of the Hellenic Republic (OJ L 291, 19.11.1979, p. 93),
   - 185 I: Act concerning the conditions of accession and the Adjustments to the Treaties – Accession to the European Communities of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 165).

4. 362 R 0027: Commission Regulation No 27/62 of 3 May 1962. First Regulation implementing Council Regulation No 17/62 of 6 February 1962 (form, content and other details concerning applications and notifications) (OJ 35, 10.5.1962, p. 1118/62), as amended by:
   - 368 R 1133: Regulation (EEC) No 1133/68 of 26 July 1968 (OJ L 189, 1.8.1968, p. 1),
   - 375 R 1699: Regulation (EEC) No 1699/75 of 2 July 1975 (OJ L 172, 3.7.1975, p. 11),
   - 178 H: Act concerning the conditions of accession and the Adjustments to the Treaties – Accession to the European Communities of the Hellenic Republic (OJ L 291, 19.11.1979, p. 94),
   - 385 R 2526: Regulation (EEC) No 2526/85 of 5 August 1985 (OJ L 240, 7.9.1985, p. 1),
   - 185 I: Act concerning the conditions of accession and the Adjustments to the Treaties – Accession to the European Communities of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 166).

5. 363 R 0099: Commission Regulation No 96/63 of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation (EEC) No 17/62 (OJ 127, 20.8.1963, p. 2268/63).

Transport

6. 362 R 0141: Council Regulation No 141/62 of 26 November 1962 exempting transport from the application of Council Regulation No 17/62 amended by Regulations Nos 165/65/EEC and 1002/67/EEC (OJ 124, 28.11.1962, p. 2751/62).

7. 368 R 1017: Article 6 and Articles 10 to 31 of Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway (OJ L 175, 23.7.1968, p. 1).

8. 369 R 1629: Commission Regulation (EEC) No 1629/69 of 8 August 1969 on the form, content and other details of complaints pursuant to Article 10, applications pursuant to Article 12 and notifications pursuant to Article 14(1) of Council Regulation (EEC) No 1017/68 of 19 July 1968 (OJ L 209, 21.8.1969, p. 1).

9. 369 R 1630: Commission Regulation (EEC) No 1630/69 of August 1969 on the hearings provided for in Article 26(1) and (2) of Council Regulation (EEC) No 1017/68 of 19 July 1968 (OJ L 209, 21.8.1969, p. 11).

10. 374 R 2988: Council Regulation (EEC) No 2988/74 of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition (OJ L 319, 29.11.1974, p. 1).

11. 386 R 4056: Section II of Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ L 378, 31.12.1986, p. 4).

12. 388 R 4260: Commission Regulation (EEC) No 4260/88 of 16 December 1988 on the communications, complaints and applications and the hearings provided for in Council Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ L 376, 31.12.1988, p. 1).

13. 387 R 3975: Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector (OJ L 374, 31.12.1987, p. 1), as amended by:

    - 391 R 1284: Council Regulation (EEC) No 1284/91 of 14 May 1991 (OJ L 122, 17.5.1991, p. 2).

14. 388 R 4261: Commission Regulation (EEC) No 4261/88 of 16 December 1988 on the form, content and other details of complaints and of applications, and the hearings provided for in Council Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules of competition to undertakings in the air transport sector (OJ L 376, 31.12.1988, p. 10).

2. In addition to the acts listed in Annex XIV, the following acts reflect the powers and functions of the EC Commission for the application of the competition rules of the Treaty establishing the European Coal and Steel Community (ECSC):

1. Article (ECSC) 65(2), subparagraphs 3 to 5, (3), (4), subparagraph 2, and (5).

2. Article (ECSC) 66(2), subparagraphs 2 to 4, and (4) to (6).

3. 354 D 7026: High Authority Decision No 26/54 of 6 May 1954 laying down in implementation of Article 66(4) of the Treaty a regulation concerning information to be furnished (Official Journal of the European Coal and Steel Community, No 9, 11.5.1954, p. 350/54).

4. 378 S 0715: Commission Decision No 715/78/ECSC of 6 April 1978 concerning limitation periods in proceedings and the enforcement of sanctions under the Treaty establishing the European Coal and Steel Community (OJ L 94, 8.4.1978, p. 22).

5. 384 S 0379: Commission Decision 379/84/ECSC of 15 February 1984 defining the powers of officials and agents of the Commission instructed to carry out the checks provided for the ECSC Treaty and decisions taken in application thereof (OJ L 46, 16.2.1984, p. 23).

Article 4

1. Agreements, decisions and concerted practices of the kind described in Article 53(1) which come into existence after the entry into force of the Agreement and in respect of which the parties seek application of Article 53(3) shall be notified to the competent surveillance authority pursuant to Article 56, Protocol 23 and the rules referred to in Articles 1 to 3 of this Protocol. Until they have been notified, no decision in application of Article 53(3) may be taken.

2. Paragraph 1 shall not apply to agreements, decisions and concerted practices where:

(a) the only parties thereto are undertakings from one EC Member State or from one EFTA State and the agreements, decisions or concerted practices do not relate either to imports or to exports between Contracting Parties;

(b) not more than two undertakings are party thereto, and the agreements only:

  (i) restrict the freedom of one party to the contract in determining the prices or conditions of business upon which the goods which he has obtained from the other party to the contract may be resold, or

  (ii) impose restrictions on the exercise of the rights of the assignee or user of industrial property rights – in particular patents, utility models, designs or trademarks – or the person entitled under a contract to the assignment, or grant, of the right to use a method of manufacture or knowledge relating to the use and to the application of industrial processes;

(c) they have as their sole object:

  (i) the development or uniform application of standards or types, or

  (ii) joint research or development, or

(iii) specialization in the manufacture of products including agreements necessary for achieving this:

- where the products which are the subject of specialization do not, in a substantial part of the territory covered by the Agreement, represent more than 15% of the volume of business done in identical products or those considered by consumers to be similar by reason of their characteristics, price and use, and
- where the total annual turnover of the participating undertakings does not exceed ECU 200 million.

These agreements, decisions and concerted practices may be notified to the competent surveillance authority pursuant to Article 56, Protocol 23 and the rules referred to in Articles 1 to 3 of this Protocol.

Article 5

1. Agreements, decisions and concerted practices of the kind described in Article 53(1) which are in existence at the date of entry into force of the Agreement and in respect of which the parties seek application of Article 53(3) shall be notified to the competent surveillance authority pursuant to the provisions in Article 56, Protocol 23 and the rules referred to in Articles 1 to 3 of this Protocol within six months of the date of entry into force of the Agreement.

2. Paragraph 1 shall not apply to agreements, decisions or concerted practices of the kind described in Article 53(1) of the Agreement and falling under Article 4(2) of this Protocol; these may be notified to the competent surveillance authority pursuant to Article 56, Protocol 23 and the rules referred to in Articles 1 to 3 of this Protocol.

Article 6

The competent surveillance authority shall specify in its decisions pursuant to Article 53(3) the date from which the decisions shall take effect. That date may be earlier than the date of notification as regards agreements, decisions of associations of undertakings or concerted practices falling under Articles 4(2) and 5(2) of this Protocol, or those falling under Article 5(1) of this Protocol which have been notified within the time-limit specified in Article 5(1).

Article 7

1. Where agreements, decisions or concerted practices of the kind described in Article 53(1) which are in existence at the date of entry into force of the Agreement and notified within the time-limits specified in Article 5(1) of this Protocol do not satisfy the requirements of Article 53(3) and the undertakings or associations of undertakings concerned cease to give effect to them or modify them in such a manner that they no longer fall under the prohibition contained in Article 53(1) or that they satisfy the requirements of Article 53(3), the prohibition contained in Article 53(1) shall apply only for a period fixed by the competent surveillance authority. A decision by the competent surveillance authority pursuant to the foregoing sentence

shall not apply as against undertakings and associations of undertakings which did not expressly consent to the notification.

2. Paragraph 1 shall apply to agreements, decisions or concerted practices falling under Article 4(2) of this Protocol which are in existence at the date of entry into force of the Agreement if they are notified within six months after that date.

Article 8

Applications and notifications submitted to the EC Commission prior to the date of entry into force of the Agreement shall be deemed to comply with the provisions on application and notification under the Agreement.

The competent surveillance authority pursuant to Article 56 of the Agreement and Article 10 of Protocol 23 may require a duly completed form as prescribed for the implementation of the Agreement to be submitted to it within such time as it shall appoint. In that event, applications and notifications shall be treated as properly made only if the forms are submitted within the prescribed period and in accordance with the provisions of the Agreement.

Article 9

Fines for infringement of Article 53(1) shall not be imposed in respect of any act prior to notification of the agreements, decisions and concerted practices to which Articles 5 and 6 of this Protocol apply and which have been notified within the period specified therein.

Article 10

The Contracting Parties shall ensure that the measures affording the necessary assistance to officials of the EFTA Surveillance Authority and the EC Commission, in order to enable them to make their investigations as foreseen under the Agreement, are taken within six months of the entry into force of the Agreement.

Article 11

As regards agreements, decisions and concerted practices already in existence at the date of entry into force of the Agreement which fall under Article 53(1), the prohibition in Article 53(1) shall not apply where the agreements, decisions or practices are modified within six months from the date of entry into force of the Agreement so as to fulfil the conditions contained in the block exemptions provided for in Annex XIV.

Article 12

As regards agreements, decisions of associations of undertakings and concerted practices already in existence at the date of entry into force of the Agreement which fall under Article 53(1), the prohibition in Article 53(1) shall not apply, from the date of entry into force of the Agreement, where the agreements, decisions or practices are modified within six months from the date of entry into force of the Agreement so as not to fall under the prohibition of Article 53(1) any more.

Article 13

Agreements, decisions of associations of undertakings and concerted practices which benefit from an individual exemption granted under Article 85(3) of the Treaty establishing the European Economic Community before the entry into force of the Agreement shall continue to be exempted as regards the provisions of the Agreement, until their date of expiry as provided for in the decisions granting these exemptions or until the EC Commission otherwise decides, whichever date is the earlier.

PROTOCOL 22 CONCERNING THE DEFINITION OF 'UNDERTAKING' AND 'TURNOVER' (ARTICLE 56)

Article 1

For the purposes of the attribution of individual cases pursuant to Article 56 of the Agreement, an 'undertaking' shall be any entity carrying out activities of a commercial or economic nature.

Article 2

'Turnover' within the meaning of Article 56 of the Agreement shall comprise the amounts derived by the undertakings concerned, in the territory covered by the Agreement, in the preceding financial year from the sale of products and the provision of services falling within the undertaking's ordinary score of activities after deduction of sales rebates and of value-added tax and other taxes directly related to turnover.

Article 3

In place of turnover, the following shall be used:

(a) for credit institutions and other financial institutions, their total assets multiplied by the ratio between loans and advances to credit institutions and customers in transactions with residents in the territory covered by the Agreement and the total sum of those loans and advances;

(b) for insurance undertakings, the value of gross premiums received from residents in the territory covered by the Agreement, which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total value of premiums.

Article 4

1. In derogation from the definition of the turnover relevant for the application of Article 56 of the Agreement, as contained in Article 2 of this Protocol, the relevant turnover shall be constituted:

(a) as regards agreements, decisions of associations of undertakings and concerted practices related to distribution and supply arrangements between non-competing undertakings, of the amounts derived from the sale of goods or the provision of services which are the subject matter of the agreements, decisions or concerted practices, and from the other goods or services which are considered by users to be equivalent in view of their characteristics, price and intended use;

(b) as regards agreements, decisions of associations of undertakings and concerted practices related to arrangements on transfer of technology between non-competing undertakings, of the amounts derived from the sale of goods or the provision of services which result from the technology which is the subject matter of the agreement, decisions or concerted practices, and of the amounts derived from the sale of those goods or the provision of those services which that technology is designed to improve or replace.

2. However, where at the time of the coming into existence of arrangements as described in paragraph 1(a) and (b) turnover as regards the sale of goods or the provision of services is not in evidence, the general provision as contained in Article 2 shall apply.

Article 5

1. Where individual cases concern products falling within the scope of application of Protocol 25, the relevant turnover for the attribution of those cases shall be the turnover achieved in these products.

2. Where individual cases concern products falling within the scope of application of Protocol 25 as well as products or services falling within the scope of application of Articles 53 and 54 of the Agreement, the relevant turnover is determined by taking into account all the products and services as provided for in Article 2.

PROTOCOL 23 CONCERNING THE COOPERATION BETWEEN THE SURVEILLANCE AUTHORITIES (ARTICLE 58)

GENERAL PRINCIPLES

Article 1

The EFTA Surveillance Authority and the EC Commission shall exchange information and consult each other on general policy issues at the request of either of the surveillance authorities.

The EFTA Surveillance Authority and the EC Commission, in accordance with their internal rules, respecting Article 56 of the Agreement on Protocol 22 and the autonomy of both sides in their decisions, shall cooperate in the handling of individual cases falling under Article 56(1)(b) and (c), (2) second sentence and (3), as provided for in the provisions below.

For the purposes of this Protocol, the term 'territory of a surveillance authority' shall mean for the EC Commission the territory of the EC Member States to which the Treaty establishing the European Economic Community or the Treaty establishing the European Coal and Steel Community, as the case may be, applies, upon the terms laid down in those Treaties, and for the EFTA Surveillance Authority the territories of the EFTA States to which the Agreement applies.

THE INITIAL PHASE OF THE PROCEEDINGS

Article 2

In cases falling under Article 56(1)(b) and (c), (2), second sentence and (3) of the Agreement, the EFTA Surveillance Authority and the EC Commission shall without undue delay forward to each other notifications and complaints to the extent that it is not apparent that these have been addressed to both surveillance authorities. They shall also inform each other when opening *ex officio* procedures.

The surveillance authority which has received information as provided for in the first subparagraph may present its comments thereon within 40 working days of its receipt.

Article 3

The competent surveillance authority shall, in cases falling under Article 56(1)(b) and (c), (2), second sentence and (3) of the Agreement, consult the other surveillance authority when:

- publishing its intention to give a negative clearance,
- publishing its intention to take a decision in application of Article 53(3), or
- addressing to the undertakings or associations of undertakings concerned its statement of objections.

The other surveillance authority may deliver its comments within the time-limits set out in the abovementioned publication or statement of objections.

Observations received from the undertakings concerned or third parties shall be transmitted to the other surveillance authority.

Article 4

In cases falling under Article 56(1)(b) and (c), (2), second sentence and (3) of the Agreement, the competent surveillance authority shall transmit to the other surveillance authority the administrative letters by which a file is closed or a complaint rejected.

Article 5

In cases falling under Article 56(1)(b) and (c), (2), second sentence and (3) of the Agreement, the competent surveillance authority shall invite the other surveillance authority to be represented at hearings of the undertakings concerned. The invitation shall also extend to the States falling within the competence of the other surveillance authority.

ADVISORY COMMITTEES

Article 6

In cases falling under Article 56(1)(b) and (c), (2), second sentence and (3) of the Agreement, the competent surveillance authority shall, in due time, inform the other surveillance authority of the date of the meeting of the Advisory Committee and transmit the relevant documentation.

All documents forwarded for that purpose from the other surveillance authority shall be presented to the Advisory Committee of the surveillance authority which is competent to decide on a case in accordance with Article 56 together with the material sent out by that surveillance authority.

Each surveillance authority and the States falling within its competence shall be entitled to be present in the Advisory Committees of the other surveillance authority and to express their views therein; they shall not have, however, the right to vote.

REQUEST FOR DOCUMENTS AND THE RIGHT TO MAKE OBSERVATIONS

Article 7

In cases falling under Article 56(1)(b) and (c), (2), second sentence and (3) of the Agreement, the competent surveillance authority which is not competent to decide on a case in accordance with Article 56 may request at all stages of the proceedings copies of the most important

documents lodged with the competent surveillance authority for the purpose of establishing the existence of infringements of Articles 53 and 54 or of obtaining a negative clearance or exemption, and may furthermore, before a final decision is taken, make any observations it considers appropriate.

ADMINISTRATIVE ASSISTANCE

Article 8

1. When sending a request for information to an undertaking or association of undertakings located within the territory of the other surveillance authority, the competent surveillance authority, as defined in Article 56 of the Agreement, shall at the same time forward a copy of the request to the other surveillance authority.

2. Where an undertaking or association of undertakings does not supply the information requested within the time-limit fixed by the competent surveillance authority, or supplies incomplete information, the competent surveillance authority shall by decision require the information to be supplied. In the case of undertakings or associations of undertakings located within the territory of the other surveillance authority, the competent surveillance authority shall forward a copy of that decision to the other surveillance authority.

3. At the request of the competent surveillance authority, as defined in Article 56 of the Agreement, the other surveillance authority shall, in accordance with its internal rules, undertake investigations within its territory in cases where the competent surveillance authority so requesting considers it to be necessary.

4. The competent surveillance authority is entitled to be represented and take an active part in investigations carried out by the other surveillance authority in respect of paragraph 3.

5. All information obtained during such investigations on request shall be transmitted to the surveillance authority which requested the investigations immediately after their finalization.

6. Where the competent surveillance authority, in cases falling under Article 56(1)(b) and (c), (2), second sentence and (3) of the Agreement, carries out investigations within its territory, it shall inform the other surveillance authority of the fact that such investigations have taken place and, on request, transmit to that authority the relevant results of the investigations.

Article 9

1. Information acquired as a result of the application of this Protocol shall be used only for the purpose of procedures under Articles 53 and 54 of the Agreement.

2. The EC Commission, the EFTA Surveillance Authority, the competent authority of the EC Member States and the EFTA States, and their officials and other servants shall not disclose information acquired by them as a result of the application of this Protocol and of the kind covered by the obligation of professional secrecy.

3. Rules on professional secrecy and restricted use of information provided for in the Agreement or in the legislation of the Contracting Parties shall not prevent exchange of information as set out in this Protocol.

Article 10

1. Undertakings shall, in cases of notifications of agreements, address the notification of the competent surveillance authority in accordance with Article 56 of the Agreement. Complaints may be addressed to either surveillance authority.

2. Notifications or complaints addressed to the surveillance authority which, pursuant to Article 56, is not competent to decide on a given case shall be transferred without delay to the competent surveillance authority.

3. If, in the preparation or initiation of *ex officio* proceedings, it becomes apparent that the other surveillance authority is competent to decide on a case in accordance with Article 56 of the Agreement, this case shall be transferred to the competent surveillance authority.

4. Once a case is transmitted to the other surveillance authority as provided for in paragraphs 2 and 3, a retransmission of the case may not take place. A transmission of a case may not take place after the publishing of the intention to give a negative clearance, the publishing of the intention to take a decision in application of Article 53(3) of the Agreement, the addressing to undertakings or associations of undertakings concerned of the statement of objections or the sending of a letter informing the applicant that there are insufficient grounds for pursuing the complaint.

Article 11

The date of submission of an application or notification shall be the date on which it is received by the EC Commission or the EFTA Surveillance Authority, regardless of which of these is competent to decide on the case under Article 56 of the Agreement. Where, however, the application or notification is sent by registered post, it shall be deemed to have been received on the date shown on the postmark of the place of posting.

LANGUAGES

Article 12

Undertakings shall be entitled to address and be addressed by the EFTA Surveillance Authority and the EC Commission in an official language of an EFTA State or the European Community which they choose as regards notifications, applications and complaints. This shall also cover all instances of a proceeding, whether it be opened on notification, application or complaint or *ex officio* by the competent surveillance authority.

PROTOCOL 24 ON COOPERATION IN THE FIELD OF CONTROL OF CONCENTRATIONS

GENERAL PRINCIPLES

Article 1

1. The EFTA Surveillance Authority and the EC Commission shall exchange information and consult each other on general policy issues at the request of either of the surveillance authorities.

2. In cases falling under Article 57(2)(a), the EC Commission and the EFTA Surveillance Authority shall cooperate in the handling of concentrations as provided for in the provisions set out below.

3. For the purposes of this Protocol, the term 'territory of a surveillance authority' shall mean for the EC Commission the territory of the EC Member States to which the Treaty establishing the European Economic Community or the Treaty establishing the European Coal and Steel Community, as the case may be, applies, upon the terms laid down in those Treaties, and for the EFTA Surveillance Authority the territories of the EFTA States to which the Agreement applies.

Article 2

1. Cooperation shall take place, in accordance with the provisions set out in this Protocol, where:

(a) the combined turnover of the undertakings concerned in the territory of the EFTA States equals 25% or more of their total turnover within the territory covered by the Agreement, or

(b) each of at least two of the undertakings concerned has a turnover exceeding ECU 250 million in the territory of the EFTA States, or

(c) the concentration is liable to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the territories of the EFTA States or a substantial part thereof.

2. Cooperation shall also take place where:

(a) the concentration threatens to create or strengthen a dominant position as a result of which effective competition would be significantly impeded on a market within an EFTA State which presents all the characteristics of a distinct market, be it a substantial part of the territory covered by this Agreement or not, or

(b) an EFTA State wishes to adopt measures to protect legitimate interests as set out in Article 7.

INITIAL PHASE OF THE PROCEEDINGS

Article 3

1. The EC Commission shall transmit to the EFTA Surveillance Authority copies of notifications of the cases referred to in Article 2(1) and (2)(a) within three working days and, as soon as possible, copies of the most important documents lodged with or issued by the EC Commission.

2. The EC Commission shall carry out the procedures set out for the implementation of Article 57 of the Agreement in close and constant liaison with the EFTA Surveillance Authority. The EFTA Surveillance Authority and EFTA States may express their views upon those procedures. For the purposes of Article 6 of this Protocol, the EC Commission shall obtain information from the competent authority of the EFTA State concerned and give it the opportunity to make known its views at every stage of the procedures up to the adoption of a decision pursuant to that Article. To that end, the EC Commission shall give it access to the file.

HEARINGS

Article 4

In cases referred to in Article 2(1) and (2)(a), the EC Commission shall invite the EFTA Surveillance Authority to be represented at the hearings of the undertakings concerned. The EFTA States may likewise be represented at those hearings.

THE EC ADVISORY COMMITTEE ON CONCENTRATIONS

Article 5

1. In cases referred to in Article 2(1) and (2)(a), the EC Commission shall in due time inform the EFTA Surveillance Authority of the date of the meeting of the EC Advisory Committee on Concentrations and transmit the relevant documentation.

2. All documents forwarded for that purpose from the EFTA Surveillance Authority, including documents emanating from EFTA States, shall be presented to the EC Advisory Committee on Concentrations together with the other relevant documentation sent out by the EC Commission.

3. The EFTA Surveillance Authority and the EFTA States shall be entitled to be present in the EC Advisory Committee on Concentrations and to express their views therein; they shall not have, however, the right to vote.

RIGHTS OF INDIVIDUAL STATES

Article 6

1. The EC Commission may, by means of a decision notified without delay to the undertakings concerned, to the competent authorities of the EC Member States and to the EFTA Surveillance Authority, refer a notified concentration to an EFTA State where a concentration threatens to create or strengthen a dominant position as a result of which effective competition would be significantly impeded on a market within that State, which presents all the characteristics of a distinct market, be it a substantial part of the territory covered by the Agreement or not.

2. In cases referred to in paragraph 1, any EFTA State may appeal to the European Court of Justice, on the same grounds and conditions as an EC Member State under Article 173 of the Treaty establishing the European Economic Community, and in particular request the application of interim measures, for the purpose of applying its national competition law.

Article 7

1. Notwithstanding the sole competence of the EC Commission to deal with concentrations of a Community dimension as set out in Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395, 30.12.1989, p. 1, as corrected by OJ L 257, 21.9.1990, p. 13), EFTA States may take appropriate measures to protect legitimate interests other than those taken into consideration according to the above Regulation and compatible with the general principles and other provisions as provided for, directly or indirectly, under the Agreement.

2. Public security, plurality of media and prudential rules shall be regarded as legitimate interests within the meaning of paragraph 1.

3. Any other public interest must be communicated to the EC Commission and shall be recognized by the EC Commission after an assessment of its compatibility with the general principles and other provisions as provided for, directly or indirectly, under the Agreement before the measures referred to above may be taken. The EC Commission shall inform the EFTA Surveillance Authority and the EFTA State concerned of its decision within one month of that communication.

ADMINISTRATIVE ASSISTANCE

Article 8

1. In carrying out the duties assigned to it for the implementation of Article 57, the EC Commission may obtain all necessary information from the EFTA Surveillance Authority and EFTA States.

2. When sending a request for information to a person, an undertaking or an association of undertakings located within the territory of the EFTA Surveillance Authority, the EC Commission shall at the same time forward a copy of the request to the EFTA Surveillance Authority.

3. Where such persons, undertakings or associations of undertakings do not provide the information requested within the period fixed by the EC Commission, or provide incomplete information, the EC Commission shall by decision require the information to be provided and forward a copy of that decision to the EFTA Surveillance Authority.

4. At the request of the EC Commission, the EFTA Surveillance Authority shall undertake investigations within its territory.

5. The EC Commission is entitled to be represented and take an active part in investigations carried out pursuant to paragraph 4.

6. All information obtained during such investigations on request shall be transmitted to the EC Commission immediately after their finalization.

7. Where the EC Commission carries out investigations within the territory of the Community, it shall, as regards cases falling under Article 2(1) and (2)(a) inform the EFTA Surveillance Authority of the fact that such investigations have taken place and on request transmit in an appropriate way the relevant results of the investigations.

PROFESSIONAL SECRECY

Article 9

1. Information acquired as a result of the application of this Protocol shall be used only for the purpose of procedures under Article 57 of the Agreement.

2. The EC Commission, the EFTA Surveillance Authority, the competent authorities of the EC Member States and of the EFTA States, and their officials and other servants shall not disclose information acquired by them as a result of the application of this Protocol and of the kind covered by the obligation of professional secrecy.

3. Rules on professional secrecy and restricted used of information provided for in the Agreement or the legislation of the Contracting Parties shall not prevent the exchange and use of information as set out in this Protocol.

NOTIFICATIONS

Article 10

1. Undertakings shall address their notifications to the competent surveillance authority in accordance with Article 57(2) of the Agreement.

2. Notifications or complaints addressed to the authority which, pursuant to Article 57, is not competent to take decisions on a given case shall be transferred without delay to the competent surveillance authority.

Article 11

The date of submission of a notification shall be the date on which it is received by the competent surveillance authority.

The date of submission of a notification shall be the date on which it is received by the EC Commission or the EFTA Surveillance Authority, if the case is notified in accordance with the implementing rules under Article 57 of the Agreement, but falls under Article 53.

LANGUAGES

Article 12

1. Undertakings shall be entitled to address and be addressed by the EFTA Surveillance Authority and the EC Commission in an official language of an EFTA State or the European Community which they choose as regards notifications. This shall also cover all instances of a proceeding.

2. If undertakings choose to address a surveillance authority in a language which is not one of the official languages of the States falling within the competence of that authority, or a working language of that authority, they shall simultaneously supplement all documentation with a translation into an official language of that authority.

3. As far as undertakings are concerned which are not parties to the notification, they shall likewise be entitled to be addressed by the EFTA Surveillance Authority and the EC Commission in an appropriate official language of an EFTA State or the Community or in a working language of one of those authorities. If they choose to address a surveillance authority in a language which is not one of the official languages of the States falling within the competence of that authority, or a working language of that authority, paragraph 2 shall apply.

4. The language which is chosen for the translation shall determine the language in which the undertakings may be addressed by the competent authority.

TIME-LIMITS AND OTHER PROCEDURAL QUESTIONS

Article 13

As regards time-limits and other procedural provisions, the rules implementing Article 57 shall apply also for the purpose of the cooperation between the EC Commission and the EFTA Surveillance Authority and EFTA States, unless otherwise provided for in this Protocol.

TRANSITION RULE

Article 14

Article 57 shall not apply to any concentration which was the subject of an agreement or announcement or where control was acquired before the date of entry into force of the Agreement. It shall not in any circumstances apply to a concentration in respect of which proceedings were initiated before that date by a national authority with responsibility for competition.

PROTOCOL 25 ON COMPETITION REGARDING COAL AND STEEL

Article 1

1. All agreements between undertakings, decisions by associations of undertakings and concerted practices in respect of particular products referred to in Protocol 14 which may affect trade between Contracting Parties tending directly or indirectly to prevent, restrict or distort normal competition within the territory covered by this Agreement shall be prohibited, and in particular those tending:

(a) to fix or determine prices,

(b) to restrict or control production, technical development or investment,

(c) to share markets, products, customers or sources of supply.

2. However, the competent surveillance authority, as provided for in Article 56 of the Agreement, shall authorize specialization agreements or joint-buying or joint-selling agreements in respect of the products referred to in paragraph 1, if it finds that:

(a) such specialization or such joint buying or joint selling will make for a substantial improvement in the production or distribution of those products;

(b) the agreement in question is essential in order to achieve these results and is not more restrictive than is necessary for that purpose; and

(c) the agreement is not liable to give the undertakings concerned the power to determine the prices, or to control or restrict the production or marketing, of a substantial part of the products in question within the territory covered by the Agreement, or to shield them against effective competition from other undertakings within the territory covered by the Agreement.

If the competent surveillance authority finds that certain agreements are strictly analogous in nature and affect to those referred to above, having particular regard to the fact that this paragraph applies to distributive undertakings, it shall authorize them also when satisfied that they meet the same requirements.

3. Any agreement or decision prohibited by paragraph 1 shall be automatically void and may not be relied upon before any court or tribunal in the EC Member States or the EFTA States.

Article 2

1. Any transaction shall require the prior authorization of the competent surveillance authority, as provided for in Article 56 of the Agreement, subject to the provisions of paragraph 3 of this Article, if it has in itself the direct or indirect effect of bringing about within the territory covered by the Agreement, as a result of action by any person or undertaking or group of persons or undertakings, a concentration between undertakings at least one of which is covered by Article 3, which may affect trade between Contracting Parties, whether the transaction concerns a single product or a number of different products, and whether it is effected by merger, acquisition of shares or parts of the undertaking or assets, loan, contract or any other means of control.

2. The competent surveillance authority, as provided for in Article 56 of the Agreement, shall grant the authorization referred to in paragraph 1 if it finds that the proposed transaction will not give to the persons or undertakings concerned the power, in respect of the product or products within its jurisdiction:

- to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market for those products, or
- to evade the rules of competition instituted under this Agreement, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

3. Classes of transactions may, in view of the size of the assets or undertakings concerned, taken in conjunction with the kind of concentration to be effected, be exempted from the requirement of prior authorization.

4. If the competent surveillance authority, as provided for in Article 56 of the Agreement, finds that public or private undertakings which, in law or in fact, hold or acquire in the market for one of the products within its jurisdiction a dominant position shielding them against effective competition in a substantial part of the territory covered by this Agreement are using that position for purposes contrary to the objectives of this Agreement and if such abuse may affect trade between Contracting Parties, it shall make to them such recommendations as may be appropriate to prevent the position from being so used.

Article 3

For the purposes of Articles 1 and 2 as well as for the purposes of information required for their application and proceedings in connection with them, 'undertaking' means any undertaking engaged in production in the coal or the steel industry within the territory covered by the Agreement, and any undertaking or agency regularly engaged in distribution other than sale to domestic consumers or small craft industries.

Article 4

Annex XIV to the Agreement contains specific provisions giving effect to the principles set out in Articles 1 and 2.

Article 5

The EFTA Surveillance Authority and the EC Commission shall ensure the application of the principles laid down in Articles 1 and 2 of this Protocol in accordance with the provisions giving effect to Articles 1 and 2 as contained in Protocol 21 and Annex XIV to the Agreement.

Article 6

Individual cases referred to in Articles 1 and 2 of this Protocol shall be decided upon by the EC Commission or the EFTA Surveillance Authority in accordance with Article 56 of the Agreement.

Article 7

With a view to developing and maintaining a uniform surveillance through the European Economic Area in the field of competition and of promoting a homogeneous implementation, application and interpretation of the provisions of the Agreement to this end, the competent authorities shall cooperate in accordance with the provisions set out in Protocol 23.

PROTOCOL 26 ON THE POWERS AND FUNCTIONS OF THE EFTA SURVEILLANCE AUTHORITY IN THE FIELD OF STATE AID

The EFTA Surveillance Authority shall, in an agreement between the EFTA States, be entrusted with equivalent powers and similar functions to those of the EC Commission, at the time of the signature of the Agreement, for the application of the competition rules applicable to State aid of the Treaty establishing the European Economic Community, enabling the EFTA Surveillance Authority to give effect to the principles expressed in Articles 1(2)(e), 49 and 61 to 63 of the Agreement. The EFTA Surveillance Authority shall also have such powers to give effect to the competition rules applicable to State aids relating to products falling under the Treaty establishing the European Coal and Steel Community as referred to in Protocol 14.

PROTOCOL 27 ON COOPERATION IN THE FIELD OF STATE AID

In order to ensure a uniform implementation, application and interpretation of the rules on State aid throughout the territory of the Contracting Parties as well as to guarantee their

harmonious development, the EC Commission and the EFTA Surveillance Authority shall observe the following rules:

(a) exchange of information and views on general policy issues such as the implementation, application and interpretation of the rules on State aid set out in the Agreement shall be held periodically or at the request of either surveillance authority;

(b) the EC Commission and the EFTA Surveillance Authority shall periodically prepare surveys on State aid in their respective States. These surveys shall be made available to the other surveillance authority;

(c) if the procedure referred to in the first and second subparagraphs of Article 93(2) of the Treaty establishing the European Economic Community or the corresponding procedure set out in an agreement between the EFTA States establishing the EFTA Surveillance Authority is opened for State aid programmes and cases, the EC Commission or the EFTA Surveillance Authority shall give notice to the other surveillance authority as well as to the parties concerned to submit their comments;

(d) the surveillance authorities shall inform each other of all decisions as soon as they are taken;

(e) the opening of the procedure referred to in paragraph (c) and the decisions referred to in paragraph (d) shall be published by the competent surveillance authorities;

(f) notwithstanding the provisions of this Protocol, the EC Commission and the EFTA Surveillance Authority shall, at the request of the other surveillance authority, provide on a case-by-case basis information and exchange views on individual State aid programmes and cases;

(g) information obtained in accordance with paragraph (f) shall be treated as confidential.

[...]

PROTOCOL 35 ON THE IMPLEMENTATION OF EEA RULES

Whereas this Agreement aims at achieving a homogeneous European Economic Area, based on common rules, without requiring any Contracting Parties to transfer legislative powers to any institution of the European Economic Area; and

Whereas this consequently will have to be achieved through national procedures;

Sole article

For cases of possible conflicts between implemented EEA rules and other statutory provisions, the EFTA States undertake to introduce, if necessary, a statutory provision to the effect that EEA rules prevail in these cases.

[...]

ANNEX XIII

TRANSPORT

ACTS REFERRED TO

I – Inland transport

[...]

(iii) Competition rules

6. 360 R 0011: Council Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community (OJ 52, 16.8.1960, p. 1121/60) as amended and supplemented by:

   - 172 B: Act concerning the conditions of accession and the adjustments to the Treaties – Accession to the European Communities of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ L 73, 27.3.1972, p. 148).
   - 384 R 3626: Council Regulation (EEC) No 3626/84 of 19 December 1984 (OJ L 335, 22.12.1984, p. 4).

   The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptation:

   For the application of Articles 11 to 26 of this Regulation, see Protocol 21.

7. 368 R 1017: Council Regulation (EEC) No 1017/68 of 19 July 1968, applying rules of competition to transport by rail, road and inland waterway (OJ L 175, 23.7.1968, p. 1).[1]

8. 369 R 1629: Commission Regulation (EEC) No 1629/69 of 8 August 1969 on the form, content and other details of complaints pursuant to Article 10, applications pursuant to Article 12 and notifications pursuant to Article 14(1) of Council Regulation (EEC) No 1017/68 of 19 July 1968 (OJ L 209, 21.8.1969, p. 1).[2]

9. 369 R 1630: Commission Regulation (EEC) No 1630/69 of 8 August 1969 on the hearings provided for in Article 26(1) and (2) of Council Regulation (EEC) No 1017/68 of 19 July 1968 (OJ L 209, 21.8.1969, p. 11).[2]

10. 374 R 2988: Council Regulation (EEC) No 2988/74 of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition (OJ L 319, 29.11.1974, p. 1).[2]

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[1] Listed here for purposes of information only. For application, see Annex XIV.

[2] Listed here for purposes of information only. For application, see Protocol 21.

(iv) State aid

11. 370 R 1107: Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway (OJ L 130, 15.6.1970, p. 1), as amended and supplemented by:
    - 172 B: Act concerning the conditions of accession and the adjustments to the Treaties – Accession to the European Communities of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ L 73, 27.3.1972, p. 149),
    - 375 R 1473: Council Regulation (EEC) No 1473/75 of 20 May 1975 (OJ L 152, 12.6.1975, p. 1),
    - 382 R 1658: Council Regulation (EEC) No 1658/82 of 10 June 1982 supplementing, by provisions on combined transport, Regulation (EEC) No 1107/70 (OJ L 184, 29.6.1982, p. 1),
    - 389 R 1100: Council Regulation (EEC) No 1100/89 of 27 April 1989 (OJ L 116, 28.4.1989, p. 24).

    The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptation:

    In Article 5 'Commission' shall read 'the competent authority as defined in Article 62 of the EEA Agreement'.

[...]

ACTS REFERRED TO

VI – Civil aviation

(i) Competition rules

60. 387 R 3975: Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector (OJ L 374, 31.12.1987, p. 1). [1]

61. 388 R 4261: Council Regulation (EEC) No 4261/88 of 16 December 1988 on the complaints, application and hearings provided for in Council Regulation (EEC) No 3975/87 (OJ L 376, 31.12.1988, p. 10). [1]

[...]

[1] Listed here for purposes of information only. For application, see Protocol 21.

ANNEX XIV

COMPETITION

List provided for in Article 60

Introduction

When the acts referred to in this Annex contain notions or refer to procedures which are specific to the Community legal order, such as

- preambles;
- the addressees of the Community acts;
- references to territories or languages of the EC;
- references to rights and obligations of EC Member States, their public entities, undertakings or individuals in relation to each other; and
- references to information and notification procedures;

Protocol 1 on horizontal adaptations shall apply, unless otherwise provided for in this Annex.

Sectoral adaptations

Unless otherwise provided for, the provisions of this Annex shall, for the purposes of the present Agreement, be read with the following adaptations:

(I) the term 'Commission' shall read 'competent surveillance authority';

(II) the term 'common market' shall read 'the territory covered by the EEA Agreement';

(III) the term 'trade between Member States' shall read 'trade between Contracting Parties';

(IV) the term 'the Commission and the authorities of the Member States' shall read 'the EC Commission, the EFTA Surveillance Authority, the authorities of the EC Member States and of the EFTA States';

(V) References to Articles of the Treaty establishing the European Economic Community (EEC) or the Treaty establishing the European Coal and Steel Community (ECSC) shall be read as references to the EEA Agreement (EEA) as follows:

Article 85 (EEC) – Article 53 (EEA),

Article 86 (EEC) – Article 54 (EEA),

Article 90 (EEC) – Article 59 (EEA),

Article 66 (ECSC) – Article 2 of Protocol 25 to the EEA Agreement,

Article 80 (ECSC) – Article 3 of Protocol 25 to the EEA Agreement;

(VI) the term 'this Regulation' shall read 'this Act';

(VII) the term 'the competition rules of the Treaty' shall read 'the competition rules of the EEA Agreement';

(VIII) the term 'High Authority' shall read 'competent surveillance authority'.

Without prejudice to the rules on control of concentrations, the term 'competent surveillance authority' as referred to in the rules below shall read 'the surveillance authority which is competent to decide on a case in accordance with Article 56 of the EEA Agreement'.

ACTS REFERRED TO

A – Merger control

1. 389 R 4064: Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395, 30.12.1989, p. 1), as corrected by OJ L 257, 21.9.1990, p.13.

   The provisions of Articles 1 to 5 of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

   (a) in Article 1(1), the phrase 'or the corresponding provision envisaged in Protocol 21 to the EEA Agreement' shall be inserted after the words 'Without prejudice to Article 22';

   furthermore the term 'Community dimension' shall be replaced by 'Community or EFTA dimension';

   (b) in Article 1(2), the term 'Community dimension' shall be replaced by 'Community or EFTA dimension respectively';

   furthermore, the term 'Community-wide turnover' shall be replaced by 'Community-wide or EFTA-wide turnover';

   in the last subparagraph, the term 'Member State' shall be replaced by 'State';

   (c) Article 1(3) shall not apply;

   (d) in Article 2(1), first subparagraph, the term 'common market' shall be replaced by 'functioning of the EEA Agreement';

   (e) in Article 2(2), at the end, the term 'common market' shall be replaced by 'functioning of the EEA Agreement';

   (f) in Article 2(3), at the end, the term 'common market' shall be replaced by 'functioning of the EEA Agreement';

   (g) in Article 3(5)(b), the term 'Member State' shall be replaced by 'EC Member State or an EFTA State';

(h) in Article 4(1), the term 'Community dimension' shall be replaced by 'Community or EFTA dimension';

furthermore, in the first sentence, the phrase 'in accordance with Article 57 of the EEA Agreement' shall be inserted after the words '... shall be notified to the Commission';

(i) in Article 5(1), the last subparagraph shall be replaced by the following:

'Turnover, in the Community or in an EC Member State, shall comprise products sold and services provided to undertakings or consumers, in the Community or in that EC Member State as the case may be. The same shall apply as regards turnover in the territory of the EFTA States as a whole or in an EFTA State.';

(j) in Article 5(3)(a), second subparagraph, the term 'Community-wide turnover' shall be replaced by the words 'Community-wide or EFTA-wide turnover';

furthermore, the term 'Community residents' shall be replaced by 'Community or EFTA residents, respectively';

(k) in Article 5(3)(a), third subparagraph, the term 'Member State' shall be replaced by 'EC Member State or EFTA State';

(l) in Article 5(3)(b), the last phrase '..., gross premiums received from Community residents and from residents of one Member State respectively shall be taken into account' shall be replaced by the following:

'..., gross premiums received from Community residents and from residents of one Member State respectively shall be taken into account. The same shall apply as regards gross premiums received from residents in the territory of the EFTA States as a whole and from residents in one EFTA State, respectively.'

B – Exclusive dealing agreements

2. 383 R 1983: Commission Regulation (EEC) No 1983/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive distribution agreements (OJ L 173, 30.6.1983, p. 1), as corrected by OJ L 281, 13.10.1983, p. 24, and as amended by:

- 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 166).

The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 5(1), the term 'the Treaty' shall read 'the Treaty establishing the European Economic Community';

(b) in Article 6, introductory paragraph, the phrase 'pursuant to Article 7 of Regulation No 19/65/EEC' shall read 'either on its own initiative or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest';

(c) the following paragraph shall be added at the end of Article 6:

'The competent surveillance authority may in such cases issue a decision in accordance with Articles 6 and 8 of Regulation (EEC) No 17/62, or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, without any notification from the undertakings concerned being required';

(d) Article 7 shall not apply;

(e) Article 10 shall read:

'This Act shall expire on 31 December 1997'.

3. 383 R 1984: Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive purchasing agreements (OJ L 173, 30.6.1983, p. 5), as corrected by OJ L 281, 13.10.1983, p. 24, and as amended by:

– 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 166).

The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 5(1), the term 'the Treaty' shall read 'the Treaty establishing the European Economic Community';

(b) in Article 14, introductory paragraph, the phrase 'pursuant to Article 7 of Regulations No 19/65/EEC' shall read 'either on its own initiative or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest';

(c) the following paragraph shall be added at the end of Article 14:

'The competent surveillance authority may in such cases issue a decision in accordance with Articles 6 and 8 of Regulation (EEC) No 17/62, or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, without any notification from the undertakings concerned being required';

(d) Article 15 shall not apply;

(e) Article 19 shall read:

'This Act shall expire on 31 December 1997'.

4. 385 R 0123: Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the Treaty to categories of motor vehicle distribution and servicing agreements (OJ L 15, 18.1.1985, p. 16), as amended by:

– 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession to the European Communities of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 167).

The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 5(1), subparagraph (2)(d), the term 'Member State' shall read 'EC Member State or EFTA State';

(b) Article 7 shall not apply;

(c) Article 8 shall not apply;

(d) Article 9 shall not apply;

(e) in Article 10, introductory paragraph, the phrase 'pursuant to Article 7 of Regulations No 19/65/EEC' shall read 'either on its own initiative or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest';

(f) in Article 10(3), the term 'Member States' shall read 'Contracting Parties';

(g) the following paragraph shall be added at the end of Article 10:

'The competent surveillance authority may in such cases issue a decision in accordance with Articles 6 and 8 of Regulation (EEC) No 17/62, or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, without any notification from the undertakings concerned being required';

(h) Article 14 shall read:

'This Act shall remain in force until 30 June 1995'.

C – Patent licensing agreements

5. 384 R 2349: Commission Regulation (EEC) No 2349/84 of 23 July 1984 on the application of Article 85(3) of the Treaty to certain categories of patent licensing agreements (OJ L 219, 16.8.1984, p. 15), as amended by:

– 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 167).

The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 4(1), the phrase 'on condition that the agreements in question are notified to the Commission in accordance with the provisions of Commission Regulation No 27, as last amended by Regulation (EEC) No 1699/75, and that the Commission does not oppose' shall read 'on condition that the agreements in question are notified to the EC Commission or the EFTA Surveillance Authority in accordance with the provisions of Commission Regulation No 27/62, as last amended by Regulation (EEC)

No 2526/85, and the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, and that the competent surveillance authority does not oppose';

(b) in Article 4(2), the term 'the Commission' shall read 'the EC Commission or the EFTA Surveillance Authority';

(c) Article 4(4) shall not apply;

(d) in Article 4(5), the second sentence shall be replaced as follows:

'It shall oppose exemption if it receives a request to do so from a State falling within its competence within three months of the transmission to those States of the notification referred to in paragraph 1';

(e) in Article 4(6), the second sentence shall be replaced as follows:

'However, where the opposition was raised at the request of a State falling within its competence and this request is maintained, it may be withdrawn only after consultation of its Advisory Committee on Restrictive Practices and Dominant Positions';

(f) the following shall be added to the end of Article 4(9):

'or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement';

(g) Article 6 shall not apply;

(h) Article 7 shall not apply;

(i) Article 8 shall not apply;

(j) in Article 9, introductory paragraph, the phrase 'pursuant to Article 7 of Regulation No 19/65/EEC' shall read 'either on its own initiative or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest';

(k) the following paragraph shall be added at the end of Article 9:

'The competent surveillance authority may in such cases issue a decision in accordance with Articles 6 and 8 of Regulation (EEC) No 17/62, or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, without any notification from the undertakings concerned being required';

(l) Article 14 shall read:

'This Act shall apply until 31 December 1994'.

D – Specialization and research and development agreements

6. 385 R 0417: Commission Regulation (EEC) No 417/85 of 19 December 1984 on the application of Article 85(3) of the Treaty to categories of specialization agreements (OJ L 53, 22.2.1985, p. 1), as amended by:

– 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 167).

The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 4(1), the phrase 'on condition that the agreements in question are notified to the Commission in accordance with the provisions of Commission Regulation No 27 and that the Commission does not oppose' shall read 'on condition that the agreements in question are notified to the EC Commission or the EFTA Surveillance Authority in accordance with the provisions of Commission Regulation No 27/62, as last amended by Regulation (EEC) No 2526/85, and the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, and that the competent surveillance authority does not oppose';

(b) in Article 4(2), the term 'the Commission' shall read 'the EC Commission or the EFTA Surveillance Authority';

(c) Article 4(4) shall not apply;

(d) in Article 4(5), the second sentence shall be replaced as follows:

'It shall oppose exemption if it receives a request to do so from a State falling within its competence within three months of the transmission to those States of the notification referred to in paragraph 1';

(e) in Article 4(6), the second sentence shall be replaced as follows:

'However, where the opposition was raised at the request of a State falling within its competence and this request is maintained, it may be withdrawn only after consultation of its Advisory Committee on Restrictive Practices and Dominant Positions';

(f) the following shall be added to the end of Article 4(9):

',or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement';

(g) in Article 8, introductory paragraph, the phrase 'pursuant to Article 7 of Regulation (EEC) No 2821/71' shall read 'either on its own initiative or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest';

(h) the following paragraph shall be added at the end of Article 10:

'The competent surveillance authority may in such cases issue a decision in accordance with Articles 6 and 8 of Regulation (EEC) No 17/62, or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, without any notification from the undertakings concerned being required';

(i) Article 10 shall read:

'This Act shall apply until 31 December 1997'.

7. 385 R 0418: Commission Regulation (EEC) No 418/85 of 19 December 1984 on the application of Article 85(3) of the Treaty to categories of research and development agreements (OJ L 53, 22.2.1985, p. 5), as amended by:

   - 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 167).

   The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

   (a) in Article 7(1), the phrase 'on condition that the agreements in question are notified to the Commission in accordance with the provisions of Commission Regulation No 27 and that the Commission does not oppose' shall read 'on condition that the agreements in question are notified to the EC Commission or the EFTA Surveillance Authority in accordance with the provisions of Commission Regulation No 27/62, as last amended by Regulation (EEC) No 2526/85, and the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, and that the competent surveillance authority does not oppose';

   (b) in Article 7(2), the term 'the Commission' shall read 'the EC Commission or the EFTA Surveillance Authority';

   (c) Article 7(4) shall not apply;

   (d) in Article 7(5), the second sentence shall be replaced as follows:

   'It shall oppose exemption if it receives a request to do so from a State falling within its competence within three months of the transmission to those States of the notification referred to in paragraph 1';

   (e) in Article 7(6), the second sentence shall be replaced as follows:

   'However, where the opposition was raised at the request of a State falling within its competence and this request is maintained, it may be withdrawn only after consultation of its Advisory Committee on Restrictive Practices and Dominant Positions';

   (f) the following shall be added to the end of Article 7(9):

   ', or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement';

   (g) in Article 10, introductory paragraph, the phrase 'pursuant to Article 7 of Regulation (EEC) No 2821/71' shall read 'either on its own initiative or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest';

   (h) the following paragraph shall be added at the end of Article 10:

   'The competent surveillance authority may in such cases issue a decision in accordance with Articles 6 and 8 of Regulation (EEC) No 17/62, or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, without any notification from the undertakings concerned being required';

(i) Article 11 shall not apply;

(j) Article 13 shall read:

'This Act shall apply until 31 December 1997'.

E – Franchising agreements

8. 388 R 4087: Commission Regulation (EEC) No 4087/88 of 30 November 1988 on the application of Article 85(3) of the Treaty to categories of franchise agreements (OJ L 359, 28.12.1988, p. 46).

The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 6(1), the phrase 'on condition that the agreements in question are notified to the Commission in accordance with the provisions of Commission Regulation No 27, and that the Commission does not oppose' shall read 'on condition that the agreements in question are notified to the EC Commission or the EFTA Surveillance Authority in accordance with the provisions of Commission Regulation No 27/62, as last amended by Regulation (EEC) No 2526/85, and the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, and that the competent surveillance authority does not oppose';

(b) in Article 6(2), the term 'the Commission' shall read 'the EC Commission or the EFTA Surveillance Authority';

(c) Article 6(4) shall not apply;

(d) in Article 6(5), the second sentence shall be replaced as follows:

'It shall oppose exemption if it receives a request to do so from a State falling within its competence within three months of the forwarding to those States of the notification referred to in paragraph 1';

(e) in Article 6(6), the second sentence shall be replaced as follows:

'However, where the opposition was raised at the request of a State falling within its competence and this request is maintained, it may be withdrawn only after consultation of its Advisory Committee on Restrictive Practices and Dominant Positions';

(f) the following shall be added to the end of Article 6(9):

', or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement';

(g) in Article 8, introductory paragraph, the phrase 'pursuant to Article 7 of Regulation No 19/65/EEC' shall read 'either on its own initiative or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest';

(h) the following paragraph shall be added at the end of Article 8:

'The competent surveillance authority may in such cases issue a decision in accordance with Articles 6 and 8 of Regulation No 17/62, or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, without any notification from the undertakings concerned being required';

(i) in Article 8(c), the term 'Member States' shall read 'EC Member States or EFTA States';

(j) Article 9 shall read:

'This Act shall remain in force until 31 December 1999'.

F – Know-how licensing agreements

9. 389 R 0556: Commission Regulation (EEC) No 556/89 of 30 November 1988 on the application of Article 85(3) of the Treaty to categories of know-how licensing agreements (OJ L 61, 4.3.1989, p. 1).

The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 1(2), the term 'EEC' shall read 'the territory covered by the EEA Agreement';

(b) Article 1(4) shall read:

'In so far as the obligations referred to in paragraph 1(1) to (5) concern territories including EC Member States or EFTA States in which the same technology is protected by necessary patents, the exemption provided for in paragraph 1 shall extend for those States as long as the licensed product or process is protected in those States by such patents, where the duration of such protection exceeds the periods specified in paragraph 2.';

(c) in Article 1(7), points 6 and 8, the term 'Member States' shall read 'EC Member States or EFTA States';

(d) in Article 4(1), the phrase 'on condition that the agreements in question are notified to the Commission in accordance with the provisions of Commission Regulation No 27, and that the Commission does not oppose' shall read 'on condition that the agreements in question are notified to the EC Commission or the EFTA Surveillance Authority in accordance with the provisions of Commission Regulation No 27/62, as last amended by Regulation (EEC) No 2526/85, and the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, and that the competent surveillance authority does not oppose';

(e) in Article 4(3), the term 'the Commission' shall read 'the EC Commission or the EFTA Surveillance Authority';

(f) Article 4(5) shall not apply;

(g) in Article 4(6), the second sentence shall be replaced as follows:

'It shall oppose exemption if it receives a request to do so from a State falling within its competence within three months of the transmission to those States of the notification referred to in paragraph 1';

(h) in Article 4(7), the second sentence shall be replaced as follows:

'However, where the opposition was raised at the request of a State falling within its competence and this request is maintained, it may be withdrawn only after consultation of its Advisory Committee on Restrictive Practices and Dominant Positions';

(i) the following shall be added to the end of Article 4(10):

', or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement';

(j) in Article 7, introductory paragraph, the phrase 'pursuant to Article 7 of Regulation No 19/65/EEC' shall read 'either on its own initiative or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest';

(k) in Article 7, the following shall be added at the end points (5)(a) and (b):

'The competent surveillance authority may in such cases issue a decision in accordance with Articles 6 and 8 of Regulation (EEC) No 17/62, or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, without any notification from the undertakings concerned being required';

(l) Article 8 shall not apply;

(m) Article 9 shall not apply;

(n) Article 10 shall not apply;

(o) Article 12 shall read:

'This Act shall apply until 31 December 1999'.

G – Transport

10. 368 R 1017: Commission Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway (OJ L 175, 23.7.1968, p.1).

The provisions of Articles 1 to 5 and of Articles 7 to 9 of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 2, the introductory paragraph shall read as follows:

'Subject to the provisions of Articles 3 to 5, Article 6 of Regulation (EEC) No 1017/68 and to the provision corresponding to Article 6 as it is envisaged in Protocol 21 to the EEA Agreement, the following shall be prohibited as incompatible with

the functioning of the EEA Agreement, no prior decision to that effect being required: all agreements between undertakings, decisions by associations of undertakings and concerted practices liable to affect trade between Contracting Parties which have as their objects or effect the prevention, restriction or distortion of competition within the territory covered by the EEA Agreement, and in particular those which:';

(b) Article 3(2) shall not apply;

(c) Article 6 shall not apply;

(d) in the first subparagraph of Article 8, the phrase 'incompatible with the common market' shall read 'incompatible with the functioning of the EEA Agreement';

(e) Article 9(1) shall read:

'In the case of public undertakings and undertakings to which EC Member States or EFTA States grant special or exclusive rights, Contracting Parties shall ensure that there is neither enacted nor maintained in force any measure contrary to the provisions of the foregoing Articles.';

(f) in Article 9(2), the term 'Community' shall read 'the Contracting Parties';

(g) Article 9(3) shall read:

'The EC Commission and the EFTA Surveillance Authority shall see to it that the provisions of this Article are applied and shall, where necessary, address appropriate measures to States falling within their respective competence.'

11. 386 R 4056: Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ L 378, 31.12.1986, p. 4).

The provisions of Section I of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 1(2), the term 'Community Ports' shall read 'ports in the territory covered by the EEA Agreement';

(b) Article 2(2) shall not apply;

(c) in Article 7(1), introductory paragraph, the term 'Section II' shall read 'Section II or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement';

furthermore, in the second indent, the term 'Article 11(4)' shall read 'Article 11(4) or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement';

(d) in Article 7(2)(a), the term 'Section II' shall read 'Section II or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement';

(e) the following subparagraphs shall be added to Article 7(2)(c)(i):

'If any of the Contracting Parties intends to undertake consultations with a third country in accordance with this Regulation, it shall inform the EEA Joint Committee.

Whenever appropriate, the Contracting Party initiating the procedure may request the other Contracting Parties to cooperate in these procedures.

If one or more of the other Contracting Parties object to the intended action, a satisfactory solution will be sought within the EEA Joint Committee. If the Contracting Parties do not reach agreement, appropriate measures may be taken to remedy subsequent distortions of competition.';

(f) in Article 8(2), the phrase 'at the request of a Member State' shall read 'at the request of a State falling within its competence';

furthermore, the term 'Article 10' shall read 'Article 10 or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement';

(g) in Article 9(1), the term 'Community trading and shipping interests' shall read the 'trading and shipping interests of the Contracting Parties';

(h) the following paragraph shall be added to Article 9:

'4. If any of the Contracting Parties intends to undertake consultations with a third country in accordance with this Regulation, it shall inform the EEA Joint Committee.

Whenever appropriate, the Contracting Parties initiating the procedure may request the other Contracting Parties to cooperate in these procedures.

If one or more of the other Contracting Parties object to the intended action, a satisfactory solution will be sought within the EEA Joint Committee. If the Contracting Parties do not reach agreement, appropriate measures may be taken to remedy subsequent distortions of competition.'

H – Public undertakings

12. 388 L 0301: Commission Directive 88/301/EEC of 16 May 1988 on competition in the markets in telecommunications terminal equipment (OJ L 131, 27.5.1988, p. 73).

The provisions of the Directive shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in the second subparagraph of Article 2, the phrase 'notification of this Directive' shall be replaced by 'entry into force of the EEA Agreement';

(b) Article 10 shall not apply;

(c) in addition, the following shall apply:

as regards EFTA States, it is understood that the EFTA Surveillance Authority shall be the addressee of all the information, communications, reports and notifications which according to this Directive are, within the Community, addressed to the EC Commission.

As regards the different transition periods provided for in this Act, a general transition period of six months as from the entry into force of the EEA Agreement shall apply.

13. 390 L 0388: Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ L 192, 24.7.1990, p. 10).

The provisions of the Directive shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 3, the fifth subparagraph shall be replaced by the following:

'Before they are implemented, the EC Commission or the EFTA Surveillance Authority shall, in their respective competence, verify the compatibility of these projects with the EEA Agreement';

(b) in the second subparagraph of Article 6, the phrase 'harmonized Community rules adopted by the Council' shall be replaced by 'harmonized rules contained in the EEA Agreement';

(c) the first paragraph of Article 10 shall not apply;

(d) in addition, the following shall apply:

as regards EFTA States, it is understood that the EFTA Surveillance Authority shall be the addressee of all the information, communications, reports and notifications which according to this Directive are, within the Community, addressed to the EC Commission. Likewise, the EFTA Surveillance Authority shall be responsible, as regards EFTA States, for making the necessary reports or assessments.

As regards the different transition periods provided for in this Act, a general transition period of six months as from the entry into force of the EEA Agreement shall apply.

I – Coal and steel

14. 354 D 7024: High Authority Decision No 24/54 of 6 May 1954 laying down in implementation of Article 66(1) of the Treaty a Regulation on what constitutes control of an undertaking (Official Journal of the European Coal and Steel Community, No 9, 11.5.1954, p. 345/54).

The provisions of the Decision shall, for the purposes of the Agreement, be read with the following adaptation:

Article 4 shall not apply.

15. 367 D 7025: High Authority Decision No 25/67 of 22 June 1967 laying down in implementation of Article 66(3) of the Treaty a Regulation concerning exemption from prior authorization (OJ 154, 14.7.1967, p. 11), as amended by:

- 378 S 2495: Commission Decision No 2495/78/ECSC of 20 October 1978 (OJ L 300, 27.10.1978, p. 21).

The provisions of the Decision shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 1(2), the phrase 'and within the EFTA States' shall be inserted after '... within the Community';

(b) in the heading of Article 2, the phrase 'the scope of the Treaty' shall read 'the scope of Protocol 25 to the EEA Agreement';

(c) in the heading of Article 3, the phrase 'the scope of the Treaty' shall read 'the scope of Protocol 25 to the EEA Agreement';

(d) Article 11 shall not apply.

ACTS OF WHICH THE EC COMMISSION AND THE EFTA SURVEILLANCE AUTHORITY SHALL TAKE DUE ACCOUNT

In the application of Articles 53 to 60 of the Agreement and the provisions referred to in this Annex, the EC Commission and the EFTA Surveillance Authority shall take due account of the principles and rules contained in the following acts:

Control of concentrations

16. C/203/90/p. 5: Commission notice regarding restrictions ancillary to concentrations (OJ C 203, 14.8.1990, p. 5).

17. C/203/90/p. 10: Commission notice regarding the concentrative and cooperative operations under Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ C 203, 14.8.1990, p. 10).

Exclusive dealing agreements

18. C/101/84/p. 2: Commission notice concerning Commission Regulations (EEC) No 1983/83 and (EEC) No 1984/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive distribution and exclusive purchasing agreements (OJ C 101, 13.4.1984, p. 2).

19. C/17/85/p. 4: Commission notice concerning Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ C 17, 18.1.1985, p. 4).

Other

20. 362 X 1224 (01): Commission notice on exclusive dealing contracts with commercial agents (OJ 139, 24.12.1962, p. 2921/62).

21. C/75/68/p. 3: Commission notice concerning agreements, decisions and concerted practices in the field of cooperation between enterprises (OJ C 75, 29.7.1968, p. 3) as corrected by OJ C 84, 28.8.1968, p. 14.

22. C/111/72/p. 13: Commission notice concerning imports into the Community of Japanese goods falling within the scope of the Rome Treaty (OJ C 111, 21.10.1972, p. 13).

23. C/1/79/p. 2: Commission notice of 18 December 1978 concerning its assessment of certain subcontracting agreements in relation to Article 85(1) of the EEC Treaty (OJ C 1, 3.1.1979, p. 2).

24. C/231/86/p. 2: Commission notice on agreements of minor importance which do not fall under Article 85(1) of the Treaty establishing the European Economic Community (OJ C 231, 12.9.1986, p. 2).

25. C/233/91/p. 2: Guidelines on the applications of EEC competition rules in the telecommunications sector (OJ C 233, 6.9.1991, p. 2).

ANNEX XV

STATE AID

List provided for in Article 63

Introduction

When the acts referred to in this Annex contain notions or refer to procedures which are specific to the Community legal order, such as

- preambles;
- the addressees of the Community acts;
- references to territories or languages of the EC;
- references to rights and obligations of EC Member States, their public entities, undertakings or individuals in relation to each other; and
- references to information and notification procedures;

Protocol 1 on horizontal adaptations shall apply, unless otherwise provided for in this Annex.

ACTS REFERRED TO

Public undertakings

1. 380 L 0723: Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (OJ L 195, 29.7.1980, p. 35), as amended by:
   - 385 L 0413: Commission Directive 85/413/EEC of 24 July 1985 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (OJ L 229, 28.8.1985, p. 20).

The provisions of this Directive shall, for the purposes of the present Agreement, be read with the following adaptations:

(a) The term 'Commission' shall read 'competent surveillance authority as defined in Article 62 of the EEA Agreement';

(b) The term 'trade between Members' shall read 'trade between Contracting Parties'.

ACTS OF WHICH THE EC COMMISSION AND THE EFTA SURVEILLANCE AUTHORITY SHALL TAKE DUE ACCOUNT

In the application of Articles 61 to 63 of the Agreement and the provisions referred to in this Annex, the EC Commission and the EFTA Surveillance Authority shall take due account of the principles and rules contained in the following acts:

Prior notification of State aid plans and other procedural rules

2. C/252/80/p. 2: The notification of State aids to the Commission pursuant to Article 93(3) of the EEC Treaty; the failure of Member States to respect their obligations (OJ C 252, 30.9.1980, p. 2).

3. Letter from the Commission to the Member States SG(81) 12740 of 2 October 1981.

4. Letter from the Commission to the Member States SG(89) D/5521 of 27 April 1989.

5. Letter from the Commission to the Member States SG(87) D/5540 of 30 April 1989: Procedure under Article 93(2) of the EEC Treaty – time-limits.

6. Letter from the Commission to the Member States SG(90) D/28091 of 11 October 1990: State aid – informing Member States about aid cases not objected by the Commission.

7. Letter from the Commission to the Member States SG(91) D/4577 of 4 March 1991: Communication to the Member States concerning the procedure for the notification of aid plans and procedures applicable when aid is provided in breach of the rules of Article 93(3) of the EEC Treaty.

Evaluation of aid of minor importance

8. C/40/90/p. 2: Notification of an aid scheme of minor importance (OJ C 40, 20.2.1990, p. 2).

Public authorities' holdings

9. Application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings (Bulletin EC 9-1984).

Aid granted illegally

10. C/318/83/p. 3: Commission communication on aids granted illegally (OJ C 318, 24.11.1983, p. 3).

State guarantees

11. Letter from the Commission to the Member States SG(89) D/4328 of 5 April 1989.

12. Letter from the Commission to the Member States SG(89) D/12772 of 12 October 1989.

Frameworks on sectoral aid schemes

Textile and clothing industry

13. Commission communication to the Member States on the Community framework on aid to the textile industry (SEC(71) 363 final, July 1971).

14. Letter from the Commission to the Member States SG(77) D/1190 of 4 February 1977 and Annex (Doc. SEC(77) 317, 25.1.1977): Examination of the present situation with regard to aids to the textile and clothing industries.

Synthetic fibres industry

15. C/173/89/p. 5: Commission communication on aid to the EEC synthetic fibres industries (OJ C 173, 8.7.1989, p. 5).

Motor vehicle industry

16. C/123/89/p. 3: Community framework on State aid to the motor vehicle industry (OJ C 123, 18.5.1989, p. 3).

17. C/81/91/p. 4: Community framework on State aid to the motor vehicle industry (OJ C 81, 26.3.1991, p. 4).

Frameworks on general systems of regional aid

18. 471 Y 1104: Council resolution of 20 October 1971 on general systems of regional aid (OJ C 111, 4.11.1971, p. 1).

19. C/111/71/p. 7: Commission communication on the Council resolution of 20 October 1971 on general systems of original aid (OJ C 111, 4.11.1971, p. 7).

20. Commission communication to the Council on general aid systems (COM(75) 77 final).

21. C/31/79/p.9: Commission communication of 21 December 1978 on regional aid systems (OJ C 31, 3.2.1979, p. 9).

22. C/212/88/p. 2: Commission communication on the method for the application of Article 92(3)(a) and (c) to regional aid (OJ C 212, 12.8.1988, p. 2).

23. C/10/90/p. 8: Commission communication on the revision of the communication of 21 December 1978 (OJ C 10, 16.1.1990, p. 8).

24. C/163/90/p. 5: Commission communication on the method of application of Article 92(3)(c) to regional aid (OJ C 163, 4.7.1990, p. 5).

25. C/163/90/p. 6: Commission communication on the method of application of Article 92(3)(a) to regional aid (OJ C 163, 4.7.1990, p. 6).

Horizontal frameworks

Community framework on State aid in environmental matters

26. Letter from the Commission to the Member States S/74/30.807 of 7 November 1974.

27. Letter from the Commission to the Member States SG(80) D/8287 of 7 July 1980.

28. Commission communication to the Member States (Annex to the letter of 7 July 1980).

29. Letter from the Commission to the Member States SG(87) D/3795 of 29 March 1987.

Community framework on State aid to research and development

30. C/83/86/p. 2: Community framework for State aids for research and development (OJ C 83, 11.4.1986, p. 2).

31. Letter from the Commission to the Member States SG(90) D/01620 of 5 February 1990.

Rules applicable to general aid schemes

32. Letter from the Commission to the Member States SG(79) D/10478 of 14 September 1979.

33. Control of aid for rescue and restructuring (*Eight Report on Competition Policy*, point 228).

Rules applicable to cases of cumulation of aid for different purposes

34. C/3/85/p. 2: Commission communication on the cumulation of aids for different purposes (OJ C 3, 5.1.1985, p. 2).

Aid to employment

35. *Sixteenth Report on Competition Policy*, point 253.

36. *Twentieth Report on Competition Policy*, point 280.

Control of aid to the steel industry

37. C/320/88/p. 3: Framework for certain steel sectors not covered by the ECSC Treaty (OJ C 320, 13.12.1988, p. 3).

JOINT DECLARATION CONCERNING RULES ON COMPETITION

The Contracting Parties declare that the implementation of the EEA competition rules, in cases falling within the responsibility of the EC Commission, is based on the existing Community competences, supplemented by the provisions contained in the Agreement. In case falling within the responsibility of the EFTA Surveillance Authority, the implementation of the EEA competition rules is based on the agreement establishing that authority as well as on the provisions contained in the EEA Agreement.

JOINT DECLARATION ON ARTICLE 61(3)(B) OF THE AGREEMENT

The Contracting Parties declare that in establishing whether a derogation can be granted under Article 61(3)(b) the EC Commission shall take the interest of the EFTA States into account and the EFTA Surveillance Authority shall take the interest of the Community into account.

JOINT DECLARATION ON ARTICLE 61(3)(C) OF THE AGREEMENT

The Contracting Parties take note that even if eligibility of the regions has to be denied in the context of Article 61(3)(a) and according to the criteria of the first stage of analysis under subparagraph (c) (see Commission communication on the method for the application of Article 92(3)(a) and (c) to regional aid – OJ C 212, 12.8.1988, p. 2) examination according to other criteria, for example very low population density, is possible.

JOINT DECLARATION ON AID GRANTED THROUGH THE EC STRUCTURAL FUNDS OR OTHER FINANCIAL INSTRUMENTS

The Contracting Parties declare that financial support to undertakings financed by the EC Structural Funds or receiving assistance from the European Investment Bank or from any other similar financial instrument or fund shall be in keeping with the provisions of this Agreement on State aid. They declare that exchange of information and views on these forms of aid shall take place at the request of either surveillance authority.

JOINT DECLARATION ON PARAGRAPH (C) OF PROTOCOL 27 TO THE AGREEMENT

The notice referred to in paragraph (c) of Protocol 27 shall contain a description of the State aid programme or case concerned, including all elements which are necessary for a proper evaluation of the programme or case (depending on the State aid elements concerned, such as type of State aid, budget, beneficiary, duration). Moreover, the reasons for the opening of the procedure referred to in Article 93(2) of the Treaty establishing the European Economic Community or of the corresponding procedure set out in an agreement between the EFTA States establishing the EFTA Surveillance Authority shall be communicated to the other surveillance authority. Exchange of information between the two surveillance authorities shall take place on a reciprocal basis.

JOINT DECLARATION ON SHIPBUILDING

The Contracting Parties agree that, until the expiry of the seventh shipbuilding Directive (i.e. at the end of 1993), they will refrain from the application of the general rules on State aid laid down in Article 61 of the Agreement to the sector of shipbuilding.

Article 62(2) of the Agreement as well as the Protocols referring to State aid are applicable to the sector of shipbuilding.

[...]

JOINT DECLARATION ON PROTOCOL 35 TO THE AGREEMENT

It is the understanding of the Contracting Parties that Protocol 35 does not restrict the effects of those existing internal rules which provide for direct effect and primacy of international agreements.

[...]

JOINT DECLARATION ON THE AGREED INTERPRETATION OF ARTICLE 4(1) AND (2) OF PROTOCOL 9 ON TRADE IN FISH AND OTHER MARINE PRODUCTS

1. While the EFTA States will not take over the *acquis communautaire* concerning the fishery policy, it is understood that, where reference is made to aid granted through State resources, any distortion of competition is to be assessed by the Contracting Parties in the context of Articles 92 and 93 of the EEC Treaty and in relation to relevant provisions of the *acquis communautaire* concerning the fishery policy and the content of the Joint Declaration regarding Article 61(3)(c) of the Agreement.

2. While the EFTA States will not take over the *acquis communautaire* concerning the fishery policy, it is understood that, where reference is made to legislation relating to the organization of the market, any distortion of competition cause by such legislation is to be assessed in relation to the principles of the *acquis communautaire* concerning the common organization of the market.

   Whenever an EFTA State maintains or introduces national provisions on market organization in the fisheries sector, such provisions shall be considered a priori to be compatible with the principles, referred to in the first subparagraph, if they contain at least the following elements:

(a) the legislation on producers' organizations reflects the principles of the *acquis communautaire* regarding:

   - establishment on the producers' initiative;
   - freedom to become and cease to be a member;

- absence of a dominant position, unless necessary in pursuance of objectives corresponding to those specified in Article 39 of the EEC Treaty;

(b) whenever the rules of producers' organizations are extended to non-members of producers' organizations, the provisions to be applied correspond to those laid down in Article 7 of Regulation (EEC) No 3687/91;

(c) whenever provisions in respect of interventions to support prices exist or are established, they correspond to those specified in Title III of Regulation (EEC) No 3687/91.

[...]

AGREED MINUTES OF THE NEGOTIATIONS FOR AN AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY, THE EUROPEAN COAL AND STEEL COMMUNITY AND THEIR MEMBER STATES AND THE EFTA STATES ON THE EUROPEAN ECONOMIC AREA

The Contracting Parties agreed that:

Ad Article 26 and Protocol 13

before the entry into force of the Agreement the Community shall, together with the interested EFTA States, examine whether the conditions are fulfilled in which Article 26 of the Agreement, irrespective of the provisions set forth in the first paragraph of Protocol 13, will apply between the Community and the EFTA States concerned in the fisheries sector;

Ad Article 56(3)

the word 'appreciable' in Article 56(3) of the Agreement is understood to have the meaning it has in the Commission notice of 3 September 1986 on agreements of minor importance which do not fall under Article 85(1) of the Treaty establishing the European Economic Community (OJ C 231, 12.9.1986, p. 2);

[...]

Ad Protocols 23 and 24 (Article 12 concerning languages)

the EC Commission and the EFTA Surveillance Authority will provide for practical arrangements for mutual assistance or any other appropriate solution concerning in particular the question of translations.

[...]

DECLARATIONS BY ONE OR MORE OF THE CONTRACTING PARTIES TO THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA

DECLARATION BY THE GOVERNMENTS OF FINLAND, ICELAND, NORWAY AND SWEDEN ON ALCOHOL MONOPOLIES

Without prejudice to the obligations arising under the Agreement, Finland, Iceland, Norway and Sweden recall that their alcohol monopolies are based on important health and social policy considerations.

DECLARATION BY THE GOVERNMENTS OF LIECHTENSTEIN AND SWITZERLAND ON ALCOHOL MONOPOLIES

Without prejudice to the obligations arising under the Agreement, Switzerland and Liechtenstein declare that their alcohol monopolies are based on important agricultural, health and social policy considerations.

[...]

DECLARATION BY THE GOVERNMENT OF NORWAY ON THE DIRECT ENFORCEABILITY OF DECISIONS BY THE EC INSTITUTIONS REGARDING PECUNIARY OBLIGATIONS ADDRESSED TO ENTERPRISES LOCATED IN NORWAY

The attention of the Contracting Parties is drawn to the fact that the present constitution of Norway does not provide for direct enforceability of decisions by the EC institutions regarding pecuniary obligations addressed to enterprises located in Norway. Norway acknowledges that such decisions should continue to be addressed directly to these enterprises and that they should fulfil their obligations in accordance with the present practice. The said constitutional limitations to direct enforceability of decisions by the EC institutions regarding pecuniary obligations do not apply to subsidiaries and assets in the territory of the Community belonging to enterprises located in Norway. If difficulties should arise, Norway is prepared to enter into consultations and work towards a mutually satisfactory solution.

DECLARATION BY THE EUROPEAN COMMUNITY

The Commission will keep the situation referred to in Norway's unilateral declaration under constant review. It may at any time initiate consultations with Norway with a view to finding satisfactory solutions to such problems as may arise.

DECLARATION BY THE GOVERNMENT OF AUSTRIA ON THE ENFORCEMENT ON ITS TERRITORY OF DECISIONS BY EC INSTITUTIONS REGARDING PECUNIARY OBLIGATIONS

Austria declares that its obligation to enforce on its territory decisions by EC institutions which impose pecuniary obligations shall only refer to such decisions which are fully covered by the provisions of the EEA Agreement.

DECLARATION BY THE EUROPEAN COMMUNITY

The Community understands the Austrian declaration to mean that the enforcement of decisions imposing pecuniary obligations on undertakings will be ensured on Austrian territory to the extent that the decisions imposing such obligations are based – even if not exclusively – on provisions contained in the EEA Agreement.

The Commission may at any time initiate consultations with the Government of Austria with a view to finding satisfactory solutions to such problems as may arise.

[...]

DECLARATION BY THE EUROPEAN COMMUNITY ON SHIPBUILDING

It is the agreed policy of the European Community progressively to reduce the level of contract-related production aid paid to shipyards. The Commission is working to bring down the level of the ceiling as far as and as fast as is consistent with the seventh Directive (90/684/EEC).

The seventh Directive expires at the end of 1993. In deciding whether a new Directive is necessary, the Commission will also review the competitive situation in shipbuilding throughout the EEA in the light of progress made towards the reduction or elimination of contract-related production aid. When conducting this review the Commission will closely consult with the EFTA States, taking due account of the result of efforts in a wider international context and with a view to creating conditions which ensure that competition is not distorted.

[...]

DECLARATION BY THE EUROPEAN COMMUNITY ON THE RIGHTS FOR THE EFTA STATES BEFORE THE EC COURT OF JUSTICE

1. In order to reinforce the legal homogeneity within the EEA through the opening of intervention possibilities for EFTA States and the EFTA Surveillance Authority before the EC Court of Justice, the Community will amend Articles 20 and 37 of the Statute of the Court of Justice and the Court of First Instance of the European Communities.

2. In addition, the Community will take the necessary measures to ensure that EFTA States, in so far as the implementation of Articles 2(2)(b) and 6 of Protocol 24 to the EEA Agreements is concerned, will have the same rights as EC Member States under Article 9(9) of Regulation (EEC) No 4064/89.

DECLARATION BY THE EUROPEAN COMMUNITY ON THE RIGHTS OF LAWYERS OF THE EFTA STATES UNDER COMMUNITY LAW

The Community undertakes to amend the Statute of the Court of Justice and the Court of First Instance of the European Communities so as to ensure that agents appointed for each case, when representing an EFTA State or the EFTA Surveillance Authority, may be assisted by an adviser or by a lawyer entitled to practise before a court of an EFTA State. It also undertakes to ensure that lawyers entitled to practise before a court of an EFTA State may represent individuals and economic operators before the Court of Justice and the Court of First Instance of the European Communities.

Such agents, advisers and lawyers shall, when they appear before the Court of Justice and the Court of First Instance of the European Communities, enjoy the rights and immunities necessary to the independent exercise of their duties, under the conditions to be laid down in the rules of procedure of those Courts.

[...]

PROTOCOL ADJUSTING THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA

[...]

PROTOCOL 6 ON THE BUILDING-UP OF COMPULSORY RESERVES BY LIECHTENSTEIN

[...]

Article 11

In Protocol 8 on State monopolies the words 'Swiss and' shall be deleted.

[...]

Decision of the EEA Joint Committee No 3/94 of 8 February 1994 amending Protocol 21 to the EEA Agreement, on the implementation of competition rules applicable to undertakings [1]

[...]

Article 1

In Article 3(1) of Protocol 21 to the Agreement the following shall be inserted in point 13 (Council Regulation (EEC) No 3975/87) after the indent referring to Council Regulation (EEC) No 1284/91:

– 392 R 2410: Council Regulation (EEC) No 2410/92 of 23 July 1992 (OJ L 240, 24.8.1992, p. 18).

[...]

[1] OJ L 85, 30.3.1994, p. 65.

Decision of the EEA Joint Committee No 7/94 of 21 March 1994 amending Protocol 47 and certain Annexes to the EEA Agreement [1]

[...]

ANNEX 12

TO DECISION NO 7/94 OF THE EEA JOINT COMMITTEE

Annex XIV (Competition) to the EEA Agreement shall be amended as specified below.

(a) Chapter C. – Patent licensing agreements

1. The following indent shall be added in point 5 (Council Regulation (EEC) No 394/84) before the adaptations:

'– 393 R 0151: Commission Regulation (EEC) No 151/93 of 23 December 1992 (OJ L 21, 29.1.1993, p. 8).'

(b) Chapter D. – Specialization and research and development agreements

1. The following indent shall be added in point 6 (Council Regulation (EEC) No 418/85) before the adaptations:

'– 393 R 0151: Commission Regulation (EEC) No 151/93 of 23 December 1992 (OJ L 21, 29.1.1993, p. 8).'

2. The following indent shall be added in point 7 (Commission Regulation (EEC) No 418/85) before the adaptations:

'– 393 R 0151: Commission Regulation (EEC) No 151/93 of 23 December 1992 (OJ L 21, 29.1.1993, p. 8).'

(c) Chapter F. – Know-how licensing agreements

1. The following indent shall be added in point 9 (Commission Regulation (EEC) No 556/89) before the adaptations:

'as amended by:

– 393 R 0151: Commission Regulation (EEC) No 151/93 of 23 December 1992 (OJ L 21, 29.1.1993, p. 8).'

[1] OJ L 160, 28.6.1994, p. 1.

(d) Chapter G. – Transport

1. The following new points shall be inserted after point 11 (Council Regulation (EEC) No 4056/86):

'11a. 393 R 3652: Commission Regulation (EC) No 3652/93 of 22 December 1993 on the application of Article 85(3) of the Treaty to certain categories of agreements between undertakings relating to computerized reservation systems for air transport services (OJ L 333, 31.12.1993, p. 37).

The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 9(i), the term "Community air carriers" shall read "air carriers established in the territory covered by the EEA Agreement";

(b) in Article 9(4), a new sentence shall be inserted after the second sentence reading: "The competent surveillance authority shall also inform the EEA Joint Committee";

(c) in Article 14, introductory paragraph, the phrase "Pursuant to Article 7 of Regulation (EEC) No 3976/87" shall read "Either on the initiative of the competent surveillance authority or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest";

(d) the following shall be added at the end of Article 14: "The competent surveillance authority may in such cases take, pursuant to Article 13 of Regulation (EEC) No 3975/87, or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, all appropriate measures for the purpose of bringing these infringements to an end. Before taking such decision, the competent surveillance authority may address recommendations for termination of the infringement to the persons concerned";

(e) The second paragraph of Article 15 shall read:

"This Act shall apply with retroactive effect to agreements in existence at the date of entry into force of the EEA Agreement, from the time when the conditions of application of this Act were fulfilled."

11b. 393 R 1617: Commission Regulation (EEC) No 1617/93 of 25 June 1993 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocations at airports (OJ L 155, 26.6.1993, p. 18).

The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 1, the term "Community airports" shall read "airports in the territory covered by the EEA Agreement";

(b) in Article 6, introductory paragraph, the phrase "pursuant to Article 7 of Regulation (EEC) No 3976/87" shall read "either on its own initiative or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest";

(c) the following shall be added at the end of Article 6: "The competent surveillance authority may in such cases take, pursuant to Article 13 of Regulation (EEC) No 3975/87, or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, all appropriate measures for the purpose of bringing these infringements to an end. Before taking such decision, the competent surveillance authority may address recommendations for termination of the infringement to the persons concerned";

(d) The last paragraph of Article 7 shall read:

"This Act shall apply with retroactive effect to agreements, decisions and concerted practices in existence at the date of entry into force of the EEA Agreement, from the time when the conditions of application of this Act were fulfilled.."'

(e) Chapter I – Coal and steel

1. The following indent shall be added in point 15 (High Authority Decision No 25/67) before the adaptations:

'– 391 S 3654: Commission Decision 3654/91/ECSC of 13 December 1991 (OJ L 348, 17.12.1991, p. 12).

(f) The following new chapter and new points shall be added after point 15 (High Authority Decision No 25/67):

'J. – *Insurance sector*

15a. 392 R 3932: Commission Regulation (EEC) No 3932/92 of 21 December 1992 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector (OJ L 398, 31.12.1992, p. 7).

The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in Article 17, introductory paragraph, the phrase "pursuant to Article 7 of Regulation (EEC) No 1534/91" shall read "either on its own initiative or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest";

(b) the following shall be added at the end of Article 17: "The competent surveillance authority may in such cases issue a decision in accordance with Articles 6 and 8 of Regulation (EEC) No 17/62, or the corresponding provisions envisaged in Protocol 21 to the EEA Agreement, without any notification from the undertakings being required";

(c) Article 18 shall not apply;

(d) Article 19 shall not apply;

(e) Article 20 shall not apply;

(f) Article 21 shall read: "This Act shall apply until 31 March 2003."'

(g) Acts of which the EC Commission and the EFTA surveillance authority shall take due account

The following shall be added after point 25 (C/233/91/p. 2) as a new section:

'General

I. The above acts were adopted by the EC Commission up to 31 July 1991. Upon entry into force of the Agreement, corresponding acts are to be adopted by the EFTA Surveillance Authority under Articles 5(2)(b) and 25 of the Agreement between the EFTA States on the establishment of a surveillance authority and a Court of Justice. They are to be published in accordance with the exchange of letters on publication of EEA relevant information.

II. As regards EEA relevant acts adopted by the EC Commission after 31 July 1991, the EFTA Surveillance Authority, in accordance with the powers vested in it under the Agreement between the EFTA States on the establishment of a surveillance authority and a Court of Justice, is to adopt, after consultations with the EC Commission, corresponding acts in order to maintain equal conditions of competition. The acts adopted by the Commission will not be integrated into this Annex but a reference to their publication in the *Official Journal of the European Communities* will be made in the EEA Supplement to the Official Journal. The corresponding acts adopted by the EFTA Surveillance Authority are to be published in the EEA Supplement to, and the EEA section of, the Official Journal. Both surveillance authorities shall take due account of these acts in cases where they are competent under the Agreement.

ANNEX 13

TO DECISION NO 7/94 OF THE EEA JOINT COMMITTEE

Annex XV (State aid) to the EEA Agreement shall be amended as specified below:

(a) Public undertakings:

(a) The following indent shall be added in point 1 (Commission Directive 80/723/EEC) before the adaptations:

'– 393 L 0084: Commission Directive 93/84/EEC of 30 September 1993 (OJ L 254, 12.10.1993, p. 16).'

(b) The following adaptation shall be added in point 1 (Commission Directive 80/723/EEC):

'(c) In Article 5a(3), second subparagraph, the phrase "in the Member States" shall read "in the EC Member States or EFTA States".'

(b) The following new heading and new point shall be added after point 1 (Commission Directive 80/723/EEC):

'Aid to the steel industry

1a. 391 S 3855: Commission Decision 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry (OJ L 362, 31.12.1991, p. 5).

The provision of the Decision shall, for the purposes of the present Agreement, be read with the following adaptations:

(a) The term "Commission" shall read "competent surveillance authority as defined in Article 62 of the EEA Agreement";

(b) the term "trade between Member States" shall read "trade between Contracting Parties";

(c) the term "compatible with the common market" shall read "compatible with the functioning of the EEA Agreement";

(d) in Article 4(1), second indent, the following shall be added: "or, in the case of an EFTA State, the aid relative to the payments does not exceed what may be granted to an EC steel undertaking in a similar situation";

(e) in Article 6(1), "under the EEC Treaty" shall read "under the EEC Treaty or the Agreement between the EFTA States on the establishment of a surveillance authority and a Court of Justice";

(f) in Article 6(4), "Article 88 of the Treaty" shall read "Article 88 of the Treaty and the corresponding procedure set out in the Agreement between the EFTA States on the establishment of a surveillance authority and a Court of Justice".'

(c) Acts of which the EC Commission and the EFTA Surveillance Authority shall take due account

The following shall be added after point 37 (C/320/88/p. 3) as a new section:

'General

I. The above acts were adopted by the EC Commission up to 31 July 1991. Upon entry into force of the Agreement, corresponding acts are to be adopted by the EFTA Surveillance Authority under Articles 5(2)(b) and 24 of the Agreement between the EFTA States on the establishment of a surveillance authority and a Court of Justice. They are to be published in accordance with the exchange of letters on publication of EEA relevant information.

II. As regards EEA relevant acts adopted by the EC Commission after 31 July 1991, the EFTA Surveillance Authority, in accordance with the powers vested in it under the Agreement between the EFTA States on the establishment of a surveillance authority and a Court of Justice, is to adopt, after consultation with the EC Commission corresponding acts in order to maintain equal conditions of competition. The acts adopted by the Commission will not be integrated into this Annex. In their publication in the *Official Journal of the European Communities* indication will be given as to their relevance for the EEA and a reference to this publication will be made in the EEA Supplement of the Official Journal. The corresponding acts adopted by the EFTA Surveillance Authority are to be published in the EEA Supplement to, and the EEA section of, the Official Journal. Both surveillance authorities shall take due account of these acts in cases where they are competent under the Agreement.'

Decision of the EEA Joint Committee No 23/95 of 28 April 1995 amending Annex XIV (Competition) to the EEA Agreement [1]

[...]

Article 1

The following indent shall be added in point 5 (Commission Regulation (EEC) No 2349/84) of Annex XIV to the Agreement before the adaptation:

– '395 L 0700: Commission Regulation (EC) No 70/95 of 17 January 1995 amending Regulation (EEC) No 2349/84 on the application of Article 85 (3) of the Treaty to certain categories of patent licensing agreements (OJ L 12, 18.1.1995, p. 13).'.

Article 2

In adaptation (1) in point 5, the date '31 December 1994' shall be replaced by '30 June 1995'.

Article 3

The texts of Regulation (EC) No 70/95 in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

Article 4

This Decision shall enter into force on 1 May 1995, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee. It shall apply from 1 January 1995.

[...]

[1] OJ L 139, 22.6.1995, p. 14.

Decision of the EEA Joint Committee No 21/95 of 5 April 1995 amending Annex XV (State aid) to the EEA Agreement [1]

[...]

Article 1

1. The following new heading and new point shall be added after point 1a (Commission Decision No 3855/91/ECSC) of Annex XV to the Agreement:

'Aid to shipbuilding

1b. 390 L 0684: Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding (OJ L 380, 31.12.1990, p. 27), as amended by:

- 393 L 01115: Council Directive 93/115/EEC of 16 December 1993 (OJ L 326, 28.12.1993, p. 62),
- 394 L 0073: Council Directive 94/73/EC of 19 December 1994 (OJ L 351, 31.12.1994, p. 10).

The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptations:

(a) the term "Member States" shall read "EC Member States or EFTA States";

(b) the term "Member State" shall read "EC Member State or EFTA State";

(c) the term "Commission" shall read "competent surveillance authority as defined in Article 62 of the EEA Agreement";

(d) in Article 1 (d), first subparagraph, the phrase "State aid within the meaning of Articles 92 and 93 of the Treaty" shall read "State aid within the meaning of Articles 61 and 62 of the EEA Agreement";

(e) in Article 3 (2) the term "Community shipyards" shall read "Community shipyards or EFTA States' shipyards";

(f) in Article 3 (4) the term "Community rules" shall read "rules under the EFTA Agreement";

(g) in Article 4 (1) the term "common market" shall read "functioning of the EEA Agreement";

(h) in Article 4 (2), first subparagraph, the term "Community yards" shall read "yards within the territory covered by the EEA Agreement";

(i) the following shall be added at the end of the fist subparagraph of Article 4 (2):

"Before fixing the ceiling the competent surveillance authorities as defined in Article 62 of the EEA Agreement shall, in order to obtain uniform application in the EEA context, exchange information and consult each other closely.";

[1] OJ L 158, 8.7.1995, p. 43.

(j) in Article 4 (3) the phrase "contrary to Community interests" shall read "contrary to common interests";

(k) the following shall be added after the second sentence in the first subparagraph of Article 4 (3):

"Before reviewing the ceiling the competent surveillance authorities as defined in Article 62 of the EEA Agreement shall, in order to obtain uniform application in the EEA context, exchange information and consult each other closely.";

(l) Article 4 (5), second subparagraph, shall read:

"However, where there is competition between yards in different States within the territory covered by the EEA Agreement, the competent surveillance authorities as defined in Article 62 of the EEA Agreement shall require prior notification of the relevant aid proposals at the request of any State. In such cases the competent surveillance authority shall adopt its decision, after consulting the other surveillance authority, within 30 days of notification; such proposals may not be implemented before the competent surveillance authority has given its authorization. By its decision the competent surveillance authority shall ensure that the planned aid does not affect trading conditions within the territory covered by the EEA Agreement to an extent contrary to the common interest.";

(m) in Article 6 (2) the phrase "in a Member State's only existing yard, provided that the effect of the yard in question on the Community market is minimal" shall read "in an EC Member State's or EFTA State's only existing yard, provided that the effect of the yard in question on the EEA market is minimal";

(n) in Article 6 (4) the term "Community objectives" shall read "common objectives";

(o) in Article 7 (1), fourth subparagraph, the term "Commission's prior approval" shall read "prior approval by the competent surveillance authority as defined in Article 62 of the EEA Agreement";

(p) in Article 7 (1) fifth subparagraph, the term "Commission's decision" shall read "decision of the competent surveillance authority as defined in Article 62 of the EEA Agreement";

(q) in Article 7 (3) the term "Community legislation and rules" shall read "rules under the EEA Agreement";

(r) in Article 8 (2) the phrase "as defined by the Commission in Annex I to the Community framework for State aids for research and development" shall read "as defined by the Commission in Annex I to the Community framework for State aids for research and development [1] and by the EFTA Surveillance Authority in Section 14 of its Procedural and Substantive Rules in the Field of State Aid" [2];

(s) in Article 1 (1) the term "Articles 92 and 93 of the Treaty" shall read "Articles 61 and 62 of the EEA Agreement".'

[1] OJ C 83, 11.4.1986, p. 2.
[2] OJ L 231, 3.9.1994, p. 25.

Article 2

The texts of Council Directive 90/684/EEC, the Council Directive 93/115/EEC and Council Directive 94/73/EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Declaration, are authentic.

Article 3

This Declaration shall enter into force on 1 May 1995, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

[...]

Decision of the EEA Joint Committee No 25/95 of 19 May 1995 amending Annexes XI (Telecommunication services) and XIV (Competition) to the EEA Agreement [1]

[...]

Article 1

1. The following shall be added to point 3 (Commission Directive 90/388/EEC) of Annex XI to the Agreement:

', as amended by:

– 394 L 0046: Commission Directive 94/46/EC of 13 October 1994 (OJ L 268, 19.10.1994, p. 15).'

2. The following footnote shall be added in relation to Commission Directive 90/388/EEC:

'(1) Listed here for purposes of information only. For application, see Annex XIV.'

Article 2

1. The following shall be added to point 12 (Commission Directive 88/301/EEC) of Annex XIV to the Agreement before the adaptation:

', as amended by:

– 394 L 0046: Commission Directive 94/46/EC of 13 October 1994 (OJ L 268, 19.10.1994, p. 15).'

2. The following shall be added in point 13 (Commission Directive 90/388/EEC) of Annex XIV to the Agreement before the adaptation:

', as amended by:

– 394 L 0046: Commission Directive 94/46/EC of 13 October 1994 (OJ L 268, 19.10.1994, p. 15).'

Article 3

The texts of Directive 94/46/EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

Article 4

This Decision shall enter into force on 1 June 1995, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

[...]

[1] OJ L 251, 19.10.1995, p. 31.

Decision of the EEA Joint Committee No 65/95 of 22 November 1995 amending Annex XIV (Competition) to the EEA Agreement [1]

[...]

Article 1

The following indent shall be added in point 5 (Commission Regulation (EEC) No 2349/84) of Annex XIV to the Agreement before the adaptation:

'– 395 R 2131: Commission Regulation (EC) No 2131/95 of 7 September 1995 amending Regulation (EEC) No 2349/84 on the application of Article 85 (3) of the Treaty to certain categories of patent licensing (OJ L 214, 8.9.1995, p. 6).'

Article 2

In adaptation (1) in point 5, the date '30 June 1995' shall be replaced by '31 December 1995'.

Article 3

The texts of Regulation (EC) No 2131/95 in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Declaration, are authentic.

Article 4

This Decision shall enter into force on 1 December 1995, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee. It shall apply from 1 July 1995.

[...]

[1] OJ L 8, 11.1.1996, p. 86.

Decision of the EEA Joint Committee No 12/96 of 1 March 1996 amending Annex XIV (Competition) to the EEA Agreement [1]

[...]

Article 1

The following point shall be inserted after point 11.B (Commission Regulation (EEC) No 1617/93) of Annex XIV to the Agreement:

'11.C. 395 R 0870: Commission Regulation (EC) No 870/95 of 20 April 1995 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) pursuant to Council Regulation (EEC) No 479/92 (OJ L 89, 21.4.1995, p. 7).

The provisions of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) In Article 2 the words "Community ports" shall read "ports in the territory covered by the EEA Agreement";

(b) In Article 7 (1) the phrase "on condition that the agreements in questions are notified to the Commission in accordance with the provisions of Commission Regulation (EEC) No 4260/88 and that the Commission does not oppose" shall read "on condition that the agreements in question are notified to the EC Commission or the EFTA Surveillance Authority in accordance with the provisions of Commission Regulation (EEC) No 4260/88, and the corresponding provisions in Protocol 21 to the EEA Agreement, and that the competent surveillance authority does not oppose";

(c) In Article 7 (2) the term "the Commission" shall read "the EC Commission or the EFTA Surveillance Authority";

(d) In Article 7 (5) the second sentence shall be replaced by the following:

"It shall oppose the exemption if it receives a request to do so from a State falling within its competence within three months of the transmission to those States of the notification referred to in paragraph 1";

(e) In Article 7 (6) the second sentence shall be replaced by the following:

"However, where the opposition was raised at the request of a State falling within its competence and this request is maintained, it may be withdrawn only after consultation of its Advisory Committee on Restrictive Practices and Dominant Positions in Maritime Transport";

(f) The following shall be added at the end of Article 7 (9):

", or the corresponding provision in Protocol 21 to the EEA Agreement";

[1] OJ L 124, 23.5.1996, p. 13.

(g) In Article 12, introductory paragraph, the phrase "in accordance with Article 6 of Regulation (EEC) No 479/92" shall read "either on its own initiative or at the request of the other surveillance authority or a State falling within its competence or of natural or legal persons claiming a legitimate interest".'

Article 2

The texts of Regulation (EC) No 870/95 in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

Article 3

This Decision shall enter into force on 1 April 1996, provided that all the notifications under Article 103 (1) of the Agreement have been made for the EEA Joint Committee.

[...]

II – Accession of Austria, Finland and Sweden

Act

concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded

(94/C 241/08) [1]

[...]

ADAPTATIONS TO ACTS ADOPTED BY THE INSTITUTIONS

Article 29

The acts listed in Annex I to this Act shall be adapted as specified in that Annex.

[...]

APPLICABILITY OF THE ACTS OF THE INSTITUTIONS

[...]

Article 171

Agreements, decisions and concerted practices in existence at the time of accession which come within the scope of Article 65 of the ECSC Treaty by reason of the accession must be notified to the Commission within three months of accession. Only agreements and decisions which have been notified shall remain provisionally in force until a decision has been taken by the Commission. However, this Article shall not apply to agreements, decisions and concerted practices which at the date of accession already fall under Articles 1 and 2 of Protocol 25 to the EEA Agreement.

Article 172

1. From the date of accession, the new Member States shall ensure that any relevant notification or information transmitted to the EFTA Surveillance Authority or to the Standing

[1] OJ C 241, 29.8.1994, p. 21.

Committee of the EFTA States under the EEA Agreement before accession is transmitted without delay to the Commission. Such transmission shall be deemed to be notification or information to the Commission for the purposes of the corresponding Community provisions.

2. From the date of accession, the new Member States shall ensure that cases which are pending before the EFTA Surveillance Authority immediately prior to accession under Articles 53, 54, 57, 61 and 62 or 65 of the EEA Agreement or Article 1 or 2 of Protocol 25 to that Agreement and which fall under the Commmission's competence as a result of accession, including cases in which the facts came to an end before the date of accession, are transmitted without delay to the Commission, which shall continue to deal with them under the relevant Community provisions while ensuring that the right of defence continues to be observed.

3. Cases which are pending before the Commission under Article 53 or 54 of the EEA Agreement or Article 1 or 2 of Protocol 25 to that Agreement and which fall under Article 85 or 86 of the EC Treaty or Article 65 or 66 of the ECSC Treaty as a result of accession, including cases in which the facts came to an end before the date of accession, shall continue to be dealt with by the Commission under the relevant Community provisions.

4. Any individual exemption decisions taken and negative clearance decisions taken before the date of accession under Article 53 of the EEA Agreement or Article 1 of Protocol 25 to that Agreement, whether by the EFTA Surveillance Authority or the Commission, and which concern cases which fall under Article 85 of the EC Treaty or Article 65 of the ECSC Treaty as a result of accession shall, on accession, remain valid for the purposes of Article 85 of the EC Treaty or, as the case may be, Article 65 of the ECSC Treaty until the time-limit specified therein expires or until the Commission takes a duly motivated decision to the contrary, in accordance with the basic principles of Community law.

5. All decisions taken by the EFTA Surveillance Authority before the date of accession pursuant to Article 61 of the EEA Agreement and which fall under Article 92 of the EC Treaty as a result of accession shall, on accession, remain valid with respect to Article 92 of the EC Treaty unless the Commission decides otherwise pursuant to Article 93 of the EC Treaty. This paragraph shall not apply to decisions subject to the proceedings provided for in Article 64 of the EEA Agreement. Without prejudice to paragraph 2 above, State aids granted by new Member States during 1994 but which, in contravention of the EEA Agreement or arrangements made thereunder, either have not been notified to the EFTA Surveillance Authority or have been notified but granted before the EFTA Surveillance Authority took a decision, shall not as a consequence be considered as existing State aids under Article 93(1) of the EC Treaty.

6. From the date of accession, the new Member States shall ensure that all other cases, where the EFTA Surveillance Authority has been seized in the framework of the surveillance procedure under the EEA Agreement before accession, are transmitted without delay to the Commission which shall continue to deal with them under the relevant Community provisions while ensuring that the right of defence continues to be observed.

7. Without prejudice to paragraphs 4 and 5, the decisions taken by the EFTA Surveillance Authority remain valid after accession unless the Commission takes a duly motivated decision to the contrary in accordance with the basic principles of Community law.

[...]

9. Joint declaration on Article 172 of the Act of Accession

The Contracting Parties note that any amendment to the EEA Agreement and the Agreement between the EFTA States on the establishment of a surveillance authority and a Court of Justice needs the consent of the contracting parties concerned.

[...]

Decision of the Council of the European Union of 1 January 1995

adjusting the instruments concerning the accession of new Member States to the European Union.

(95/1/EC, Euratom, ECSC) [1]

[...]

Article 2

The following is substituted from the title of the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded:

'Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded'.

The Act referred to above is hereinafter also referred to as 'the Act of Accession'.

[...]

Article 39

Annex I to the Act of Accession is replaced by the Annex to this Decision.

[...]

[1] OJ L 1, 1.1.1995, p. 1.

ANNEX I

LIST REFERRED TO IN ARTICLE 29 OF THE ACT OF ACCESSION

I – External relations

[...]

III – Competition

A – Enabling Regulations

1. 365 R 0019: Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices (OJ 36, 6.3.1965, p. 533/65), as amended by:

   - 172 B: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Denmark, Ireland and the United Kingdom (OJ L 73, 27.3.1972, p. 14),
   - 179 H: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Hellenic Republic (OJ L 291, 19.11.1979, p. 17),
   - 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 23).

   In Article 4:

   - the following subparagraph is added to paragraph 1:

     'The provisions of the preceding subparagraphs shall apply in the same way in the case of the accession of Austria, Finland and Sweden'.

   - paragraph 2 is supplemented by the following subparagraph:

     'Paragraph 1 shall not apply to agreements and concerted practices to which Article 85(1) of the Treaty applies by virtue of the accession of Austria, Finland and Sweden and which must be notified within six months of accession, in accordance with Articles 5 and 25 of Regulation No 17, unless they have been so notified within that period. The present paragraph shall not apply to agreements and concerted practices which at the date of accession already fall under Article 53(1) of the EEA Agreement'.

2. 371 R 2821: Council Regulation (EEC) No 2821/71 of 20 December 1971 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices (OJ L 285, 29.12.1971, p. 46) as amended by:

   - 372 R 2743: Council Regulation (EEC) No 2743/72 of 19 December 1972 (OJ L 291, 28.12.1972, p. 144),

- 179 H: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Hellenic Republic (OJ L 291, 19.11.1979, p. 17),
- 185 H: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 23).

In Article 4:

- paragraph 1 is supplemented by the following subparagraph:

  'The provisions of the preceding subparagraphs shall apply in the same way in the case of the accession of Austria, Finland and Sweden'.

- paragraph 2 is supplemented by the following subparagraph:

  'Paragraph 1 shall not apply to agreements and concerted practices to which Article 85(1) of the Treaty applies by virtue of the accession of Austria, Finland and Sweden and which must be notified within six months of accession, in accordance with Articles 5 and 25 of Regulation No 17, unless they have been so notified within that period. The present paragraph shall not apply to agreements and concerted practices which at the date of accession already fall under Article 53(1) of the EEA Agreement'.

3. 387 R 3976: Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector (OJ 374, 31.12.1987, p. 9) as amended by:

   - 390 R 2344: Council Regulation (EEC) No 2344/90 of 24 July 1990 (OJ L 217, 11.8.1990, p. 15),
   - 392 R 2411: Council Regulation (EEC) No 2411/92 of 23 July 1992 (OJ L 240, 24.8.1992, p. 19).

   The following Article is inserted:

   '*Article 4a*

   A regulation pursuant to Article 2 may stipulate that the prohibition contained in Article 85(1) of the Treaty shall not apply, for such period as fixed by that Regulation, to agreements, decisions and concerted practices already in existence at the date of accession to which Article 85(1) applies by virtue of the accession of Austria, Finland and Sweden and which do not satisfy the conditions of Article 85(3). However, this Article shall not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53(1) of the EEA Agreement'.

4. 392 R 0479: Council Regulation (EEC) No 479/92 of 25 February 1992 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner companies (consortia) (OJ L 55, 29.2.1992, p. 3).

The following Article is inserted:

'Article 3a

A Regulation pursuant to Article 1 may stipulate that the prohibition contained in Article 85(1) of the Treaty shall not apply, for such period as fixed by that Regulation, to agreements, decisions and concerted practices already in existence at the date of accession to which Article 85(1) applies by virtue of the accession of Austria, Finland and Sweden and which do not satisfy the conditions of Article 85(3). However, this Article shall not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

B – Procedural Regulations

1. 362 R 0017: First Council Regulation No 17 of 6 February 1962 implementing Articles 85 and 86 of the Treaty (OJ 13, 21.2.1962, p. 204/62), as amended by:
   - 362 R 0059: Council Regulation No 59 of 3 July 1962 (OJ 58, 10.7.1962, p. 1655/62),
   - 363 R 0118: Council Regulation No 118/63/EEC of 5 November 1963 (OJ 162, 7.11.1963, p. 2696/63),
   - 371 R 2822: Council Regulation (EEC) No 2822/71 of 20 December 1971 (OJ 285, 29.12.1971, p. 49),
   - 172 B: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Denmark, Ireland and the United Kingdom (OJ L 73, 27.3.1972, p. 14),
   - 179 H: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Hellenic Republic (OJ L 291, 19.11.1979, p. 17),
   - 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 23).

   The following paragraph is added to Article 25:

   '6. The provisions of paragraphs 1 to 4 still apply in the same way in the case of the accession of Austria, Finland and Sweden. However, they do not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53 of the EEA Agreement.'

2. 368 R 1017: Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway (OJ L 175, 23.7.1968, p. 1), as amended by:
   - 172 B: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Denmark, Ireland and the United Kingdom (OJ L 73, 27.3.1972, p. 14),

– 179 H: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Hellenic Republic (OJ L 292, 19.11.1979, p. 17),

In Article 30:

– paragraph 3 is supplemented by the following subparagraph:

'The prohibition in Article 85(1) of the Treaty shall not apply to agreements, decisions and concerted practices which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of that accession, fall within the scope of Article 85(1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in Articles 4 and 5 of this Regulation. This subparagraph does not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

3. 386 R 4056: Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ L 378, 31.12.1986, p. 4).

The following Article is inserted:

'Article 26a

The prohibition in Article 85(1) of the Treaty shall not apply to agreements, decisions and concerted practices which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of that accession, fall within the scope of Article 85(1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in Articles 3 and 6 of this Regulation. However, this Article shall not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

4. 389 R 4064: Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395, 30.12.1989, p. 1), as corrected by OJ L 257, 21.9.1990, p. 13.

The following paragraph is added to Article 25:

'3. As regards concentrations to which this Regulation applies by virtue of accession, the date of accession shall be substituted for the date of entry into force of this Regulation. The provision of paragraph 2, second alternative, applies in the same way to proceedings initiated by a competition authority of the new Member States or by the EFTA Surveillance Authority.'

C – Implementing Regulations

1. 362 R 0027: Commission Regulation No 27 of 3 May 1962: First Regulation implementing Council Regulation No 17 of 6 February 1962 (OJ L 35, 10.5.1962, p. 1118/62), as amended by:

– 375 R 1699: Commission Regulation (EEC) No 1699/75 of 2 July 1975 (OJ L 172, 3.7.1975, p. 11),

- 179 H: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Hellenic Republic (OJ L 291, 19.11.1979, p. 17),
- 385 R 2526: Commission Regulation (EEC) No 2526/85 of 5 August 1985 (OJ L 240, 7.9.1985, p. 1),
- 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 23),
- 393 R 3666: Commission Regulation (EC) No 3666/93 of 15 December 1993 (OJ L 336, 31.12.1993, p. 1).

In Article 2(1) 'fifteen' is replaced by 'eighteen'.

2. 369 R 1629: Commission Regulation (EEC) No 1629/69 of 8 August 1969 on the form, content and other details of complaints pursuant to Article 10, applications pursuant to Article 12 and notifications pursuant to Article 14(1) of Council Regulation (EEC) No 1017/68 (OJ L 209, 21.8.1969, p. 1), as amended by:
   - 393 R 3666: Commission Regulation (EC) No 3666/93 of 15 December 1993 (OJ L 336, 31.12.1993, p. 1).

   In Article 3(5) 'fifteen' is replaced by 'eighteen'.

3. 388 R 4260: Commission Regulation (EEC) No 4260/88 of 16 December 1988 on the communications, complaints and applications and the hearings provided for in Council Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ L 376, 31.12.1988, p. 1) as amended by:
   - 393 R 3666: Commission Regulation (EC) No 3666/93 of 15 December 1993 (OJ L 336, 31.12.1993, p. 1).

   In Article 3(5) 'fifteen' is replaced by 'eighteen'.

4. 388 R 4261: Commission Regulation (EEC) No 4261/88 of 16 December 1988 on the complaints and applications and the hearings provided for in Council Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector (OJ L 376, 31.12.1988, p. 10), as amended by:
   - 393 R 3666: Commission Regulation (EC) No 3666/93 of 15 December 1993 (OJ L 336, 31.12.1993, p. 1).

   In Article 3(4) 'fifteen' is replaced by 'eighteen'.

5. 390 R 2367: Council Regulation (EEC) No 2367/90 of 25 July 1990 on the notifications, time-limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the

control of concentrations between undertakings (OJ L 219, 14.8.1990, p. 5), as amended by:

- 393 R 3666: Commission Regulation (EC) No 3666/93 of 15 December 1993 (OJ L 336, 31.12.1993, p. 1).

In Article 2(2) 'twenty-one' shall be replaced by 'twenty-four' and 'sixteen' by 'nineteen'.

D – Block exemption Regulations

1. 383 R 1983: Commission Regulation (EEC) No 1983/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive distribution agreements (OJ L 173, 30.6.1983, p. 1), as amended by:

   - 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 23).

   The following Article is inserted:

   '*Article 7a*

   The prohibition in Article 85(1) of the Treaty shall not apply to agreements which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of this accession, fall within the scope of Article 85(1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in this Regulation. However, this Article shall not apply to agreements which at the date of accession already fall under Article 53 of the EEA Agreement.'

2. 383 R 1984: Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive purchasing agreements (OJ L 173, 30.6.1983, p. 5), as corrected by OJ L 281, 13.10.1983, p. 24, as amended by:

   - 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 23).

   The following Article is inserted:

   '*Article 15a*

   The prohibition in Article 85(1) of the Treaty shall not apply to agreements which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of this accession, fall within the scope of Article 85(1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in this Regulation. However, this Article shall not apply to agreements which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

3. 384 R 2349: Commission Regulation (EEC) No 2349/84 of 23 July 1984 on the application of Article 85(3) of the Treaty to categories of patent licensing agreements (OJ L 219, 16.8.1984, p. 15), as amended by:

   - 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 23),
   - 393 R 0151: Council Regulation (EEC) No 151/93 of 23 December 1992 (OJ L 21, 29.1.1993, p. 8).

   The following paragraph is added to Article 8:

   '4. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Austria, Finland and Sweden, Articles 6 and 7 shall apply *mutatis mutandis* on the understanding that the relevant dates shall be the date of accession instead of 13 March 1962 and six months after the date of accession instead of 1 February 1963, 1 January 1967 and 1 April 1985. The amendment made to these agreements in accordance with Article 7 need not be notified to the Commission. However, this paragraph shall not apply to agreements which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

4. 385 R 0123: Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the Treaty to categories of motor vehicle distribution and servicing agreements (OJ L 15, 18.1.1985, p. 16), as amended by:

   - 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 23).

   The following paragraph is added to Article 9:

   '4. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Austria, Finland and Sweden, Articles 7 and 8 shall apply *mutatis mutandis* on the understanding that the relevant dates shall be the date of accession instead of 13 March 1962 and six months after the date of accession instead of 1 February 1963; 1 January 1967 and 1 October 1985. The amendment made to these agreements in accordance with Article 8 need not be notified to the Commission. However, this paragraph shall not apply to agreements which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

5. 385 R 0417: Commission Regulation (EEC) No 417/85 of 19 December 1984 on the application of Article 85(3) of the Treaty to categories of specialization agreements (OJ L 53, 22.2.1985, p. 1), as amended by:

   - 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 23),

– 393 R 0151: Commission Regulation (EEC) No 151/93 of 23 December 1992 (OJ L 21, 29.1.1993, p. 8).

The following paragraph is added to Article 9a:

'As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Austria, Finland and Sweden, the preceding paragraph shall apply *mutatis mutandis* on the understanding that the relevant dates shall be the date of accession of those countries and six months after the date of accession respectively. However, this paragraph shall not apply to agreements which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

6. 385 R 0418: Commission Regulation (EEC) No 418/85 of 19 December 1984 on the application of Article 85(3) of the Treaty to categories of research and development agreements (OJ L 53, 22.2.1985, p. 5), as amended by:

– 185 I: Act concerning the conditions of accession and the adjustments to the Treaties – Accession of the Kingdom of Spain and the Portuguese Republic (OJ L 302, 15.11.1985, p. 23),

– 393 R 0151: Commission Regulation (EEC) No 151/93 of 23 December 1992 (OJ L 21, 29.1.1993, p. 8).

The following paragraph is added to Article 9a:

'7. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Austria, Finland and Sweden, paragraphs 1 to 3 shall apply *mutatis mutandis* on the understanding that the relevant dates shall be the date of accession instead of 13 March 1962 and six months after the date of accession instead of 1 February 1963, 1 January 1967, 1 March 1985 and 1 September 1985. The amendment made to these agreements in accordance with the provisions of paragraph 3 need not be notified to the Commission. However, this paragraph shall not apply to agreements which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

7. 388 R 4087: Commission Regulation (EEC) No 4087/88 of 30 November 1988 on the application of Article 85(3) of the Treaty to categories of franchise agreements (OJ L 359, 28.12.1988, p. 46).

The following Article is inserted:

'Article 8a

The prohibition in Article 85(1) of the Treaty shall not apply to the franchise agreements which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of this accession, fall within the scope of Article 85(1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in this Regulation. However, this Article shall not apply to agreements which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

8. 389 R 0556: Commission Regulation (EEC) No 556/89 of 30 November 1988 on the application of Article 85(3) of the Treaty to certain categories of know-how licensing agreements (OJ L 61, 4.3.1989, p. 1), as amended by:

   - 393 R 0151: Commission Regulation (EEC) No 151/93 of 23 December 1992 (OJ L 21, 29.1.1993, p. 8).

   The following paragraph is added to Article 10:

   '4. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Austria, Finland and Sweden, Articles 8 and 9 shall apply *mutatis mutandis* on the understanding that the relevant dates shall be the date of accession instead of 13 March 1962 and six months after the date of accession instead of 1 February 1963 and 1 January 1967. The amendments made to the agreements in accordance with Article 9 need not be notified to the Commission. However, this paragraph shall not apply to agreements which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

9. 392 R 3932: Commission Regulation (EEC) No 3932/92 of 21 December 1992 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector (OJ L 398, 31.12.1992, p. 7).

   The following paragraph is added to Article 20:

   '4. As regards agreements covered by Article 85 of the Treaty as a result of the accession of Austria, Finland and Sweden, Articles 18 and 19 shall apply *mutatis mutandis* on the understanding that the relevant dates shall be the date of accession instead of 13 March 1962 and six months after the date of accession instead of 1 February 1963 and 1 January 1967, 31 December 1993 and 1 April 1994. The amendments made to the agreements in accordance with Article 19 need not be notified to the Commission. However, the present paragraph shall not apply to agreements which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

10. 393 R 1617: Commission Regulation (EEC) No 1617/93 of 25 June 1993 on the application of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports (OJ L 155, 26.6.1993, p. 18).

    The following Article is inserted:

    '*Article 6a*

    The prohibition in Article 85(1) of the Treaty shall not apply to agreements, decisions and concerted practices which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of this accession, fall within the scope of Article 85(1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in this Regulation. However, this Article shall not apply

to agreements, decisions and concerted practices which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

11. 393 R 3652: Commission Regulation (EEC) No 3652/93 of 22 December 1993 on the application of Article 85(3) of the Treaty to certain categories of agreements between undertakings relating to computerized reservation systems for air transport services (OJ L 333, 31.12.1993, p. 37).

The following Article is inserted:

'*Article 14a*

The prohibition in Article 85(1) of the Treaty shall not apply to agreements which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of this accession, fall within the scope of Article 85(1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in this Regulation. However, this Article shall not apply to agreements which at the date of accession already fall under Article 53(1) of the EEA Agreement.'

[...]

III – Multilateral texts

1. OECD – Recommendation of 27 and 28 July 1995

Revised recommendation of the Council concerning cooperation between member countries on anticompetitive practices affecting international trade

(C(95) 130 final)

THE COUNCIL

Having regard to Article 5(b) of the Convention on the Organization for Economic Cooperation and Development of 14 December 1960,

Having regard to the fact that international cooperation among OECD countries in the control of anticompetitive practices affecting international trade has long existed, based on successive recommendations of the Council of 5 October 1967 (C(67) 53 final), 3 July 1973 (C(73) 99 final), 25 September 1979 (C(79) 154 final) and 21 May 1986 (C(86) 44 final),

Having regard to the recommendations made in the study of transnational mergers and merger control procedures prepared for the Committee on Competition Law and Policy,

Recognizing that anticompetitive practices may constitute an obstacle to the achievement of economic growth, trade expansion and other economic goals of member countries,

Recognizing that the continued growth in internationalization of business activities correspondingly increases the likelihood that anticompetitive practices in one country or coordinated behaviour of firms located in different countries may adversely affect the interests of member countries and also increases the number of transnational mergers that are subject to the merger control laws of more than one member country,

Recognizing that the unilateral application of national legislation, in cases where business operations in other countries are involved, raises questions as to the respective spheres of sovereignty of the countries concerned,

Recognizing the need for member countries to give effect to the principles of international law and comity and to use moderation and self-restraint in the interest of cooperation in the field of anticompetitive practices,

Recognizing that anticompetitive practices investigations and proceedings by one member country may, in certain cases, affect important interests of other member countries,

Considering, therefore, that member countries should cooperate in the implementation of their respective national legislation in order to combat the harmful effects of anticompetitive practices,

Considering also that closer cooperation between member countries is needed to deal effectively with anticompetitive practices operated by enterprises situated in member countries when they affect the interests of one or more other member countries and have a harmful effect on international trade,

Considering, moreover, that closer cooperation between member countries in the form of notification, exchange of information, coordination of action, consultation and conciliation, on a fully voluntary basis, should be encouraged, it being understood that such cooperation should not, in any way, be construed to affect the legal positions of member countries with regard to questions of sovereignty, and, in particular the extra-territorial application of laws concerning anticompetitive practices, as may arise,

Recognizing the desirability of setting forth procedures by which the Competition Law and Policy Committee can act as a forum for exchanges of views, consultations and conciliation on matters related to anticompetitive practices affecting international trade,

Considering that if member countries find it appropriate to enter into bilateral arrangements for cooperation in the enforcement of national competition laws, they should take into account the present Recommendation and guiding principles,

I. RECOMMENDS to governments of member countries that in so far as their laws permit:

A – Notification, exchange of information and coordination of action

1. When a member country undertakes under its competition laws an investigation or proceeding which may affect important interests of another member country or countries, it should notify such member country or countries, if possible in advance, and, in any event, at a time that would facilitate comments or consultations; such advance notification would enable the proceeding member country, while retaining full freedom of ultimate decision, to take account of such views as the other member country may wish to express and of such remedial action as the other member country may find it feasible to take under its own laws, to deal with the anticompetitive practices.

2. Where two or more member countries proceed against an anticompetitive practice in international trade, they should endeavour to coordinate their action in so far as appropriate and practicable.

3. Through consultations or otherwise, the member countries should cooperate in developing or applying mutually satisfactory and beneficial measures for dealing with anticompetitive practices in international trade. In this connection, they should supply each other with such relevant information on anticompetitive practices as their legitimate interests permit them to disclose; and should allow, subject to appropriate safeguards, including those relating to confidentiality, the disclosure of information to the competent authorities of member countries by the other parties concerned, whether accomplished unilaterally or in the context of bilateral or multilateral understandings, unless such cooperation or disclosure would be contrary to significant national interests.

B – Consultation and conciliation

4. (a) A member country which considers that an investigation or proceeding being conducted by another member country under its competition laws may affect its important interests should transmit its views on the matter to or request consultation with the other member country.

   (b) Without prejudice to the continuation of its action under its competition law and to its full freedom of ultimate decision, the member country so addressed should give full and sympathetic consideration to the views expressed by the requesting country, and, in particular, to any suggestions as to alternative means of fulfilling the needs or objectives of the competition investigation or proceeding.

5. (a) A member country which considers that one or more enterprises situated in one or more other member countries are or have been engaged in anticompetitive practices of whatever origin that are substantially and adversely affecting its interests may request consultation with such other member country or countries, recognizing that entering into such consultations is without prejudice to any action under its competition law and to the full freedom of ultimate decision of the member countries concerned.

   (b) Any member country so addressed should give full and sympathetic consideration to such views and factual materials as may be provided by the requesting country and, in particular, to the nature of the anticompetitive practices in question, the enterprises involved and the alleged harmful effects on the interests of the requesting country.

   (c) The member country addressed which agrees that enterprises situated in its territory are engaged in anticompetitive practices harmful to the interests of the requesting country should attempt to ensure that these enterprises take remedial action, or should itself take whatever remedial action it considers appropriate, including actions under its legislation on anticompetitive practices or administrative measures, on a voluntary basis and considering its legitimate interests.

6. Without prejudice to any of their rights, the member countries involved in consultations under paragraph 4 and 5 above should endeavour to find a mutually acceptable solution in the light of the respective interests involved.

7. In the event of a satisfactory conclusion to the consultations under paragraphs 4 and 5 above, the requesting country, in agreement with, and in the form accepted by, the member countries or countries addressed, should inform the Competition Law and Policy Committee of the nature of the anticompetitive practices in question and of the settlement reached.

8. In the event that no satisfactory conclusion can be reached, the member countries concerned, if they so agree, should consider having recourse to the good offices of the Competition Law and Policy Committee with a view to conciliation. If the member

countries concerned agree to the use of another means of settlement, they should, if they consider it appropriate, inform the Committee of such features of the settlement as they feel they can disclose.

II. RECOMMENDS that member countries take into account the guiding principles set out in the Appendix to this Recommendation.

III. INSTRUCTS the Competition Law and Policy Committee:

1. to examine periodically the progress made in the implementation of the present Recommendation and to serve periodically or at the request of a member country as a forum for exchanges of views on matters related to the Recommendation on the understanding that it will not reach conclusions on the conduct of individual enterprises or governments;

2. to consider the reports submitted by member countries in accordance with paragraph 7 of Section I above;

3. to consider the requests for conciliation submitted by member countries in accordance with paragraph 8 of Section I above and to assist, by offering advice or by any other means, in the settlement of the matter between the member countries concerned;

4. to report to the Council as appropriate on the application of the present Recommendation.

IV. DECIDES that this Recommendation and its Appendix cancel and replace the Recommendation of the Council of 21 May 1986 (C(86) 44 final).

APPENDIX

GUIDING PRINCIPLES FOR NOTIFICATIONS, EXCHANGE OF INFORMATION, COOPERATION IN INVESTIGATIONS AND PROCEEDINGS, CONSULTATIONS AND CONCILIATION OF ANTICOMPETITIVE PRACTICES AFFECTING INTERNATIONAL TRADE

Purpose

1. The purpose of these principles is to clarify the procedures laid down in the Recommendation and thereby to strengthen cooperation and to minimize conflicts in the enforcement of competition laws. It is recognized that implementation of the recommendations herein is fully subject to the national laws of member countries, as well as in all cases to the judgment of national authorities that cooperation in a specific matter is consistent with the member country's national interests. Member countries may wish to consider appropriate legal measures, consistent with their national policies, to give effect to this Recommendation in appropriate cases.

Definitions

2. (a) 'Investigation or proceeding' means any official factual inquiry or enforcement action authorized or undertaken by a competition authority of a member country pursuant to the competition laws of that country. Excluded, however, are: (i) the review of business conduct or routine filings, in advance of a formal or informal determination that the matter may be anticompetitive; or (ii) research, studies or surveys the objective of which is to examine the general economic situation or general conditions in specific industries.

(b) 'Merger' means merger, acquisition, joint venture and any other form of business amalgamation that falls within the scope and definitions of the competition laws of a member country governing business concentrations or combinations.

Notification

3. The circumstances in which a notification of an investigation or proceeding should be made, as recommended in paragraph I.A.1 of the Recommendation, include:

(a) when it is proposed that, through a written request, information will be sought from the territory of another member country or countries;

(b) when it concerns a practice (other than a merger) carried out wholly or in part in the territory of another member country or countries, whether the practice is purely private or whether it is believed to be required, encouraged or approved by the government or governments of another country or countries;

(c) when the investigation or proceeding previously notified may reasonably be expected to lead to a prosecution or other enforcement action which may affect an important interest of another member country or countries;

(d) when it involves remedies that would require or prohibit behaviour or conduct in the territory of another member country;

(e) in the case of an investigation or proceeding involving a merger, and in addition to the circumstances described elsewhere in this paragraph, when a party directly involved in the merger, or an enterprise controlling such a party, is incorporated or organized under the laws of another member country;

(f) in any other situation where the investigation or proceeding may involve important interests of another member country or countries.

Procedure for notifying

4. (a) Under the Recommendation, notification ordinarily should be provided at the first stage of an investigation or proceeding when it becomes evident that notifiable circumstances described in paragraph 3 are present. However, there may be cases where notification at that stage could prejudice the investigative action or proceeding. In such a case, notification and, when requested, consultation should take place as soon as possible and in sufficient time to enable the views of the other member countries to be taken into account. Before any formal legal or administrative action is taken, the notifying country should ensure, to the fullest extent possible in the circumstances, that it would not prejudice this process.

(b) Notification of an investigation or proceeding should be made in writing through the channels requested by each country as indicated in a list to be established and periodically updated by the Competition Law and Policy Committee.

(c) The content of the notification should be sufficiently detailed to permit an initial evaluation by the notified country of the likelihood of any effects on its national interests. It should include, if possible, the names of the persons or enterprises concerned, the activities under investigation, the character of the investigation or procedure and the legal provisions concerned, and, if applicable, the need to seek information from the territory of another member country. In the case of an investigation or proceeding involving a merger, notification should also include:

(i) the fact of initiation of an investigation or proceeding;

(ii) the fact of determination of the investigation or proceeding, with a description of any remedial action ordered or voluntary steps undertaken by the parties;

(iii) a description of the issues of interest to the notifying member country, such as the relevant markets affected, jurisdictional issues or remedial concerns;

(iv) a statement of the time period within which the notifying member country either must act or is planning to act.

Coordination of investigations

5. The coordination of concurrent investigations, as recommended in paragraph I.A.2 of the Recommendation, should be undertaken on a case-by-case basis, where the relevant member countries agree that it would be in their interests to do so. This coordination process shall not, however, affect each member country's right to take a decision independently based on the investigation. Coordination might include any of the following steps, consistent with the national laws of the countries involved:

(a) providing notice of applicable time periods and schedules for decision-making;

(b) sharing factual and analytical information and material, subject to national laws governing the confidentiality of information and the principles relating to confidential information set forth in paragraph 10;

(c) requesting, in appropriate circumstances, that the subjects of the investigation voluntarily permit the cooperating countries to share some or all of the information in their possession, to the extent permitted by national laws;

(d) coordinating discussions or negotiations regarding remedial actions, particularly when such remedies could require conduct or behaviour in the territory of more than one member country;

(e) in those member countries in which advance notification of mergers is required or permitted, requesting that the notification include a statement identifying notifications also made or to be made to other countries.

Assistance in an investigation or proceeding of a member country

6. Cooperation among member countries by means of supplying information on anticompetitive practices in response to a request from a member country, as recommended in paragraph I.A.3 of the Recommendation, should be undertaken on a case-by-case basis, where it would be in the interests of the relevant member countries to do so. Cooperation might include any of the following steps, consistent with the national laws of the countries involved:

(a) assisting in obtaining information on a voluntary basis from within the assisting member's country;

(b) providing factual and analytical material from its files, subject to national laws governing confidentiality of information and the principles relating to confidential information set forth in paragraph 10;

(c) employing on behalf of the requesting member country its authority to compel the production of information in the form of testimony or documents, where the national law of the requested member country provides for such authority;

(d) providing information in the public domain relating to the relevant conduct or practice. To facilitate the exchange of such information, member countries should consider collecting and maintaining data about the nature and sources of such public information to which other member countries could refer.

7. When a member country learns of an anticompetitive practice occurring in the territory of another member country that could violate the laws of the latter, the former should consider informing the latter and providing as much information as practicable, subject to national laws governing the confidentiality of information and the principles relating to confidential information set forth in paragraph 10, consistent with other applicable national laws and its national interests.

8. (a) Member countries should use moderation and self-restraint and take into account the substantive laws and procedural rules in the foreign forum when exercising their investigatory powers with a view to obtaining information located abroad.

(b) Before seeking information located abroad, member countries should consider whether adequate information is conveniently available from sources within their national territory.

(c) Any requests for information located abroad should be framed in terms that are as specific as possible.

9. The provision of assistance or cooperation between member countries may be subject to consultations regarding the sharing of costs of these activities.

Confidentiality

10. The exchange of information under this Recommendation is subject to the laws of participating member countries governing the confidentiality of information. A member country may specify the protection that shall be accorded the information to be provided and any limitations that may apply to the use of such information. The requested member country would be justified in declining to supply information if the requesting member country is unable to observe those requests. A receiving member country should take all reasonable steps to ensure observance of the confidentiality and use limitations specified by the sending member country, and, if a breach of confidentiality or use limitation occurs, should notify the sending member country of the breach and take appropriate steps to remedy the effects of the breach.

Consultations between member countries

11. (a) The country notifying an investigation or proceeding should conduct its investigation or proceeding, to the extent possible under legal and practical time constraints, in a manner that would allow the notified country to request informal consultations or to submit its views on the investigation or proceeding.

(b) Requests for consultation under paragraph I.B.4 and I.B.5 of the Recommendation should be made as soon as possible after notification and explanation of the national interests affected should be provided in sufficient detail to enable full consideration to be given to them.

(c) The notified member country should, where appropriate, consider taking remedial action under its own legislation in response to a notification.

(d) All countries involved in consultations should give full consideration to the interests raised and to the views expressed during the consultations so as to avoid or minimize possible conflict.

Conciliation

12. (a) If they agree to the use of the Committee's good offices for the purpose of conciliation in accordance with paragraph I.B.8 of the Recommendation, member countries should inform the chairman of the Committee and the Secretariat with a view to invoking conciliation.

(b) The Secretariat should continue to compile a list of persons willing to act as conciliators.

(c) The procedure for conciliation should be determined by the chairman of the Committee in agreement with the member countries concerned.

(d) Any conclusions drawn as a result of the conciliation are not binding on the member countries concerned and the proceedings of the conciliation will be kept confidential unless the member countries concerned agree otherwise.

2. The set of multilaterally agreed equitable principles and rules for the control of restrictive business practices (Unctad)

Adopted by the United Nations Conference on Restrictive Business Practices as an annex to its resolution of 22 April 1980

THE UNITED NATIONS CONFERENCE ON RESTRICTIVE BUSINESS PRACTICES

Recognizing that restrictive business practices can adversely affect international trade, particularly that of developing countries, and the economic development of these countries,

Affirming that a set of multilaterally agreed equitable principles and rules for the control of restrictive business practices can contribute to attaining the objective in the establishment of a new international economic order to eliminate restrictive business practices adversely affecting international trade and thereby contribute to development and improvement of international economic relations on a just and equitable basis,

Recognizing also the need to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting international trade, particularly those affecting the trade and development of developing countries,

Considering the possible adverse impact of restrictive business practices, including among others those resulting from the increased activities of transnational corporations, on the trade and development of developing countries,

Convinced of the need for action to be taken by countries in a mutually reinforcing manner at the national, regional and international levels to eliminate or effectively deal with restrictive business practices, including those of transnational corporations, adversely affecting international trade, particularly that of developing countries, and the economic development of these countries,

Convinced also of the benefits to be derived from a universally applicable set of multilaterally agreed equitable principles and rules for the control of restrictive business practices and that all countries should encourage their enterprises to follow in all respects the provisions of such a set of multilaterally agreed equitable principles and rules,

Convinced further that the adoption of such a set of multilaterally agreed equitable principles and rules for the control of restrictive business practices will thereby facilitate the adoption and strengthening of laws and policies in the area of restrictive business practices at the national and regional levels and thus lead to improved conditions and attain greater efficiency and participation in international trade and development, particularly that of developing countries,

and to protect and promote social welfare in general, and in particular the interests of consumers in both developed and developing countries,

Affirming also the need to eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help to maximize benefits to international trade and particularly the trade and development of developing countries,

Affirming further the need that measures adopted by States for the control of restrictive business practices should be applied fairly, equitably, on the same basis to all enterprises and in accordance with established procedures of law, and for States to take into account the principles and objectives of the set of multilaterally agreed equitable principles and rules,

HEREBY AGREES ON the following set of principles and rules for the control of restrictive business practices, which take the form of recommendations:

A – Objectives

Taking into account the interests of all countries, particularly those of developing countries, the set of multilaterally agreed equitable principles and rules are framed in order to achieve the following objectives:

1. To ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries.

2. To attain greater efficiency in international trade and development, particularly that of developing countries, in accordance with national aims of economic and social development and existing economic structures, such as through:

(a) the creation, encouragement and protection of competition;

(b) control of the concentration of capital and/or economic power;

(c) encouragement of innovation.

3. To protect and promote social welfare in general and, in particular, the interests of consumers in both developed and developing countries.

4. To eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help to maximize benefits to international trade and particularly the trade and development of developing countries.

5. To provide a set of multilaterally agreed equitable principles and rules for the control of restrictive business practices for adoption at the international level and thereby to facilitate the adoption and strengthening of laws and policies in this area at the national and regional levels.

B – Definition and scope of application

For the purpose of this set of multilaterally agreed equitable principles and rules:

(i) Definition

1. 'Restrictive business practices' means acts or behaviour of enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries, or which, through formal, informal, written or unwritten agreements or arrangements among enterprises, have the same impact.

2. 'Dominant position of market power' refers to a situation where an enterprise, either by itself or acting together with a few other enterprises, is in a position to control the relevant market for a particular good or service or group of goods or services.

3. 'Enterprises' means firms, partnerships, corporations, companies, other associations, natural or juridical persons, or any combination thereof, irrespective of the mode of creation or control or ownership, private or State, which are engaged in commercial activities, and includes their branches, subsidiaries, affiliates, or other entities directly or indirectly controlled by them.

4. The set of principles and rules applies to restrictive business practices, including those of transnational corporations, adversely affecting international trade, particularly that of developing countries and the economic development of these countries. It applies irrespective of whether such practices involve enterprises in one or more countries.

5. The 'principles and rules for enterprises, including transnational corporation' apply to all transactions in goods and services.

6. The 'principles and rules for enterprises, including transnational corporations' are addressed to all enterprises.

7. The provisions of the set of principles and rules shall be universally applicable to all countries and enterprises regardless of the parties involved in the transactions, acts or behaviour.

8. Any reference to 'States' or 'Governments' shall be construed as including any regional groupings of States, to the extent that they have competence in the area of restrictive business practices.

9. The set of principles and rules shall not apply to intergovernmental agreements, nor to restrictive business practices directly caused by such agreements.

C – Multilaterally agreed equitable principles for the control of restrictive business practices

In line with the objectives set forth, the following principles are to apply:

(i) General principles

1. Appropriate action should be taken in a mutually reinforcing manner at national, regional and international levels to eliminate, or effectively deal with, restrictive business practices, including those of transnational corporations, adversely affecting international trade, particularly that of developing countries and the economic development of these countries.

2. Collaboration between governments at bilateral and multilateral levels should be established and, where such collaboration has been established, it should be improved to facilitate the control of restrictive business practices.

3. Appropriate mechanisms should be devised at the international level and/or the use of existing international machinery improved to facilitate exchange and dissemination of information among Governments with respect to restrictive business practices.

4. Appropriate means should be devised to facilitate the holding of multilateral consultations with regard to policy issues relating to the control of restrictive business practices.

5. The provisions of the set of principles and rules should not be construed as justifying conduct by enterprises which is unlawful under applicable national or regional legislation.

(ii) Relevant factors in the application of the set of principles and rules

6. In order to ensure the fair and equitable application of the set of principles and rules, States, while bearing in mind the need to ensure the comprehensive application of the set of principles and rules, should take due account of the extent to which the conduct of enterprises, whether or not created or controlled by States, is accepted under applicable legislation or regulations, bearing in mind that such laws and regulations should be clearly defined and publicly and readily available, or is required by States.

(iii) Preferential or differential treatment for developing countries

7. In order to ensure the equitable application of the set of principles and rules, States, particularly developed countries, should take into account in their control of restrictive business practices the development, financial and trade needs of developing countries, in particular of the least-developed countries, for the purposes especially of developing countries in:

(a) promoting the establishment or development of domestic industries and the economic development of other sectors of the economy, and

(b) encouraging their economic development through regional or global arrangements among developing countries.

D – Principles and rules for enterprises, including transnational corporations

1. Enterprises should conform to the restrictive business practices laws, and the provisions concerning restrictive business practices in other laws, of the countries in which they operate, and, in the event of proceedings under these laws, should be subject to the competence of the courts and relevant administrative bodies therein.

2. Enterprises should consult and cooperate with competent authorities of countries directly affected in controlling restrictive business practices adversely affecting the interests of those countries. In this regard, enterprises should also provide information, in particular details of restrictive arrangements, required for this purpose, including that which may be located in foreign countries, to the extent that in the latter event such production or disclosure is not prevented by applicable law or established public policy. Whenever the provision of information is on a voluntary basis, its provision should be in accordance with safeguards normally applicable in this field.

3. Enterprises, except when dealing with each other in the context of an economic entity wherein they are under common control, including through ownership, or otherwise not able to act independently of each other, engaged on the market in rival or potentially rival activities, should refrain from practices such as the following when, through formal, informal, written or unwritten agreements or arrangements, they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries:

(a) agreements fixing prices, including as to exports and imports;

(b) collusive tendering;

(c) market or customer allocation agreements;

(d) allocation by quota as to sales and production;

(e) collective action to enforce arrangements, by concerted refusals to deal;

(f) concerted refusal of supplies to potential importers;

(g) collective denial of access to an arrangement, or association, which is crucial to competition.

4. Enterprises should refrain from the following acts or behaviour in a relevant market when, through an abuse [1] or acquisition and abuse of a dominant position of market power, they limit access to markets or otherwise unduly restrain competition having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries:

(a) predatory behaviour towards competitors, such as using below-cost pricing to eliminate competitors;

(b) discriminatory (i.e. unjustifiable differentiated) pricing or terms or conditions in the supply of purchase of goods or services, including by means of the use of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;

(c) mergers, takeovers, joint ventures or other acquisitions of control, whether of a horizontal, vertical or a conglomerate nature;

(d) fixing the prices at which goods exported can be resold in importing countries;

(e) restrictions on the importation of goods which have been legitimately marked abroad with a trade mark identical with or similar to the trade mark protected as to identical or similar goods in the importing country where the trade marks in question are of the same origin, i.e. belong to the same owner or are used by enterprises between which there is economic, organizational, managerial or legal interdependence and where the purpose of such restrictions is to maintain artificially high prices;

(f) when not for ensuring the achievement of legitimate business purposes, such as quality, safety, adequate distribution or service:

  (i) partial or complete refusals to deal on the enterprise's customary commercial terms;

  (ii) making the supply of particular goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods;

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[1] Whether acts or behaviour are abusive or not should be examined in terms of their purpose and effects in the actual situation, in particular with reference to whether they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries, and to whether they are:

(a) appropriate in the light of the organizational, managerial and legal relationship among the enterprises concerned, such as in the context of relations within an economic entity and not having restrictive effects outside the related enterprises;

(b) appropriate in the light of special conditions or economic circumstances in the relevant market such as exceptional conditions of supply and demand or the size of the market;

(c) of types which are usually treated as acceptable under pertinent national or regional laws and regulations for the control of restrictive business practices;

(d) consistent with the purposes and objectives of these principles and rules.

(iii) imposing restrictions concerning where, or to whom, or in what form or quantities, goods supplied or other goods may be resold or exported;

(iv) making the supply of particular goods or services dependent upon the purchase of other goods or services from the suppliers or his designee.

E – Principles and rules for States at national, regional and subregional levels

1. States should, at the national level or through regional groupings, adopt, improve and effectively enforce appropriate legislation and implementing judicial and administrative procedures for the control of restrictive business practices, including those of transnational corporations.

2. States should base their legislation primarily on the principle of eliminating or effectively dealing with acts or behaviour of enterprises which, through an abuse or acquisition an abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on their trade or economic development, or which, through formal, informal, written or unwritten agreement or arrangements among enterprises have the same impact.

3. States, in their control of restrictive business practices, should ensure treatment of enterprises which is fair, equitable, on the same basis to all enterprises, and in accordance with established procedures of law. The laws and regulations should be publicly and readily available.

4. States should seek appropriate remedial or preventive measures to prevent and/or control the use of restrictive business practices within their competence when it comes to the attention of States that such practices adversely affect international trade, and particularly the trade and development of the developing countries.

5. Where, for the purposes of the control of restrictive business practices, a State obtains information from enterprises containing legitimate business secrets, it should accord such information reasonable safeguards normally applicable in this field, particularly to protect its confidentiality.

6. States should institute or improve procedures for obtaining information from enterprises, including transnational corporations, necessary for their effective control of restrictive business practices, including in this respect details of restrictive agreements, understandings and other arrangements.

7. States should establish appropriate mechanisms at the regional and subregional levels to promote exchange of information on restrictive business practices and on the application of national laws and policies in this area, and to assist each other on their mutual advantage regarding control of restrictive business practices at the regional and subregional levels.

8. States with greater expertise in the operation of systems for the control of restrictive business practices should, on request, share their experience with, or otherwise provide technical assistance to, other States wishing to develop or improve such systems.

9. States should, on request, or at their own initiative when the need comes to their attention, supply to other States, particularly developing countries, publicly available information, and, to the extent consistent with their laws and established public policy, other information necessary to the receiving interested State for its effective control of restrictive business practices.

F – International measures

Collaboration at the international level should aim at eliminating or effectively dealing with restrictive business practices, including those of transnational corporations, through strengthening and improving controls over restrictive business practices adversely affecting international trade, particularly that of developing countries, and the economic development of these countries. In this regard, action should include:

1. Work, aimed at achieving common approaches in national policies relating to restrictive business practices compatible with the set of principles and rules.

2. Communication annually to the Secretary-General of Unctad of appropriate information on steps taken by States and regional groupings to meet their commitment to the set of principles and rules, and information on the adoption, development and application of legislation, regulations and policies concerning restrictive business practices.

3. Continued publication annually by Unctad of a report on developments in restrictive business practices legislation and on restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries, based upon publicly available information and as far as possible other information, particularly on the basis of requests addressed to all member States or provided at their own initiative and, where appropriate, to the United Nations Centre on Transnational Corporations and other competent international organizations.

4. Consultations:

(a) where a State, particularly of a developing country, believes that a consultation with another State or States is appropriate in regard to an issue concerning control of restrictive business practices, it may request a consultation with those States with a view to finding a mutually acceptable solution. When a consultation is to be held, the States involved may request the Secretary-General of Unctad to provide mutually agreed conference facilities for such a consultation;

(b) States should accord full consideration to requests for consultations and, upon agreement as to the subject of and the procedures for such a consultation, the consultation should take place at an appropriate time;

(c) if the States involved so agree, a joint report on the consultations and their results should be prepared by the States involved and, if they so wish, with the assistance of the Unctad Secretariat, and be made available to the Secretary-General of Unctad for inclusion in the annual report on restrictive business practices.

5. Continued work within Unctad on the elaboration of a model law or laws on restrictive business practices in order to assist developing countries in devising appropriate legislation. States should provide the necessary information and experience to Unctad in this connection.

6. Implementation within or facilitation by Unctad, and other relevant organizations of the United Nations system in conjunction with Unctad, of technical assistance, advisory and training programmes on restrictive business practices, particularly for developing countries:

(a) experts should be provided to assist developing countries, at their request, in formulating or improving restrictive business practice legislation and procedures;

(b) seminars, training programmes or courses should be held, primarily in developing countries, to train officials involved or likely to be involved in administering restrictive business practices' legislation and, in this connection, advantage should be taken, *inter alia* of the experience and knowledge of administrative authorities, especially in developed countries, in detecting the use of restrictive business practices;

(c) a handbook on restrictive business practice legislation should be compiled;

(d) relevant books, documents, manuals and any other information on matters related to restrictive business practices should be collected and made available, particularly to developing countries;

(e) exchange of personnel between restrictive business practice authorities should be arranged and facilitated;

(f) international conferences on restrictive business practice legislation and policy should be arranged;

(g) seminars for an exchange of views on restrictive business practices among persons in the public and private sectors should be arranged.

7. International organizations and financing programmes, in particular the United Nations Development Programme, should be called upon to provide resources through appropriate channels and modalities for the financing of activities set out in paragraph 6 above. Furthermore, all countries are invited, in particular the developed countries, to make voluntary financial and other contributions to the abovementioned activities.

G – International institutional machinery

(i) Institutional arrangements

1. An Intergovernmental Group of Experts on Restrictive Business Practices operating within the framework of a Committee of Unctad will provide the institutional machinery.

2. States which have accepted the set of principles and rules should take appropriate steps at the national or regional level to meet their commitments to the set of principles and rules.

(ii) Functions of the Intergovernmental Group

3. The Intergovernmental Group shall have the following functions:

(a) to provide a forum and modalities for multilateral consultations, discussion and exchange of views between States on matters related to the set of principles and rules, in particular its operation and the experience arising therefrom;

(b) to undertake and disseminate periodically studies and research on restrictive business practices related to the provisions of the set of principles and rules, with a view to increasing exchange of experience and giving greater effect to the set of principles and rules;

(c) to invite and consider relevant studies, documentation and reports from relevant organizations of the United Nations system;

(d) to study matters relating to the set of principles and rules and which might be characterized by data covering business transactions and other relevant information obtained upon request addressed to all States;

(e) to collect and disseminate information on matters relating to the set of principles and rules to the overall attainment of its goals and to the appropriate steps States have taken at the national or regional level to promote an effective set of principles and rules, including its objectives and principles;

(f) to make appropriate reports and recommendations to States on matters within its competence, including the application and implementation of the set of multilaterally agreed equitable principles and rules;

(g) to submit reports at least once a year on its work.

4. In the performance of its functions, neither the Intergovernmental Group nor its subsidiary organs shall act like a tribunal or otherwise pass judgment on the activities or conduct of individual governments or of individual enterprises in connection with a specific business transaction. The Intergovernmental Group or its subsidiary organs should avoid becoming involved when enterprises to a specific business transaction are in dispute.

5. The Intergovernmental Group shall establish such procedures as may be necessary to deal with issues related to confidentiality.

(iii) Review procedure

6. Subject to the approval of the General Assembly, five years after the adoption of the set of principles and rules, a United Nations Conference shall be convened by the Secretary-General of the United Nations under the auspices of Unctad for the purpose of reviewing all the aspects of the set of principles and rules. Towards this end, the Intergovernmental Group shall make proposals to the Conference for the improvement and further development of the set of principles and rules.

IV – Agreements with the Central and East European countries

1. Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part

Decision of the Council and the Commission of 13 December 1993

(93/743/Euratom, ECSC, EC) [1]

[...]

Article 32

The Member States and Poland shall progressively adjust any State monopolies of a commercial character so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of Poland. The Association Council will be informed about the measures adopted to implement this objective.

[...]

Article 63

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and Poland:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Poland as a whole or in a substantial part thereof;

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Article 85, 86 and 92 of the Treaty establishing the European Community.

[1] OJ L 348, 31.12.1993, p. 1.

3. The Association Council shall, within three years of the entry into force of this Agreement, adopt by decision the necessary rules for the implementation of paragraphs 1 and 2.

Until these rules are adopted, the provisions of the Agreement on interpretation and application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade shall be applied as the rules for the implementation of paragraph 1(iii) and related parts of paragraph 2.

4. (a) For the purposes of applying the provisions of paragraph 1(iii), the Parties recognize that during the first five years after the entry into force of this Agreement any public aid granted by Poland shall be assessed taking into account the fact that Poland shall be regarded as an area identical to those areas of the Community described in Article 92(3)(a) of the Treaty establishing the European Community. The Association Council shall, taking into account the economic situation of Poland, decide whether that period should be extended by further periods of five years.

(b) Each Party shall ensure transparency in the area of public aid, *inter alia* by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

5. With regard to products referred to in Chapters II and III of Title III:

- the provisions of paragraph 1(iii) do not apply,
- any practices contrary to paragraph 1(i) should be assessed according to the criteria established by the Community on the basis of Articles 42 and 43 of the Treaty establishing the European Economic Community, and in particular of those established in Council Regulation No 26/62.

6. If the Community or Poland considers that a particular practice is incompatible with the terms of paragraph 1, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interest of the other Party or material injury to its domestic industry, including its services industry,

it may take appropriate measures after consultation within the Association Council or after 30 working days following referral for such consultation.

In the case of practices incompatible with paragraph 1(iii) of this Article, such appropriate measures may, where the General Agreement on Tariffs and Trade applies thereto, only be adopted in accordance with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

7. Notwithstanding any provisions to the contrary adopted in accordance with paragraph 3, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

8. This Article shall not apply to the products covered by the Treaty establishing the European Coal and Steel Community which are the subject of Protocol 2.

[...]

Article 65

With regard to public undertakings, and undertakings to which special or exclusive rights have been granted, the Association Council shall ensure that as from the third year following the date of entry into force of this Agreement, the principles of the Treaty establishing the European Economic Community, in particular Article 90, and the principles of the concluding document of the April 1990 Bonn meeting of the Conference on Security and Cooperation in Europe, in particular entrepreneurs' freedom of decision, are upheld.

[...]

APPROXIMATION OF LAWS

Article 68

The Contracting Parties recognize that the major precondition for Poland's economic integration into the Community is the approximation of that country's existing and future legislation to that of the Community. Poland shall use its best endeavours to ensure that future legislation is compatible with Community legislation.

Article 69

The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, protection of health and life of humans, animals and plants, consumer protection, indirect taxation, technical rules and standards, transport and the environment.

[...]

Article 122

In the event that, pending the completion of the procedures necessary for the entry into force of this Agreement, the provisions of certain parts of this Agreement, in particular those relating to the movement of goods, are put into effect in 1992 by means of an Interim Agreement

between the Community and Poland, the Contracting Parties agree that, in such circumstances for the purposes of Title III, Articles 63, 65 and 66 of this Agreement and Protocols 1, 2, 3, 4, 5, 6 and 7 hereto, the terms 'date of entry into force of this Agreement' shall mean:

- the date of entry into force of the Interim Agreement in relation to obligations taking effect on that date, and
- 1 January 1992 in relation to obligations taking effect after the date of entry into force by reference to the date of entry into force.

[...]

PROTOCOL 2 ON ECSC PRODUCTS TO THE EUROPE AGREEMENT ('THE AGREEMENT')

[...]

Article 8

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and Poland:

(i) all agreements of cooperative or concentrative nature between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Poland as a whole or in a substantial part thereof;

(iii) public aid in any form whatsoever except derogations allowed pursuant to the ECSC Treaty.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 65 and 66 of the Treaty establishing the ECSC, Article 85 of the EEC Treaty, and the rules on State aids, including secondary legislation.

3. The Association Council shall, within three years of the entry into force of the Agreement, adopt the necessary rules for the implementation of paragraphs 1 and 2.

4. The Parties recognize that during the first five years after the entry into force of the Agreement, and by derogation to paragraph 1(iii), Poland may exceptionally, as regards ECSC steel products, grant public aid for restructuring purposes provided that:

- the restructuring programme is linked to a global rationalization and reduction of capacity in Poland,
- it leads to the viability of the benefiting firms under normal market conditions at the end of the restructuring period, and
- the amount and intensity of such aid are strictly limited to what is absolutely necessary in order to restore such viability and are progressively reduced.

The Association Council shall, taking into account the economic situation of Poland, decide whether the period of five years could be extended.

5. Each Party shall ensure transparency in the area of public aid by a full and continuous exchange of information to the other Party, including amount, intensity and purpose of the aid and detailed restructuring plan.

6. If the Community or Poland considers that a particular practice is incompatible with the terms of paragraph 1 as amended by paragraph 4, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause prejudice to the interests of the other Party or material injury to its domestic industry,

the affected Party may take appropriate measures if no solution is found within 30 days through consultation. Such consultation shall be held in 30 days.

In the case of practices incompatible with paragraph 1(iii), such appropriate measures may only cover measures adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

[...]

JOINT DECLARATIONS

[...]

11. Article 63

1. The Association Council shall establish appropriate measures to ensure that all agreements covered by Article 63(1) of the Agreement and affecting trade between the Contracting Parties and which were concluded before the entry into force of the Agreement will be dealt with in a manner similar to what is provided in Article 7 of Council Regulation (EEC) No 17/62.

2. The Parties shall not make improper use of provisions on professional secrecy to prevent the disclosure of information in the field of competition.

3. Parties may request the Association Council at a later stage, and after the adoption of the implementing rules referred to in Article 63(3), to examine to what extent and under which conditions certain competition rules may be directly applicable, taking into account the progress made in the integration process between the Community and Poland.

12. Article 63(2)

When applying the criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty, the notion of affectation of trade between Member States defined in such Articles shall be replaced by the notion of affectation of trade between the Community and Poland.

[...]

DECLARATION BY THE EUROPEAN COMMUNITY

[...]

2. Article 8(4) of Protocol 2 on ECSC products

It is understood that the possibility of an exceptional extension of the five-year period is strictly limited to the particular case of Poland and does not impair the position of the Community in relation to other cases nor prejudge international commitments. The possible derogation provided for in paragraph 4 takes into account the particular difficulties of Poland in restructuring the steel sector and the fact that this process has been launched very recently.

[...]

LETTER FROM THE POLISH GOVERNMENT TO THE COMMUNITY CONCERNING PROTOCOL 2

The Government of Poland declares that it will not invoke the provisions of Protocol 2 on ECSC products, in particular Article 8, so as not to call into question the compatibility with this Protocol of the agreements made by the Community coal industry with the electricity companies and the steel industry to secure the sale of Community coal.

[...]

Implementing rules for the application of the competition provisions applicable to undertakings provided for in Article 33, paragraphs 1(i), 1(ii) and 2, of the Interim Agreement between the EC and Poland (Article 63 of the Europe Agreement between the EC and Poland) [1]

Article 1

General principle

Cases relating to agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition as well as to abuses of dominant position in the territories of the Community or of Poland as a whole or in a substantial part thereof, which may affect trade between the EC and Poland shall be settled according to the principles contained in Article 33, paragraphs 1 and 2, of the Interim Agreement and Article 63, paragraphs 1 and 2, of the Europe Agreement.

For this purpose, these cases are dealt with by the EC Commission (DG IV) on the EC side and the Polish Antimonopoly Office (AMO) on the Polish side.

The competences of the EC Commission and the AMO to deal with these cases shall follow from the existing rules of the respective legislations of the EC and Poland, including where these rules are applied to undertakings located outside the respective territory.

Both authorities shall settle the cases in accordance with their own substantive rules, and having regard to the provisions set out below. The relevant substantive rules of the authorities are the competition rules of the Treaty establishing the European Community as well as the ECSC Treaty including the competition-related secondary legislation, for the EC Commission and the Polish Antimonopoly Law for the AMO.

ECONOMIC ACTIVITIES UNDER THE EEC TREATY

Article 2

Competence of both competition authorities

Cases under Article 33 of the Interim Agreement and Article 63 of the Europe Agreement which may affect both the EC and the Polish market and which may fall under the competence of both competition authorities shall be dealt with by the EC Commission and the AMO, according to the rules under this Article.

[1] OJ L 208, 17.8.1996, p. 24.

2.1. Notification

2.1.1. The competition authorities shall notify to each other those cases they are dealing with, which, according to the general principle laid down in Article 1, appear to fall as well under the competence of the other authority.

2.1.2. This situation may arise in particular in cases concerning activities that:

- involve anticompetitive activities carried out in the other authority's territory;
- are relevant to enforcement activities of the other competition authority;
- involve remedies that would require or prohibit conduct in the other authority's territory.

2.1.3. Notification under this Article shall include sufficient information to permit an initial evaluation by the recipient Party of any effects on its interests. Copies of the notifications shall be submitted on a regular basis to the Joint Committee under the Interim Agreement, and to the Association Council under the Europe Agreement.

2.1.4. Notification shall be made in advance, as soon as possible and at the latest at the stage of an investigation still far enough in advance of the adoption of a settlement or decision, so as to facilitate comments or consultations and to enable the proceeding authority to take into account the other authority's views, as well as to take such remedial action it may find feasible under its own laws, in order to deal with the case in question.

2.2. Consultation and comity

Whenever the EC Commission or the AMO consider that anticompetitive activities carried out on the territory of the other authority are substantially affecting important interests of the respective Party, it may request consultation with the other authority, or it may request that the other Party's competition authority initiate any appropriate procedures with a view to taking remedial action under its legislation on anticompetitive activities. This is without prejudice to any action under the requesting Party's competition law and does not hamper the full freedom of ultimate decision of the authority so addressed.

2.3. Finding of an understanding

The competition authority so addressed shall give full and sympathetic consideration to such views and factual materials as may be provided by the requesting authority and, in particular, to the nature of the anticompetitive activities in question, the enterprises involved and the alleged harmful effects on the important interests of the requesting Party.

Without prejudice to any of their rights or obligations, the competition authorities involved in consultations under this Article shall endeavour to find a mutually acceptable solution in the light of the respective important interests involved.

Article 3

Competence of one competition authority only

3.1. Cases falling under the exclusive competence of one competition authority, in accordance with the principle laid down in Article 1, and which may affect important interests of the other Party, shall be handled having regards to the provisions set out in Article 2, and taking account of the principles set out below.

3.2. In particular, whenever one of the competition authorities undertakes an investigation or proceeding in a case which reveals to affect important interests of the other Party, the proceeding authority shall notify this case to the other authority, without formal request by the latter.

Article 4

Request for information

Whenever the competition authority of a Party becomes aware of the fact that a case, falling as well or only under the competence of the other authority, appears to affect important interests of the first Party, it may request information about this case from the proceeding authority.

The proceeding authority shall give sufficient information to the extent possible and at a stage of its proceedings far enough in advance of the adoption of a decision or settlement to enable the requesting authority's views to be taken into account.

Article 5

Secrecy and confidentiality of information

5.1. Having regard to Article 33, paragraph 7, of the Interim Agreement, and Article 63, paragraph 7, of the Europe Agreement, neither competition authority is required to provide information to the other authority if disclosure of that information to the requesting authority is prohibited by the law of the authority possessing the information, or would be incompatible with important interests of the Party whose authority is in possession of the information.

5.2. Each authority agrees to maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other authority.

Article 6

Block exemptions

In the application of Article 33 of the Interim Agreement and Article 73 of the Europe Agreement as provided for in Articles 2 and 3 above, the competition authorities shall ensure

that the principles contained in the block exemptions regulations in force in the EC shall be applied integrally. The AMO shall be informed of any procedure related to the adoption, abolition or modification of block exemptions by the EC.

Where such block exemption regulations encounter serious objections on the Polish side, and having regard to the approximation of legislation as foreseen in the Europe Agreement, consultations shall take place in the Joint Committee or Association Council, in accordance with the provisions contained in Article 9.

The same principles shall apply regarding other significant changes in the EC or Polish competition policies.

Article 7

Merger control

With regard to mergers which fall within Council Regulation (EEC) 4064/89 and which have a significant impact on the Polish economy, the AMO shall be entitled to express its views in the course of the procedure, taking into account the time-limits as provided for in the aforementioned Regulation. The EC Commission shall give due consideration to that view.

Article 8

Activities of minor importance

8.1. Anticompetitive activities whose effects on trade between the Parties or on competition are negligible do not fall under Article 33, paragraph 1, of the Interim Agreement and Article 63, paragraph 1, of the Europe Agreement, and, therefore, are not to be treated under Articles 2 to 6 of the present implementing rules.

8.2. Negligible effects in the sense of Article 8.1 are generally presumed to exist when:

- the aggregate annual turnover of the participating undertakings does not exceed ECU 200 million, and
- the goods or services which are the subject of the agreement, together with the participating undertakings' other goods or services which are considered by users to be equivalent in view of their characteristics, price and intended use, do not represent more than 5% of the total market for such goods or services in the area of the common market affected by the agreement, and the Polish market affected by the agreement.

Article 9

Joint Committee/Association Council

9.1. Whenever the procedures provided for in Articles 2 and 3 above do not lead to a mutually acceptable solution, as well as in other cases explicitly mentioned in the present implementing

rules, an exchange of views shall take place in the Joint Committee or Association Council at the request of one Party within three months following the request.

9.2 Following this exchange of views, or after expiration of the delay stated above, the Joint Committee or Association Council may make appropriate recommendations for the settlement of these cases, without prejudice to Article 33, paragraph 6, of the Interim Agreement and Article 63, paragraph 6, of the Europe Agreement. In these recommendations, the Joint Committee or Association Council may take into account eventual failure of the requested authority to give its point of view to the requesting authority within the delay provided for in Article 9.1.

9.3. These procedures in the Joint Committee or Association Council are without prejudice to any action under the respective competition laws in force in the territory of the Parties.

Article 10

Negative conflict of competence

When both the EC Commission and the AMO consider that neither of them is competent to handle a case on the basis of their respective legislation an exchange of views shall take place on request in the Joint Committee. The EC and Poland shall endeavour to find a mutually acceptable solution in the light of the respective important interests involved with the support of the Joint Committee or Association Council, which may take appropriate recommendations, without prejudice to Article 33, paragraph 6, of the Interim Agreement and Articles 63, paragraph 6, of the Europe Agreement, and the rights of individual EC Member States on the basis of their competition rules.

ECONOMIC ACTIVITIES UNDER THE ECSC TREATY

Article 11

Treaty establishing the European Coal and Steel Community (ECSC)

The provisions contained in Articles 1 to 10 above shall also apply with respect to the coal and steel sector as referred to in Protocol 2 to the Interim Agreement and to the Europe Agreement.

Article 12

Administrative assistance (languages)

The EC Commission and the AMO will provide for practical arrangements for mutual assistance or any other appropriate solution concerning in particular the question of translations.

2. Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part

Decision of the Council and the Commission of 13 December 1993

(93/742/Euratom, ECSC, EC) [1]

[...]

Article 32

The Member States and Hungary shall progressively adjust any State monopolies of a commercial character so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of Hungary. The Association Council will be informed about the measures adopted to implement this objective.

[...]

Article 62

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and Hungary:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Hungary as a whole or in a substantial part thereof;

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European Economic Community.

3. The Association Council shall, within three years of the entry into force of this Agreement, adopt by decision the necessary rules for the implementation of paragraphs 1 and 2.

[1] OJ L 347, 31.12.1993, p. 1.

4. (a) For the purposes of applying the provisions of paragraph 1(iii), the Parties recognize that during the first five years after the entry into force of this Agreement, any public aid granted by Hungary shall be assessed taking into account the fact that Hungary shall be regarded as an area identical to those areas of the Community described in Article 92(3)(a) of the Treaty establishing the European Economic Community. The Association Council shall, taking into account the economic situation of Hungary, decide whether that period should be extended by further periods of five years.

(b) Each Party shall ensure transparency in the area of public aid, *inter alia* by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

5. With regard to products referred to in Chapters II and III of Title III:

- the provisions of paragraph 1(iii) do not apply,
- any practices contrary to paragraph 1(i) should be assessed according to the criteria established by the Community on the basis of Articles 42 and 43 of the Treaty establishing the European Economic Community, and in particular of those established in Council Regulation No 26/1962.

6. If the Community or Hungary considers that a particular practice is incompatible with the terms of paragraph 1, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interest of the other Party or material injury to its domestic industry, including its services industry,

it may take appropriate measures after consultation within the Association Council or after 30 working days following referral for such consultation.

In the case of practices incompatible with paragraph 1(iii), such appropriate measures may, where the General Agreement on Tariffs and Trade applies thereto, only be adopted in accordance with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

7. Notwithstanding any provisions to the contrary adopted in accordance with paragraph 3, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

8. This Article shall not apply to the products covered by the Treaty establishing the European Coal and Steel Community which are the subject of Protocol 2.

[...]

Article 64

With regard to public undertakings, and undertakings to which special or exclusive rights have been granted, the Association Council shall ensure that as from the third year following the date of entry into force of this Agreement, the principles of the Treaty establishing the European Economic Community, in particular Article 90, and the principles of the concluding document of the April 1990 Bonn meeting of the Conference on Security and Cooperation in Europe, in particular entrepreneurs' freedom of decision, are upheld.

[...]

APPROXIMATION OF LAWS

Article 67

The Contracting Parties recognize that the major precondition for Hungary's economic integration into the Community is the approximation of that country's existing and future legislation to that of the Community. Hungary shall act to ensure that future legislation is compatible with Community legislation as far as possible.

Article 68

The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, protection of health and life of humans, animals and plants, food legislation, consumer protection including product liability, indirect taxation, technical rules and standards, transport and the environment.

[...]

Article 124

In the event that, pending the completion of the procedures necessary for the entry into force of this Agreement, the provisions of certain parts of this Agreement, in particular those relating to the movement of goods, are put into effect in 1992 by means of an Interim Agreement between the Community and Hungary, the Contracting Parties agree that, in such circumstances for the purposes of Title III, Articles 63 and 65 of this Agreement and Protocols 1, 2, 3, 4, 5, 6 and 7 hereto, the terms 'date of entry into force of this Agreement' shall mean:

- the date of entry into force of the Interim Agreement in relation to obligations taking effect on that date, and
- 1 January 1992 in relation to obligations taking effect after the date of entry into force by reference to the date of entry into force.

[...]

PROTOCOL 2 ON ECSC PRODUCTS COVERED BY THE ECSC TREATY

[...]

Article 8

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and Hungary:

(i) all agreements of cooperative or concentrative nature between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Hungary as a whole or in a substantial part thereof;

(iii) public aid in any form whatsoever except derogations allowed pursuant to the ECSC Treaty.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 65 and 66 of the Treaty establishing the ECSC, Article 85 of the EEC Treaty, and the rules on State aids, including the secondary legislation.

3. The Association Council shall, within three years of the entry into force of the Agreement, adopt the necessary rules for the implementation of paragraphs 1 and 2.

4. The Parties recognize that during the first five years after the entry into force of the Agreement, and by derogation to paragraph 1(iii), Hungary may exceptionally, as regards ECSC steel products, grant public aid for restructuring purposes leading to the viability of the benefiting firms and aiming at a global reduction of capacity in Hungary, provided that the amount and intensity of such aid are strictly limited to what is absolutely necessary in order to reach these goals and that they are progressively reduced.

5. Each Party shall ensure transparency in the area of public aid by a full and continuous exchange of information to the other Party, including amount, intensity and purpose of the aid and detailed restructuring plan.

6. If the Community or Hungary considers that a particular practice is incompatible with the terms of the first paragraph as amended by paragraph 4, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause prejudice to the interests of the other Party or material injury to its domestic industry,

the affected Party may take appropriate measures if no solution is found within 30 days through consultation. Such consultation shall be held in 30 days.

In the case of practices incompatible with paragraph 1(iii), such appropriate measures may only cover measures adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

[...]

JOINT DECLARATION

[...]

12. Article 62

The Parties shall not make improper use of provisions on professional secrecy to prevent the disclosure of information in the field of competition.

[...]

UNILATERAL DECLARATION

DECLARATION BY THE EUROPEAN COMMUNITY

[...]

2. Article 8(4) of Protocol 2 on ECSC products

It is understood that the possibility of an exceptional extension of the five-year period is strictly limited to the particular case of Hungary and does not impair the position of the Community in relation to other cases nor prejudge international commitments. The possible derogation foreseen in paragraph 4 takes into account the particular difficulties of Hungary in restructuring the steel sector and the fact that this process has been launched very recently.

[...]

LETTER FROM THE HUNGARIAN GOVERNMENT TO THE COMMUNITY CONCERNING PROTOCOL 2

The Government of Hungary declares that it will not invoke the provisions of Protocol 2 on ECSC products, in particular Article 8, so as not to call into question the compatibility with this Protocol of the agreements made by the Community coal industry with the electricity companies and the steel industry to secure the sale of Community coal.

Implementing rules for the application of the competition provisions applicable to undertakings provided for in Article 62 (1) (i), (1) (ii) and (2) of the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part [1]

Article 1

General principle

Cases relating to agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition as well as to abuses of a dominant position in the territories of the Community or of Hungary as a whole or in a substantial part thereof, which may affect trade between the Community and Hungary, shall be settled according to the principles contained in Article 62 (1) and (2) of the Europe Agreement.

For this purpose, these cases are dealt with by the Commission of the European Communities (DG IV) on the Community side and the Office of Economic Competition (GVH) on the Hungarian side.

The competences of the Commission and the GVH to deal with these cases shall flow from the existing rules of the respective legislation of the Community and Hungary, including where these rules are applied to undertakings located outside the respective territory.

Both authorities shall settle the cases in accordance with their own substantive rules, and having regard to the provisions set out below. The relevant substantive rules of the authorities are the competition rules of the Treaty establishing the European Community as well as the Treaty establishing the European Coal and Steel Community, including the competition-related secondary legislation, for the Commission, and the Hungarian Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices, for the GVH.

ECONOMIC ACTIVITIES UNDER THE EC TREATY

Article 2

Competence of both competition authorities

Cases under Article 62 of the Europe Agreement which may affect both the Community and the Hungarian market and which may fall under the competence of both competition authorities shall be dealt with by the Commission and the GVH, according to the rules under this Article.

[1] OJ L 295, 20.11.1996, p. 30.

2.1. Notification

2.1.1. The competition authorities shall notify to each other those cases they are dealing with, which, according to the general principle laid down in Article 1, appear also to fall under the competence of the other authority.

2.1.2. This situation may arise in particular in cases concerning activities that:

- involve anticompetitive activities carried out in the other authority's territory;
- are relevant to enforcement activities of the other competition authority,
- involve remedies that would require or prohibit particular conduct in the other authority's territory.

2.1.3. Notification under this Article shall include sufficient information to permit an initial evaluation by the recipient party of any effects on its interests. Copies of the notifications shall be submitted on a regular basis to the Association Council.

2.1.4. Notification shall be made in advance, as soon as possible and at the latest at the stage of an investigation still far enough in advance of the adoption of a settlement or decision, so as to facilitate comments or consultations and to enable the proceeding authority to take into account the other authority's views, as well as to take such remedial action it may find feasible under its own laws, in order to deal with the case in question.

2.2. Consultation and comity

Whenever the Commission or the GVH consider that anticompetitive activities carried out on the territory of the other authority are substantially affecting important interests of the respective Party, it may request consultation with the other authority, or it may request that the other party's competition authority initiate any appropriate procedures with a view to taking remedial action under its legislation on anticompetitive activities. This is without prejudice to any action under the requesting party's competition law and does not hamper the full freedom of ultimate decision of the authority so addressed.

2.3. Finding of an understanding

The competition authority so addressed shall give full and sympathetic consideration to such views and factual materials as may be provided by the requesting authority and, in particular, to the nature of the anticompetitive activities in question, the enterprises involved and the alleged harmful effects on the important interests of the requesting Party.

Without prejudice to any of their rights or obligations, the competition authorities involved in consultations under this Article shall endeavour to find a mutually acceptable solution in the light of the respective important interests involved.

Article 3

Competence of one competition authority only

3.1. Cases falling under the exclusive competence of one competition authority, in accordance with the principle laid down in Article 1, and which may affect important interests of the other Party, shall be handled having regard to the provisions set out in Article 2, and taking account of the principles set out below.

3.2. In particular, whenever one of the competition authorities undertakes an investigation or proceeding in a case which is found to affect important interests of the other Party, the proceeding authority shall notify this case to the other authority, without formal request by the latter.

Article 4

Request for information

Whenever the competition authority of Party becomes aware of the fact that a case, falling also or only under the competence of the other authority, appears to affect important interests of the first Party, it may request information about this case from the proceeding authority.

The proceeding authority shall give sufficient information to the extent possible and at a stage of its proceedings far enough in advance of the adoption of a decision or settlement to enable the requesting authority's views to be taken into account.

Article 5

Secrecy and confidentiality of information

5.1. Having regard to Article 62 (7) of the Europe Agreement, neither competition authority is required to provide information to the other authority if disclosure of that information to the requesting authority is prohibited by the law of the authority possessing the information, or would be incompatible with important interests of the Party whose authority is in possession of the information.

5.2. Each authority agrees to maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other authority.

Article 6

Block exemptions

In the application of Article 62 (7) of the Europe Agreement as provided for in Articles 2 and 3 of these Implementing Rules, the competition authorities shall ensure that the principles

contained in the Block Exemption Regulations in force in the Community are applied in full. The GVH shall be informed of any procedure related to the adoption, abolition or modification of Block Exemptions by the Community.

Where such Block Exemption Regulations encounter serious objections on the Hungarian side, and having regard to the approximation of legislation as provided for in the Europe Agreement, consultations shall take place in the Association Council, in accordance with the provisions contained in Article 9 of these Implementing Rules.

The same principles shall apply regarding other significant changes in the Community or Hungarian competition policies.

Article 7

Merger control

With regard to mergers which fall within Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings[1] and have significant impact on the Hungarian economy, the GVH shall be entitled to express its view in the course of the procedure taking into account the time limits as provided for in the aforementioned Regulation. The Commission shall give due consideration to that view, without prejudice to any action under the Parties' respective competition laws.

Article 8

Activities of minor importance

8.1. Anticompetitive activities whose effects on trade between the Parties or on competition are negligible do not fall under Article 62 (1) of the Europe Agreement and therefore are not to be treated under the Articles 2 to 6 of these Implementing Rules.

8.2. Negligible effects within the meaning of 8.1. are generally presumed to exist when

- the aggregate annual turnover of the participating undertaking does not exceed ECU 200 million, and
- the goods or services which are the subject of the agreement together with the participating undertakings' other goods or services which are considered by users to be equivalent in view of their characteristics, price and intended use, do not represent more than 5% of the total market for such goods or services in the area of the common market affected by the agreement, and the Hungarian market affected by the agreement, respective.

[1] OJ L 395, 30.12.1989, p. 1. Regulation as last amended by Regulation (EEC) No 2367/90 (OJ L 219, 14.8.1990, p. 5).

Article 9

Association Council

9.1. Whenever the procedures provided for in Articles 2 and 3 above do not lead to a mutually acceptable solution, as well as in other cases explicitly mentioned in these Implementing Rules, an exchange of views shall take place in the Association Council at the request of one Party within three months following the request.

9.2. Following this exchange of views, or after expiry of the period referred to in paragraph 9.1, the Association Council may make appropriate recommendations for the settlement of these cases, without prejudice to Article 62 (6) of the Europe Agreement. In these recommendations, the Association Council may take into account eventual failure of the requested authority to give its point of view to the requesting authority within the period referred to in 9.1.

9.3. These procedures in the Association Council are without prejudice to any action under the respective competition laws in force in the territory of the Parties.

Article 10

Negative conflict of competence

When both the Commission and the GVH consider that neither of them is competent to handle a case on the basis of their respective legislation, an exchange of views shall take place on request in the Association Council. The Community and Hungary shall endeavour to find a mutually acceptable solution in the light of the respective important interests involved with the support of the Association Council, which may make appropriate recommendations, without prejudice to Article 62 (6) of the Europe Agreement, and the rights of individual Member States of the European Communities on the basis of their competition rules.

ECONOMIC ACTIVITIES UNDER THE ECSC TREATY

Article 11

Treaty establishing the European Coal and Steel Community (ECSC)

The provisions contained in Articles 1 to 6 and 8 to 10 above shall also apply with respect to the coal and steel sector as referred to in Protocol 2 to the Europe Agreement.

Article 12

Administrative assistance (languages)

The Commission and the GVH shall provide for practical arrangements for mutual assistance or any other appropriate solution concerning in particular the question of translations.

3. Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part

Decision of the Council and the Commission of 19 December 1994

(94/910/ECSC, EC, Euratom) [1]

[...]

Article 33

The Member States and the Czech Republic shall progressively adjust any State monopolies of a commercial character so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of the Czech Republic. The Association Council will be informed about the measures adopted to implement this objective.

[...]

Article 64

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and the Czech Republic:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of the Czech Republic as a whole or in a substantial part thereof;

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European Economic Community.

[1] OJ L 360, 31.12.1994, p. 1.

3. The Association Council shall, within three years of the entry into force of this Agreement, adopt the necessary rules for the implementation of paragraphs 1 and 2. Until the implementing rules are adopted, practices incompatible with paragraph 1 shall be dealt with by the Contracting Parties on their respective territories according to their respective legislations. This is without prejudice to paragraph 6.

4. (a) For the purposes of applying the provisions of paragraph 1(iii), the Parties recognize that during the first five years after the entry into force of this Agreement, any public aid granted by the Czech Republic shall be assessed taking into account the fact that the Czech Republic shall be regarded as an area identical to those areas of the Community described in Article 92(3)(a) of the Treaty establishing the European Economic Community. The Association Council shall, taking into account the economic situation of the Czech Republic, decide whether that period should be extended by further periods of five years.

(b) Each Party shall ensure transparency in the area of public aid, *inter alia* by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

5. With regard to products referred to in Chapters II and III of Title III:

- the provisions of paragraph 1(iii) do not apply,
- any practices contrary to paragraph 1(i) should be assessed according to the criteria established by the Community on the basis of Articles 42 and 43 of the Treaty establishing the European Economic Community, and in particular of those established in Council Regulation No 26/62.

6. If the Community or the Czech Republic considers that a particular practice is incompatible with the terms of paragraph 1, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interest of the other Party or material injury to its domestic industry, including its services industry,

it may take appropriate measures after consultation within the Association Council or after 30 working days following referral for such consultation.

In the case of practices incompatible with paragraph 1(iii) of this Article, such appropriate measures may, where the General Agreement on Tariffs and Trade applies thereto, only be adopted in accordance with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

7. Notwithstanding any provisions to the contrary adopted in accordance with paragraph 3, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

8. This Article shall not apply to the products covered by the Treaty establishing the European Coal and Steel Community which are the subject of Protocol 2.

[...]

Article 66

With regard to public undertakings, and undertakings to which special or exclusive rights have been granted, the Association Council shall ensure that as from the third year following the date of entry into force of this Agreement, the principles of the Treaty establishing the European Economic Community, in particular Article 90, and the principles of the concluding document of the April 1990 Bonn meeting of the Conference on Security and Cooperation in Europe, in particular entrepreneurs' freedom of decision, are upheld.

[...]

APPROXIMATION OF LAWS

Article 69

The Contracting Parties recognize that the major precondition for the Czech Republic's economic integration into the Community is the approximation of the Czech Republic's existing and future legislation to that of the Community. The Czech Republic shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community.

Article 70

The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, protection of health and life of humans, animals and plants, consumer protection, indirect taxation, technical rules and standards, nuclear law and regulation, transport and the environment.

[...]

Article 124

1. In view of the fact that provisions equivalent to those of certain parts of the Agreement and thus of the Europe Agreement signed between the Community and its Member States on 16 December 1991 and the Czech and Slovak Federal Republic, in particular those relating

to the movements of goods, were put into effect since 1 March 1992 by means of an Interim Agreement on trade and trade-related measures between the Community and the Czech and Slovak Federal Republic signed on 16 December 1991, as amended by the supplementary Protocols between the Community and each of the Czech Republic and the Slovak Republic, the Parties agree that in such circumstances for the purposes of Title III, Articles 64, 66 and 67 of the Agreement and Protocols 1 (with the exception of its Article 3), 2, 3, 4, 5 and 6, 'date of entry into force of the Agreement' shall mean:

- 1 March 1992 in relation to obligations taking effect on the date of entry into force of the Agreement, and
- 1 January 1992 in relation to obligations taking effect after the date of entry into force by reference to the date of entry into force.

2. In the case of entry into force of the Agreement after 1 January in any year, the provisions of Protocol 7 shall apply.

[...]

PROTOCOL 2 ON ECSC PRODUCTS TO THE EUROPE AGREEMENT ('THE AGREEMENT')

[...]

Article 8

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and the Czech Republic:

(i) all agreements of cooperative or concentrative nature between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of the Slovak Republic as a whole or in a substantial part thereof;

(iii) public aid in any form whatsoever except derogations allowed pursuant to the ECSC Treaty.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 65 and 66 of the Treaty establishing the ECSC, Article 85 of the EEC Treaty, and the rules on State aids, including secondary legislation.

3. The Association Council shall, within three years of the entry into force of the Agreement, adopt the necessary rules for the implementation of paragraphs 1 and 2.

4. The Contracting Parties recognize that during the first five years after the entry into force of the Agreement, and by derogation to paragraph 1(iii), the Czech Republic may exceptionally, as regards ECSC steel products, grant public aid for restructuring purposes provided that:

- it leads to the viability of the benefiting firms under normal market conditions at the end of the restructuring period, and
- the amount and intensity of such aid are strictly limited to what is absolutely necessary in order to restore such viability and are progressively reduced,
- the restructuring programme is linked to a global rationalization and reduction of capacity in the Czech Republic.

5. Each Party shall ensure transparency in the area of public aid by a full and continuous exchange of information to the other Party, including amount, intensity and purpose of the aid and detailed restructuring plan.

6. If the Community or the Czech Republic considers that a particular practice is incompatible with the terms of paragraph 1 as amended by paragraph 4, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause prejudice to the interests of the other Party or material injury to its domestic industry,

the affected Party may take appropriate measures if no solution is found through consultation which shall last a maximum of 30 working days. Such consultation shall be held in 30 days from the date the official request is introduced.

In the case of practices incompatible with paragraph 1(iii), such appropriate measures may only cover measures adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

[...]

JOINT DECLARATION

[...]

10. Article 64

The Parties shall not make improper use of provisions on professional secrecy to prevent the disclosure of information in the field of competition.

[...]

DECLARATION BY THE EUROPEAN COMMUNITY

[...]

3. Article 8(4) of Protocol 2 on ECSC products

It is understood that the possibility of an exceptional extension of the five-year period is strictly limited to the particular case of the Czech Republic and does not impair the position of the Community in relation to other cases nor prejudge international commitments. The possible derogation foreseen in paragraph 4 takes into account the particular difficulties of the Czech Republic in restructuring the steel sector and the fact that this process has been launched very recently.

LETTER FROM THE GOVERNMENT OF THE CZECH REPUBLIC TO THE COMMUNITY CONCERNING PROTOCOL 2

The Government of the Czech Republic declares that it will not invoke the provisions of Protocol 2 on ECSC products, in particular Article 8, so as not to call into question the compatibility with this Protocol of the agreements made by the Community coal industry with the electricity companies and the steel industry to secure the sale of Community coal.

Implementing rules for the application of the competition provisions referred to in Article 64 (1) (i), (1) (ii) and (2) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, and in Article 8 (1) (i), (1) (ii) and (2) of Protocol 2 on ECSC products to that agreement [1]

Article 1

General principle

Cases relating to agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition as well as to abuses of a dominant position in the territories of the Community or of the Czech Republic as a whole or in a substantial part thereof, which may affect trade between the Community and the Czech Republic, shall be settled according to the principles contained in Article 64 (1) and (2) of the Europe Agreement.

For this purpose, these cases are dealt with by the Commission of the European Communities (DG IV) on the Community side and the Czech Ministry for Economic Competition (MEC) on the Czech side.

The competences of the Commission and the MEC to deal with these cases shall flow from the existing rules of the respective legislation of the Community and the Czech Republic, including where these rules are applied to undertakings located outside the respective territory.

Both authorities shall settle the cases in accordance with their own substantive rules, and having regard to the provisions set out below. The relevant substantive rules of the authorities are the competition rules of the Treaty establishing the European Community as well as the Treaty establishing the European Coal and Steel Community, including the competition-related secondary legislation, for the Commission, and the Czech Competition Protection Act for the MEC.

ECONOMIC ACTIVITIES UNDER THE EC TREATY

Article 2

Competence of both competition authorities

Cases under Article 64 of the Europe Agreement which may affect both the Community and the Czech market and which may fall under the competence of both competition authorities shall be dealt with by the Commission and the MEC, according to the rules under this Article.

[1] OJ L 31, 9.2.1996, p. 22.

2.1. Notification

2.1.1. The competition authorities shall notify to each other those cases they are dealing with, which, according to the general principle laid down in Article 1, appear also to fall under the competence of the other authority.

2.1.2. This situation may arise in particular in cases concerning activities that:

- involve anticompetitive activities carried out in the other authority's territory,
- are relevant to enforcement activities of the other competition authority,
- involve remedies that would require or prohibit conduct in the other authority's territory.

2.1.3. Notification under this Article shall include sufficient information to permit an initial evaluation by the recipient party of any effects on its interests. Copies of the notifications shall be submitted on a regular basis to the Association Council under the Europe Agreement.

2.1.4. Notification shall be made in advance, as soon as possible and at the latest at the stage of an investigation still far enough in advance of the adoption of a settlement or decision, so as to facilitate comments or consultations and to enable the proceeding authority to take into account the other authority's views, as well as to take such remedial action it may find feasible under its own laws, in order to deal with the case in question.

2.2. Consultancy and comity

Whenever the Commission or the MEC considers that anticompetitive activities carried out on the territory of the other authority are substantially affecting important interests of the respective Party, it may request consultation with the other authority, or it may request that the other Party's competition authority initiate any appropriate procedures with a view to taking remedial action under its legislation on anticompetitive activities. This is without prejudice to any action under the requesting Party's competition law and does not hamper the full freedom of ultimate decision of the authority so addressed.

2.3. Finding of an understanding

The competition authority so addressed shall give full and sympathetic consideration to such views and factual materials as may be provided by the requesting authority and, in particular, to the nature of the anticompetitive activities in question, the enterprises involved and the alleged harmful effects on the important interests of the requesting Party.

Without prejudice to any of their rights or obligations, the competition authorities involved in consultations under this Article shall endeavour to find a mutually acceptable solution in the light of the respective important interests involved.

Article 3

Competence of one competition authority only

3.1. Cases falling under the exclusive competence of one competition authority, in accordance with the principle laid down in Article 1, and which may affect important interests of the other Party, shall be handled having regard to the provisions set out in Article 2, and taking account of the principles set out below.

3.2. In particular, whenever one of the competition authorities undertakes an investigation nor proceeding in a case which is found to affect important interests of the other Party, the proceeding authority shall notify this case to the other authority, without formal request by the latter.

Article 4

Request for information

Whenever the competition authority of a Party becomes aware of the fact that a case, falling also or only under the competence of the other authority, appears to affect important interests of the first Party, it may request information about this case from the proceeding authority.

The proceeding authority shall give sufficient information to the extent possible and at a stage of its proceedings far enough in advance of the adoption of a decision or settlement to enable the requesting authority's views to be taken into account.

Article 5

Secrecy and confidentiality of information

5.1. Having regard to Article 64 (7) of the Europe Agreement, neither competition authority is required to provide information to the other authority if disclosure of that information to the requesting authority is prohibited by the law of the authority possessing the information, or would be incompatible with important interests of the Party whose authority is in possession of the information.

5.2. Each authority agrees to maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other authority.

Article 6

Block exemptions

In the application of Article 64 of the Europe Agreement as provided for in Articles 2 and 3 of these implementing rules, the competition authorities shall ensure that the principles

contained in the block exemption regulations in force in the Community are applied in full. The MEC shall be informed of any procedure related to the adoption, abolition or modification of block exemptions by the Community.

Where such block exemption regulations encounter serious objections on the Czech side, and having regard to the approximation of legislation as provided for in the Europe Agreement, consultations shall take place in the Association Council, in accordance with the provisions contained in Article 9 of these implementing rules.

The same principles shall apply regarding other significant changes in the Community or Czech competition policies.

Article 7

Merger control

With regard to mergers which fall within Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings and have significant impact on the Czech economy, the MEC shall be entitled to express its view in the course of the procedure taking into account the time limits as provided for in the abovementioned Regulation. The Commission shall give due consideration to that view, without prejudice to any action under the Parties' respective competition laws.

Article 8

Activities of minor importance

8.1. Anticompetitive activities whose effects on trade between the Parties or on competition are negligible do not fall under Article 64 (1) of the Europe Agreement and therefore are not to be treated under Articles 2 to 6 of these implementing rules.

8.2. Negligible effects within the meaning of paragraph 8 (1) are generally presumed to exist when

- the aggregate annual turnover of the participating undertakings does not exceed ECU 200 million, and
- the goods or services which are the subject of the agreement together with the participating undertakings' other goods or services which are considered by users to be equivalent in view of their characteristics, price and intended use, do not represent more than 5% of the total market for such goods or services in the area of the common market affected by the agreement, and the Czech market affected by the agreement, respectively.

Article 9

Association Council

9.1. Whenever the procedures provided for in Articles 2 and 3 above do not lead to a mutually acceptable solution, as well as in other cases explicitly mentioned in these implementing rules, an exchange of views shall take place in the Association Council at the request of one Party within three months, following the request.

9.2. Following this exchange of views, or after expiry of the period referred to in paragraph 9.1, the Association Council may take appropriate recommendations for the settlement of these cases, without prejudice to Article 64 (6) of the Europe Agreement. In these recommendations, the Association Council may take into account any failure of the requested authority to give its point of view to the requesting authority within the period referred to in paragraph 9.1.

9.3. These procedures in the Association Council are without prejudice to any action under the respective competition laws in force in the territory of the Parties.

Article 10

Negative conflict of competence

When both the Commission and the MEC consider that neither of them is competent to handle a case on the basis of their respective legislation, an exchange of views shall take place on request in the Association Council. The Community and the Czech Republic shall endeavour to find a mutually acceptable solution in the light of the respective important interests involved with the support of the Association Council, which may make appropriate recommendations, without prejudice to Article 64 (6) of the Europe Agreement, and the rights of individual Member States of the European Communities on the basis of their competition rules.

ECONOMIC ACTIVITIES UNDER THE ECSC TREATY

Article 11

Treaty establishing the European Coal and Steel Community (ECSC)

The provisions contained in Articles 1 to 6 and 8 to 10 above shall also apply with respect to the coal and steel sector as referred to in Protocol 2 to the Europe Agreement.

Article 12

Administrative assistance (languages)

The Commission and the MEC shall provide for practical arrangements for mutual assistance or any other appropriate solution concerning in particular the question of translations.

4. Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part

Decision of the Council and the Commission of 19 December 1994

(94/909/ECSC, EC, Euratom) [1]

[...]

Article 33

The Member States and the Slovak Republic shall progressively adjust any State monopolies of a commercial character so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of the Slovak Republic. The Association Council will be informed about the measures adopted to implement this objective.

[...]

Article 64

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and the Slovak Republic:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of the Slovak Republic as a whole or in a substantial part thereof;

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European Economic Community.

[1] OJ L 359, 31.12.1994, p. 1.

3. The Association Council shall, within three years of the entry into force of this Agreement, adopt the necessary rules for the implementation of paragraphs 1 and 2. Until the implementing rules are adopted, practices incompatible with paragraph 1 shall be dealt with by the Contracting Parties on their respective territories according to their respective legislations. This is without prejudice to paragraph 6.

4. (a) For the purposes of applying the provisions of paragraph 1(iii), the Parties recognize that during the first five years after the entry into force of this Agreement, any public aid granted by the Slovak Republic shall be assessed taking into account the fact that the Slovak Republic shall be regarded as an area identical to those areas of the Community described in Article 92(3)(a) of the Treaty establishing the European Economic Community. The Association Council shall, taking into account the economic situation of the Slovak Republic, decide whether that period should be extended by further periods of five years.

(b) Each Party shall ensure transparency in the area of public aid, *inter alia* by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

5. With regard to products referred to in Chapters II and III of Title III:

- the provision of paragraph 1(iii) does not apply,
- any practices contrary to paragraph 1(i) should be assessed according to the criteria established by the Community on the basis of Articles 42 and 43 of the Treaty establishing the European Economic Community, and in particular of those established in Council Regulation No 26/62.

6. If the Community or the Slovak Republic considers that a particular practice is incompatible with the terms of paragraph 1, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interest of the other Party or material injury to its domestic industry, including its services industry,

it may take appropriate measures after consultation within the Association Council or after 30 working days following referral for such consultation.

In the case of practices incompatible with paragraph 1(iii), such appropriate measures may, where the General Agreement on Tariffs and Trade applies thereto, only be adopted in accordance with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

7. Notwithstanding any provisions to the contrary adopted in accordance with paragraph 3, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

8. This Article shall not apply to the products covered by the Treaty establishing the European Coal and Steel Community which are the subject of Protocol 2.

[...]

Article 66

With regard to public undertakings, and undertakings to which special or exclusive rights have been granted, the Association Council shall ensure that as from the third year following the date of entry into force of this Agreement, the principles of the Treaty establishing the European Economic Community, in particular Article 90, and the principles of the concluding document of the April 1990 Bonn meeting of the Conference on Security and Cooperation in Europe, in particular entrepreneurs' freedom of decision, are upheld.

[...]

APPROXIMATION OF LAWS

Article 69

The Contracting Parties recognize that the major precondition for the Slovak Republic's economic integration into the Community is the approximation of Slovak Republic's existing and future legislation to that of the Community. The Slovak Republic shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community.

Article 70

The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, protection of health and life of humans, animals and plants, consumer protection, indirect taxation, technical rules and standards, nuclear law and regulation, transport and the environment.

[...]

Article 124

1. In view of the fact that provisions equivalent to those of certain parts of the Agreement and thus of the Europe Agreement signed between the Community and its Member States

on 16 December 1991 and the Czech and Slovak Federal Republic, in particular those relating to the movements of goods, were put into effect since 1 March 1992 by means of an Interim Agreement on trade and trade-related measures between the Community and the Czech and Slovak Federal Republic signed on 16 December 1991, as amended by the supplementary Protocols between the Community and each of the Slovak Republic and the Czech Republic, the Parties agree that in such circumstances for the purposes of Title III, Articles 64, 66 and 67 of the Agreement and Protocols 1 (with the exception of its Article 3), 2, 3, 4, 5 and 6, the term 'date of entry into force of the Agreement' shall mean:

- 1 March 1992 in relation to obligations taking effect on the date of entry into force of the Agreement, and
- 1 January 1992 in relation to obligations taking effect after the date of entry into force by reference to the date of entry into force.

2. In the case of entry into force of the Agreement after 1 January in any year, the provisions of Protocol 7 shall apply.

[...]

PROTOCOL 2 ON ECSC PRODUCTS TO THE EUROPE AGREEMENT ('THE AGREEMENT')

[...]

Article 8

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and the Slovak Republic:

(i) all agreements of cooperative or concentrative nature between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of the Slovak Republic as a whole or in a substantial part thereof;

(iii) public aid in any form whatsoever except derogations allowed pursuant to the ECSC Treaty.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 65 and 66 of the Treaty establishing the ECSC, Article 85 of the EEC Treaty, and the rules on State aids, including secondary legislation.

3. The Association Council shall, within three years of the entry into force of the Agreement, adopt the necessary rules for the implementation of paragraphs 1 and 2.

4. The Contracting Parties recognize that during the first five years after the entry into force of the Agreement, and by derogation to paragraph 1(iii), the Slovak Republic may exceptionally, as regards ECSC steel products, grant public aid for restructuring purposes provided that:

- it leads to the viability of the benefiting firms under normal market conditions at the end of the restructuring period, and
- the amount and intensity of such aid are strictly limited to what is absolutely necessary in order to restore such viability and are progressively reduced,
- the restructuring programme is linked to a global rationalization and reduction of capacity in the Slovak Republic.

5. Each Party shall ensure transparency in the area of public aid by a full and continuous exchange of information to the other Party, including amount, intensity and purpose of the aid and detailed restructuring plan.

6. If the Community or the Slovak Republic considers that a particular practice is incompatible with the terms of paragraph 1 as amended by paragraph 4, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause prejudice to the interests of the other Party or material injury to its domestic industry,

the affected Party may take appropriate measures if no solution is found through consultation which shall last a maximum of 30 working days. Such consultation shall be held in 30 days from the date the official request is introduced.

In the case of practices incompatible with paragraph 1(iii), such appropriate measures may only cover measures adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

[...]

JOINT DECLARATION

[...]

10. Article 64

The Parties shall not make improper use of provisions on professional secrecy to prevent the disclosure of information in the field of competition.

[...]

DECLARATION BY THE EUROPEAN COMMUNITY

[...]

3. Article 8(4) of Protocol 2 on ECSC products

It is understood that the possibility of an exceptional extension of the five-year period is strictly limited to the particular case of the Slovak Republic and does not impair the position of the Community in relation to other cases nor prejudge international commitments. The possible derogation foreseen in paragraph 4 takes into account the particular difficulties of the Slovak Republic in restructuring the steel sector and the fact that this process has been launched very recently.

LETTER FROM THE GOVERNMENT OF THE SLOVAK REPUBLIC TO THE COMMUNITY CONCERNING PROTOCOL 2

The Government of the Slovak Republic declares that it will not invoke the provisions of Protocol 2 on ECSC products, in particular Article 8, so as not to call into question the compatibility with this Protocol of the agreements made by the Community coal industry with the electricity companies and the steel industry to secure the sale of Community coal.

Implementing rules for the application of the competition provisions referred to in Article 64 (1) (i), (1) (ii) and (2) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, and in Article 8 (1) (i), (1) (ii) and (2) of Protocol No 2 on ECSC products to that agreement [1]

Article 1

General principle

Cases relating to agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition as well as to abuses of a dominant position in the territories of the Community or of the Slovak Republic as a whole or in a substantial part thereof, which may affect trade between the Community and the Slovak Republic, shall be settled according to the principles contained in Article 64 (1) and (2) of the Europe Agreement.

For this purpose, these cases are dealt with by the Commission of the European Communities (DG IV) on the Community side and the Antimonopoly Office of the Slovak Republic (AMO) on the Slovak side.

The competences of the Commission and the AMO to deal with these cases shall flow from the existing rules of the respective legislation of the Community and the Slovak Republic, including where these rules are applied to undertakings located outside the respective territory.

Both authorities shall settle the cases in accordance with their own substantive rules, and having regard to the provisions set out below. The relevant substantive rules of the authorities are the competition rules of the Treaty establishing the European Community as well as the Treaty establishing the European Coal and Steel Community, including the competition-related secondary legislation, for the Commission, and the Slovak Act on the Protection of Economic Competition for the AMO.

ECONOMIC ACTIVITIES UNDER THE EC TREATY

Article 2

Competence of both competition authorities

Cases under Article 64 of the Europe Agreement which may affect both the Community and the Slovak market and which may fall under the competence of both competition authorities shall be dealt with by the Commission and the AMO, according to the rules under this Article.

[1] OJ L 295, 20.11.1996, p. 25.

2.1. Notification

2.1.1. The competition authorities shall notify to each other those cases they are dealing with, which, according to the general principle laid down in Article 1, appear also to fall under the competence of the other authority.

2.1.2. This situation may arise in particular in cases concerning activities that:

- involve anticompetitive activities carried out in the other authority's territory,
- are relevant to enforcement activities of the other competition authority,
- involve remedies that would require or prohibit conduct in the other authority's territory.

2.1.3. Notification under this Article shall include sufficient information to permit an initial evaluation by the recipient party of any effects on its interests. Copies of the notifications shall be submitted on a regular basis to the Association Council under the Europe Agreement.

2.1.4. Notification shall be made in advance, as soon as possible and at the latest at the stage of an investigation still far enough in advance of the adoption of a settlement or decision, so as to facilitate comments or consultations and to enable the proceeding authority to take into account the other authority's views, as well as to take such remedial action it may find feasible under its own laws, in order to deal with the case in question.

2.2. Consultation and comity

Whenever the Commission or the AMO consider that anticompetitive activities carried out on the territory of the other authority are substantially affecting important interests of the respective Party, it may request consultation with the other authority, or it may request that the other Party's competition authority initiate any appropriate procedures with a view to taking remedial action under its legislation on anticompetitive activities. This is without prejudice to any action under the requesting Party's competition law and does not hamper the full freedom of ultimate decision of the authority so addressed.

2.3. Finding of an understanding

The competition authority so addressed shall give full and sympathetic consideration to such views and factual materials as may be provided by the requesting authority and, in particular, to the nature of the anticompetitive activities in question, the enterprises involved and the alleged harmful effects on the important interests of the requesting Party.

Without prejudice to any of their rights or obligations, the competition authorities involved in consultations under this Article shall endeavour to find a mutually acceptable solution in the light of the respective important interests involved.

Article 3

Competence of one competition authority only

3.1. Cases falling under the exclusive competence of one competition authority, in accordance with the principle laid down in Article 1, and which may affect important interests of the other Party, shall be handled having regard to the provisions set out in Article 2, and taking account of the principles set out below.

3.2. In particular, whenever one of the competition authorities undertakes an investigation or proceeding in a case which is found to affect important interests of the other Party, the proceeding authority shall notify this case to the other authority, without formal request by the latter.

Article 4

Request for information

Whenever the competition authority of a Party becomes aware of the fact that a case, falling also or only under the competence of the other authority, appears to affect important interests of the first Party, it may request information about this case from the proceeding authority.

The proceeding authority shall give sufficient information to the extent possible and at a stage of its proceedings far enough in advance of the adoption of a decision or settlement to enable the requesting authority's views to be taken into account.

Article 5

Secrecy and confidentiality of information

5.1. Having regard to Article 64 (7) of the Europe Agreement, neither competition authority is required to provide information to the other authority if disclosure of that information to the requesting authority is prohibited by the law of the authority possessing the information, or would be incompatible with important interests of the party whose authority is in possession of the information.

5.2. Each authority agrees to maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other authority.

Article 6

Block exemptions

In the application of Article 64 of the Europe Agreement as provided for in Articles 2 and 3 of these implementing Rules, the competition authorities shall ensure that the principles

contained in the block exemption Regulations in force in the Community are applied in full. The AMO shall be informed of any procedure related to the adoption, abolition or modification of block exemptions by the Community.

Where such block exemption Regulations encounter serious objections on the Slovak side, and having regard to the approximation of legislation as provided for in the Europe Agreement, consultations shall take place in the Association Council, in accordance with the provisions contained in Article 9 of these Implementing Rules.

The same principles shall apply regarding other significant changes in the Community or Slovak competition policies.

Article 7

Merger control

With regard to mergers which fall within Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings and have significant impact on the Slovak economy, the AMO shall be entitled to express its views in the course of the procedure taking into account the time limits as provided for in the aforementioned Regulation. The Commission shall give due consideration to that view, without prejudice to any action under the Parties' respective competition laws.

Article 8

Activities of minor importance

8.1. Anticompetitive activities whose effects on trade between the Parties or on competition are negligible do not fall under Article 64 (1) of the Europe Agreement and therefore are not to be treated under the Articles 2 to 6 of these Implementing Rules.

8.2. Negligible effects within the meaning of paragraph 8 (1) are generally presumed to exist when:

- the aggregate annual turnover of the participating undertakings does not exceed ECU 200 million, and
- the goods or services which are the subject of the agreement together with the participating undertakings' other goods or services which are considered by users to be equivalent in view of their characteristics, price and intended use, do not represent more than 5% of the total market for such goods or services in the area of the common market affected by the agreement, and the Slovak market affected by the agreement, respectively.

Article 9

Association Council

9.1. Whenever the procedures provided for in Articles 2 and 3 above do not lead to a mutually acceptable solution, as well as in other cases explicitly mentioned in these Implementing Rules, an exchange of views shall take place in the Association Council at the request of one Party within three months following the request.

9.2. Following this exchange of views, or after expiry of the period referred to in paragraph 9.1, the Association Council may make appropriate recommendations for the settlement of these cases, without prejudice to Article 64 (6) of the Europe Agreement. In these recommendations, the Association Council may take into account any failure of the requested authority to give its point of view to the requesting authority within the period referred to in paragraph 9.1.

9.3. These procedures in the Association Council are without prejudice to any action under the respective competition laws in force in the territory of the Parties.

Article 10

Negative conflict of competence

When both the Commission and the AMO consider that neither of them is competent to handle a case on the basis of their respective legislation, an exchange of views shall take place on request in the Association Council. The Community and the Slovak Republic shall endeavour to find a mutually acceptable solution in the light of the respective important interests involved with the support of the Association Council, which may make appropriate recommendations, without prejudice to Article 64 (6) of the Europe Agreement, and the rights of individual Member States of the European Communities on the basis of their competition rules.

ECONOMIC ACTIVITIES UNDER THE ECSC TREATY

Article 11

Treaty establishing the European Coal and Steel Community (ECSC)

The provisions contained in Articles 1 to 6 and 8 to 10 above shall also apply with respect to the coal and steel sector as referred to in Protocol 2 to the Europe Agreement.

Article 12

Administrative assistance (languages)

The Commission and the AMO shall provide for practical arrangements for mutual assistance or any other appropriate solution concerning in particular the question of translations.

5. Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part

Decision of the Council and the Commission of 19 December 1994

(94/908/ECSC, EC, Euratom) [1]

[...]

Article 33

The Member States and Bulgaria shall progressively adjust any State monopolies of a commercial character so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of Bulgaria. The Association Council will be informed about the measures adopted to implement this objective.

[...]

Article 64

1. The following are incompatible with the proper functioning of this Agreement, in so far as they may affect trade between the Community and Bulgaria:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Bulgaria as a whole or in a substantial part thereof;

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European Economic Community.

[1] OJ L 358, 31.12.1994, p. 1.

3. The Association Council shall, within three years of the entry into force of this Agreement, adopt the necessary rules for the implementation of paragraphs 1 and 2.

4. (a) For the purposes of applying the provision of paragraph 1(iii), the Parties recognize that during the first five years after the entry into force of the Agreement, any public aid granted by Bulgaria shall be assessed taking into account the fact that Bulgaria shall be regarded as an area identical to those areas of the Community described in Article 92(3)(a) of the Treaty establishing the European Economic Community. The Association Council shall, taking into account the economic situation of Bulgaria, decide whether that period should be extended by further periods of five years.

(b) Each Party shall ensure transparency in the area of public aid, *inter alia* by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

5. With regard to products referred to in Chapters II and III of Title III:

- the provision of paragraph 1(iii) does not apply,
- any practices contrary to paragraph 1(i) should be assessed according to the criteria established by the Community on the basis of Articles 42 and 43 of the Treaty establishing the European Economic Community and in particular of those established in Council Regulation No 26/62.

6. If the Community or Bulgaria considers that a particular practice is incompatible with the terms of paragraph 1, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interest of the other Party or material injury to its domestic industry, including its services industry,

it may take appropriate measures after consultation within the Association Council or after 30 working days following referral for such consultation.

In the case of practices incompatible with paragraph 1(iii) of this Article, such appropriate measures may, where the General Agreement on Tariffs and Trade applies thereto, only be adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

7. Notwithstanding any provisions to the contrary adopted in accordance with paragraph 3, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

8. This Article shall not apply to the products covered by the Treaty establishing the European Coal and Steel Community which are the subject of Protocol 2.

[...]

Article 66

With regard to public undertakings and undertakings to which special or exclusive rights have been granted, the Association Council shall ensure that, as from the third year from the date of entry into force of the Agreement, the principles of the Treaty establishing the European Economic Community, notably Article 90, and the principles of the concluding document of the April 1990 Bonn meeting of the Conference on Security and Cooperation in Europe (notably entrepreneurs' freedom of decision) are upheld.

[...]

APPROXIMATION OF LAWS

Article 69

The Parties recognize that an important condition for Bulgaria's economic integration into the Community is the approximation of Bulgaria's existing and future legislation to that of the Community. Bulgaria shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community.

Article 70

The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, protection of health and life of humans, animals and plants, consumer protection, indirect taxation, technical rules and standards, nuclear law and regulation, transport and the environment.

[...]

Article 125

1. In the event that, pending the completion of the procedures necessary for the entry into force of this Agreement, the provisions of certain parts of this Agreement, in particular those relating to the movement of goods, are put into effect in 1993 by means of an Interim Agreement between the Community and Bulgaria, the Contracting Parties agree that, in such

circumstances for the purposes of Title III, Articles 64 and 67 of this Agreement and Protocols 1, 2, 3, 4, 5, 6 and 7 hereto, the terms 'date of entry into force of this Agreement' shall mean:

- the date of entry into force of the Interim Agreement in relation to obligations taking effect on that date, and
- 1 January 1993 in relation to obligations taking effect after the date of entry into force by reference to the date of entry into force.

2. In the case of entry into force after 1 January, the provisions of Protocol 7 shall apply.

[...]

PROTOCOL 2 ON ECSC PRODUCTS

[...]

Article 9

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and Bulgaria:

(i) all agreements of cooperative or concentrative nature between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Bulgaria as a whole or in a substantial part thereof;

(iii) public aid in any form whatsoever except derogations allowed pursuant to the ECSC Treaty.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 65 and 66 of the Treaty establishing the ECSC, Articles 85 and 86 of the Treaty establishing the EEC and the rules on State aids, including secondary legislation.

3. The Association Council shall, within three years of the entry into force of the Agreement, adopt the necessary rules for the implementation of paragraphs 1 and 2.

4. The Contracting Parties recognize that during the first five years after the entry into force of the Agreement, and by derogation to paragraph 1(iii), Bulgaria may exceptionally, as regards ECSC steel products, grant public aid for restructuring purposes, provided that:

- it leads to the viability of the benefiting firms under normal market conditions at the end of the restructuring period, and
- the amount and intensity of such aid are strictly limited to what is absolutely necessary in order to restore such viability and are progressively reduced,
- the restructuring programme is linked to a global rationalization and reduction of overall production capacity in Bulgaria.

5. Each Party shall ensure transparency in the area of public aid by a full and continuous exchange of information to the other Party, including amount, intensity and purpose of the aid and detailed restructuring plan.

6. If the Community or Bulgaria considers that a particular practice is incompatible with the terms of paragraph 1 as amended by paragraph 4 of this Article, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause prejudice to the interests of the other Party or material injury to its domestic industry,

the affected Party may take appropriate measures if no solution is found within 30 days of the day the official request was introduced.

In the case of practices incompatible with paragraph 1(iii) of this Article, such appropriate measures may only cover measures adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

[...]

JOINT DECLARATIONS

[...]

15. Article 64

The Parties shall not make an improper use of provisions on professional secrecy to prevent the disclosure of information in the field of competition.

[...]

19. Articles 5 and 9(4) of Protocol 2 to the Agreement

The Community and Bulgaria declare that Articles 5 and 9(4) of Protocol 2 cannot be considered as a precedent in Bulgaria's negotiations for accession to the General Agreement on Tariffs and Trade or to the Multilateral Trade Organization which could emerge from the Uruguay Round negotiations.

[...]

UNILATERAL DECLARATIONS BY THE COMMUNITY

[...]

4. Article 9(1)(iii) and (4) of Protocol 2 to the Agreement

The Community confirms its understanding that the references to public aids in Article 9(1)(iii) and (4) imply the exclusion of transport subsidies acting as direct or indirect subsidies to the steel industry.

5. Article 9(4) of Protocol 2 to the Agreement

It is understood that the possibility of an exceptional extension of the five-year period is strictly limited to the particular case of Bulgaria and does not impair the position of the Community in relation to other cases nor prejudge international commitments. The possible derogation foreseen in paragraph 4 takes into account the particular difficulties of Bulgaria in restructuring the steel sector and the fact that this process has been launched very recently.

[...]

Letter from the Bulgarian Government to the Community

The Government of Bulgaria declares that it will not invoke the provisions of Protocol 2 on ECSC products, in particular Article 9, so as not to call into question the compatibility with this Protocol of the agreements made by the Community coal industry with the electricity companies and the steel industry to secure the sale of Community coal.

[...]

6. Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part

Decision of the Council and the Commission of 19 December 1994

(94/907/ECSC, EC, Euratom) [1]

[...]

Article 33

The Member States and Romania shall progressively adjust any State monopolies of a commercial character so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of Romania. The Association Council will be informed about the measures adopted to implement this objective.

[...]

Article 64

1. The following are incompatible with the proper functioning of this Agreement, in so far as they may affect trade between the Community and Romania:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Romania as a whole or in a substantial part thereof;

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European Economic Community.

[1] OJ L 357, 31.12.1994, p. 1.

3. The Association Council shall, within three years of the entry into force of this Agreement, adopt the necessary rules for the implementation of paragraphs 1 and 2.

4. (a) For the purposes of applying the provisions of paragraph 1(iii), the Parties recognize that during the first five years after the entry into force of the Agreement, any public aid granted by Romania shall be assessed taking into account the fact that Romania shall be regarded as an area identical to those areas of the Community described in Article 92(3)(a) of the Treaty establishing the European Economic Community. The Association Council shall, taking into account the economic situation of Romania, decide whether that period should be extended by further periods of five years.

(b) Each Party shall ensure transparency in the area of public aid, *inter alia* by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

5. With regard to products referred to in Chapters II and III of Title III:

- the provision of paragraph 1(iii) does not apply,
- any practices contrary to paragraph 1(i) should be assessed according to the criteria established by the Community on the basis of Articles 42 and 43 of the Treaty establishing the European Economic Community and in particular of those established in Council Regulation No 26/62.

6. If the Community or Romania considers that a particular practice is incompatible with the terms of paragraph 1, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interest of the other Party or material injury to its domestic industry, including its services industry,

it may take appropriate measures after consultation within the Association Council or after 30 working days following referral for such consultation.

In the case of practices incompatible with paragraph 1(iii) of this Article, such appropriate measures may, where the General Agreement on Tariffs and Trade applies thereto, only be adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

7. Notwithstanding any provisions to the contrary adopted in accordance with paragraph 3, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

8. This Article shall not apply to the products covered by the Treaty establishing the European Coal and Steel Community which are the subject of Protocol 2.

[...]

Article 66

With regard to public undertakings and undertakings to which special or exclusive rights have been granted, the Association Council shall ensure that, as from the third year from the date of entry into force of the Agreement, the principles of the Treaty establishing the European Economic Community, notably Article 90, and the principles of the concluding document of the April 1990 Bonn meeting of the Conference on Security and Cooperation in Europe (notably entrepreneurs' freedom of decision) are applied in the operation of this Agreement.

[...]

APPROXIMATION OF LAWS

Article 69

The Parties recognize that an important condition for Romania's economic integration into the Community is the approximation of Romania's existing and future legislation to that of the Community. Romania shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community.

Article 70

The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, social security, financial services, rules on competition, protection of health and life of humans, animals and plants, consumer protection, indirect taxation, technical rules and standards, nuclear law and regulation, transport and the environment.

[...]

Article 126

1. In the event that, pending the completion of the procedures necessary for the entry into force of this Agreement, the provisions of certain parts of this Agreement, in particular those relating to the movement of goods, are put into effect in 1993 by means of an Interim Agreement between the Community and Romania, the Contracting Parties agree that, in such

circumstances for the purposes of Title III, Articles 64 and 67 of this Agreement and Protocols 1, 2, 3, 4, 5, 6 and 7 hereto, the terms 'date of entry into force of this Agreement' shall mean:

- the date of entry into force of the Interim Agreement in relation to obligations taking effect on that date, and
- 1 January 1993 in relation to obligations taking effect after the date of entry into force by reference to the date of entry into force.

2. In the case of entry into force after 1 January, the provisions of Protocol 7 shall apply.

[...]

PROTOCOL 2 ON ECSC PRODUCTS

[...]

Article 9

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and Romania:

(i) all agreements of cooperative or concentrative nature between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Romania as a whole or in a substantial part thereof;

(iii) public aid in any form whatsoever except derogations allowed pursuant to the ECSC Treaty.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 65 and 66 of the Treaty establishing the ECSC and the rules on State aids, including secondary legislation.

3. The Association Council shall, within three years of the entry into force of the Agreement, adopt the necessary rules for the implementation of paragraphs 1 and 2.

4. The Contracting Parties recognize that during the first five years after the entry into force of the Agreement, and by derogation to paragraph 1(iii) of this Article, Romania may exceptionally, as regards ECSC steel products, grant public aid for restructuring purposes, provided that:

- it leads to the viability of the benefiting firms under normal market conditions at the end of the restructuring period, and
- the amount and intensity of such aid are strictly limited to what is absolutely necessary in order to restore such viability and are progressively reduced,
- the restructuring programme is linked to a global rationalization and reduction of capacity in Romania.

5. Each Party shall ensure transparency in the area of public aid by a full and continuous exchange of information to the other Party, including amount, intensity and purpose of the aid and detailed restructuring plan.

6. If the Community or Romania considers that a particular practice is incompatible with the terms of paragraph 1 as amended by paragraph 4 of this Article, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause prejudice to the interests of the other Party or material injury to its domestic industry,

the affected Party may take appropriate measures if no solution is found within 30 days through consultation. Such consultation shall be held in 30 days.

In the case of practices incompatible with paragraph 1(iii) of this Article, such appropriate measures may only cover measures adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

[...]

JOINT DECLARATION

[...]

Article 64

The Parties shall not make an improper use of provisions on professional secrecy to prevent the disclosure of information in the field of competition.

[...]

DECLARATIONS BY THE COMMUNITY

PROTOCOL 2 ON ECSC PRODUCTS

Article 9, paragraphs 1(iii) and 4 of Protocol 2 on ECSC products

The Community confirms its understanding that the references to public aids referred to in Article 9, paragraphs 1(iii) and 4 are exclusively for the purposes of restructuring as defined, and stresses that transport subsidies acting as direct or indirect subsidies to the steel industry are excluded.

Article 9(4) of Protocol 2 to ECSC products

It is understood that the possibility of an exceptional extension of the five-year period is strictly limited to the particular case of Romania and does not impair the position of the Community in relation to other cases nor prejudge international commitments. The possible derogation foreseen in paragraph 4 takes into account the particular difficulties of Romania in restructuring the steel sector and the fact that this process has been launched very recently.

DECLARATION BY THE COMMUNITY

The Community takes note of the fact that the Romanian authorities will not invoke the provisions of Protocol 2 on ECSC products, in particular Article 9, so as not to call into question the compatibility with this Protocol of the agreements made by the Community coal industry with the electricity companies and the steel industry to secure the sale of Community coal.

[...]

7. Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Republic of Slovenia, of the other part

Council and Commission decision of 25 November 1996

(96/752/Euratom, ECSC, EC) [1]

[...]

TITLE III

PAYMENTS, COMPETITION AND OTHER ECONOMIC PROVISIONS

[...]

Article 33 (EA 65)

1. The following are incompatible with the proper functioning of this Agreement, in so far as they may affect trade between the Community and Slovenia:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Slovenia as a whole or in a substantial part thereof;

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain products.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European Community.

3. The Cooperation Council shall, within three years of the entry into force of this Agreement, adopt the necessary rules for the implementation of paragraphs 1 and 2. Until the implementing rules are adopted, practices incompatible with paragraph 1 shall be dealt with by the Parties

[1] OJ L 344, 31.12.1996, p. 1.

on their respective territories according to their respective legislation. This shall be without prejudice to paragraph 6.

4. (a) For the purposes of applying the provisions of paragraph 1 (iii), the Parties recognize that during the first four years after the entry into force of this Agreement, any public aid granted by Slovenia shall be assessed taking into account the fact that Slovenia shall be regarded as an area identical to those areas of the Community described in Article 92 (3) (a) of the Treaty establishing the European Community. The Cooperation Council shall, taking into account the economic situation of Slovenia, decide whether that period should be extended by further periods of four years.

(b) Each party shall ensure transparency in the area of public aid, *inter alia* by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, on request, information on aid schemes. On request by one Party, the other Party shall provide information on particular individual cases of public aid.

5. With regard to products referred to in Chapters II and III of Title II

- paragraph 1 (iii) shall not apply,
- any practices contrary to paragraph 1 (i) must be assessed according to the criteria established by the Community on the basis of Articles 42 and 43 of the Treaty establishing the European Community and in particular of those established in Council Regulation No 26/1962.

6. If the Community or Slovenia considers that a particular practice is incompatible with the terms of paragraph 1, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause serious injury to the interests of the other Party or material injury to its domestic industry, including its services industry,

it may take appropriate measures after consultation within the Cooperation Council or after 30 working days following referral for such consultation.

In the case of practices incompatible with paragraph 1 (iii), such appropriate measures may, where the WTO Agreement applies thereto, only be adopted in accordance with the procedures and under the conditions laid down thereby and by any other relevant instrument negotiated under its auspices which are applicable between the Parties.

7. Notwithstanding any provisions to the contrary adopted in accordance with paragraph 3, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business confidentiality.

8. This Article shall not apply to the products covered by the Treaty establishing the European Coal and Steel Community which are the subject of Protocol 2.

Article 34 (EA 66)

1. The Parties shall endeavour wherever possible to avoid the imposition of restrictive measures, including measures relating to imports for balance of payments purposes. A Party adopting such measures shall present as soon as possible to the other Party a timetable for their removal.

2. Where one or more Member States of the Community or Slovenia is in serious balance of payments difficulties, or under imminent threat thereof, the Community or Slovenia, as the case may be, may, in accordance with the conditions established under the WTO Agreement, adopt restrictive measures, including measures relating to imports, which shall be of limited duration and may not go beyond what is strictly necessary to remedy the balance of payments situation. The Community or Slovenia, as the case may be, shall inform the other Party forthwith.

3. Any restrictive measures shall not apply to transfers related to investment and in particular to the repatriation of amounts invested or reinvested or any kind of revenues stemming therefrom.

Article 35 (EA 67)

With regard to public undertakings, and undertakings to which special or exclusive rights have been granted, the Cooperation Council shall ensure that as from the third year following the date of entry into force of this Agreement, the principles of the Treaty establishing the European Community, in particular Article 90 thereof, are upheld.

[...]

8. Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, of the one part, and the Republic of Latvia, of the other part

Council Decision of 19 December 1994

(94/976/EC) [1]

[...]

Article 26

The Member States of the European Union (hereinafter referred to as 'the Member States') and Latvia shall progressively adjust any State monopolies of a commercial character so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of Latvia. The Joint Committee will be informed about the measures adopted to implement this objective.

[...]

Article 32

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and Latvia:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Latvia as a whole or in a substantial part thereof;

(iii) any public aid, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European

[1] OJ L 374, 31.12.1994, p. 1.

Community or, for products covered by the ECSC Treaty, on the basis of corresponding rules of the ECSC Treaty including secondary legislation.

3. The Joint Committee shall, within three years of the entry into force of this Agreement, adopt by decision the necessary rules for the implementation of paragraphs 1 and 2.

Until these rules are adopted, the provisions of this Agreement on interpretation and application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade shall be applied as the rules for the implementation of paragraph 1(iii) and related parts of paragraph 2.

4. (a) For the purposes of applying the provisions of paragraph 1(iii), the Parties recognize that during the first five years after the entry into force of this Agreement, any public aid granted by Latvia shall be assessed taking into account the fact that Latvia shall be regarded as an area identical to those areas of the Community described in Article 92(3)(a) of the Treaty establishing the European Community. The Joint Committee shall, taking into account the economic situation of Latvia, decide whether that period should be extended by further periods of five years.

(b) Each Party shall ensure transparency in the area of public aid, *inter alia* by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

5. With regard to products referred to in Chapters II and III of Title III:

- the provision of paragraph 1(iii) does not apply,
- any practices contrary to paragraph 1(i) should be assessed according to the criteria established by the Community on the basis of Articles 42 and 43 of the Treaty establishing the European Community and in particular of those established in Council Regulation No 26.

6. If the Community or Latvia considers that a particular practice is incompatible with the terms of paragraph 1, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interests of the other Party or material injury to its domestic industry, including its services industry,

it may take appropriate measures after consultation within the Joint Committee or after 30 working days following referral for such consultation.

In the case of practices incompatible with paragraph 1(iii) of this Article, such appropriate measures may, where the General Agreement on Tariffs and Trade applies thereto, only be adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

7. Notwithstanding any provisions to the contrary adopted in conformity with paragraph 3, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

[...]

Article 34

With regard to public undertakings and undertakings to which special or exclusive rights have been granted, the Joint Committee shall ensure that, as from the fourth year following the date of entry into force of this Agreement, the principles of the Treaty establishing the European Community, notably Article 90, and the relevant CSCE principles, in particular entrepreneurs' freedom of decision, are upheld.

[...]

Article 36

1. The Parties recognize that an important condition for the establishment of free trade between Latvia and the Community and the further economic integration of the former into the Community is the approximation of Latvia's existing and future legislation to that of the Community. Latvia shall endeavour to ensure that its trade and trade-related legislation will be gradually made compatible with that of the Community.

2. The approximation of laws shall extend to trade-related matters, in particular dumping, rules on competition, customs legislation, statistics, technical rules and standards.

3. The Community shall provide Latvia with technical assistance for the implementation of these measures, which may include *inter alia*:

- the exchange of experts,
- the provision of early information especially on relevant legislation,
- organization of seminars,
- training activities,
- aid for the translation of legislation in the relevant sectors,
- aid for improving customs procedures and statistics,
- aid for trade-related legislation in the context of approximation of Latvia's legislation to European Union laws.

9. Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, of the one part, and the Republic of Lithuania, of the other part

Council Decision of 19 December 1994

(94/978/EC) [1]

[...]

Article 26

The Member States of the European Union (hereinafter referred to as 'the Member States') and Lithuania shall progressively adjust any State monopolies of a commercial character so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of Lithuania. The Joint Committee will be informed about the measures adopted to implement this objective.

[...]

Article 33

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and Lithuania:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Lithuania as a whole or in a substantial part thereof;

(iii) any public aid, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European

[1] OJ L 375, 31.12.1994, p. 1.

Community or, for products covered by the ECSC Treaty, on the basis of corresponding rules of the ECSC Treaty including secondary legislation.

3. The Joint Committee shall, within three years of the entry into force of this Agreement, adopt by decision the necessary rules for the implementation of paragraphs 1 and 2.

Until these rules are adopted, the provisions of this Agreement on interpretation and application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade shall be applied as the rules for the implementation of paragraph 1(iii) and related parts of paragraph 2.

4. (a) For the purposes of applying the provisions of paragraph 1(iii), the Parties recognize that during the first five years after the entry into force of this Agreement, any public aid granted by Lithuania shall be assessed taking into account the fact that Lithuania shall be regarded as an area identical to those areas of the Community described in Article 92(3)(a) of the Treaty establishing the European Community. The Joint Committee shall, taking into account the economic situation of Lithuania, decide whether that period should be extended by further periods of five years.

(b) Each Party shall ensure transparency in the area of public aid, *inter alia* by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

5. With regard to products referred to in Chapters II and III of Title III:

- the provision of paragraph 1(iii) does not apply,
- any practices contrary to paragraph 1(i) should be assessed according to the criteria established by the Community on the basis of Articles 42 and 43 of the Treaty establishing the European Community and in particular of those established in Council Regulation No 26.

6. If the Community or Lithuania considers that a particular practice is incompatible with the terms of paragraph 1, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interests of the other Party or material injury to its domestic industry, including its services industry,

it may take appropriate measures after consultation within the Joint Committee or after 30 working days following referral for such consultation.

In the case of practices incompatible with paragraph 1(iii) of this Article, such appropriate measures may, where the General Agreement on Tariffs and Trade applies thereto, only be adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

7. Notwithstanding any provisions to the contrary adopted in conformity with paragraph 3, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

[...]

Article 35

With regard to public undertakings and undertakings to which special or exclusive rights have been granted, the Joint Committee shall ensure that, as from the fourth year following the date of entry into force of this Agreement, the principles of the Treaty establishing the European Community, notably Article 90, and the principles of the concluding document of the April 1990 Bonn meeting of the Conference on Security and Cooperation in Europe (CSCE), notably entrepreneurs' freedom of decision, are upheld.

[...]

Article 37

1. The Parties recognize that an important condition for the establishment of free trade between Lithuania and the Community and the further economic integration of the former into the Community is the approximation of Lithuania's existing and future legislation to that of the Community. Lithuania shall endeavour to ensure that its trade and trade-related legislation will be gradually made compatible with that of the Community.

2. The approximation of laws shall extend to the following areas, in particular dumping, rules on competition, customs legislation, statistics, technical rules and standards.

3. The Community shall provide Lithuania with technical assistance for the implementation of these measures, which may include *inter alia*:

- the exchange of experts,
- the provision of early information especially on relevant legislation,
- organization of seminars,
- training activities,
- aid for the translation of Community legislation in the relevant sectors.

[...]

,

10. Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, of the one part, and the Republic of Estonia, of the other part

Council Decision of 19 December 1994

(94/974/EC) [1]

[...]

Article 25

The Member States of the European Union (hereinafter referred to as 'the Member States') and Estonia shall progressively adjust any State monopolies of a commercial character so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of Estonia. The Joint Committee will be informed about the measures adopted to implement this objective.

[...]

Article 32

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and Estonia:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Estonia as a whole or in a substantial part thereof;

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European

[1] OJ L 373, 31.12.1994, p. 1.

Community or, for products covered by the ECSC Treaty, on the basis of corresponding rules of the ECSC Treaty including secondary legislation.

3. The Joint Committee shall, within three years of the entry into force of this Agreement, adopt by decision the necessary rules for the implementation of paragraphs 1 and 2.

Until these rules are adopted, the provisions of this Agreement on interpretation and application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade shall be applied as the rules for the implementation of paragraph 1(iii) and related parts of paragraph 2.

4. (a) For the purposes of applying the provisions of paragraph 1(iii), the Parties recognize that during the first five years after the entry into force of this Agreement, any public aid granted by Estonia shall be assessed taking into account the fact that Estonia shall be regarded as an area identical to those areas of the Community described in Article 92(3)(a) of the Treaty establishing the European Community. The Joint Committee shall, taking into account the economic situation of Estonia, decide whether that period should be extended by further periods of three years.

(b) Each Party shall ensure transparency in the area of public aid, *inter alia* by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

5. With regard to products referred to in Chapters II and III of Title III:

- the provision of paragraph 1(iii) does not apply,
- any practices contrary to paragraph 1(i) should be assessed according to the criteria established by the Community on the basis of Articles 42 and 43 of the Treaty establishing the European Community and in particular of those established in Council Regulation No 26.

6. If the Community or Estonia considers that a particular practice is incompatible with the terms of paragraph 1, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 3, or
- in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interest of the other Party or material injury to its domestic industry, including its services industry,

it may take appropriate measures after consultation within the Joint Committee or after 30 working days following referral for such consultation.

In the case of practices incompatible with paragraph 1(iii) of this Article, such appropriate measures may, where the General Agreement on Tariffs and Trade applies thereto, only be adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

7. Notwithstanding any provisions to the contrary adopted in conformity with paragraph 3, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

[...]

Article 34

With regard to public undertakings and undertakings to which special or exclusive rights have been granted, the Joint Committee shall ensure that as from the fourth year following the date of entry into force of this Agreement, the principles of the Treaty establishing the European Community, notably Article 90, and the principles of the concluding document of the April 1990 Bonn meeting of the Conference on Security and Cooperation in Europe, notably entrepreneurs' freedom of decision, are upheld.

[...]

Article 36

1. The Parties recognize that an important condition for the establishment of free trade between Estonia and the Community and the further economic integration of the former into the Community is the approximation of Estonia's existing and future legislation to that of the Community. Estonia shall endeavour to ensure that its trade and trade-related legislation will be gradually made compatible with that of the Community.

2. The approximation of laws shall extend to the following areas in particular: dumping, rules on competition, customs legislation, statistics, technical rules and standards.

3. The Community shall provide Estonia with technical assistance for the implementation of these measures, which may include *inter alia*:

- the exchange of experts,
- the provision of early information especially on relevant legislation,
- organization of seminars,
- training activities,
- aid for the translation of Community legislation in the relevant sectors.

[...]

11. Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Russian Federation, of the other part

Council decision of 17 July 1995

(95/414/EC) [1] [2]

[...]

Article 11

[...]

In respect of anti-dumping or subsidy investigations, each Party agrees to examine submissions by the other Party and to inform the interested parties concerned of the essential facts and considerations on the basis of which a final decision is to be made. Before definitive anti-dumping and countervailing duties are imposed, the Parties shall do their utmost to bring about a constructive solution to the problem.

[...]

TITLE III

PAYMENTS, COMPETITION AND OTHER ECONOMIC PROVISIONS

[...]

Article 17

Competition

1. The Parties agree to work to remedy or remove through the application of their competition laws or otherwise, restrictions on competition by enterprises or caused by State intervention in so far as they may affect trade between the Community and Russia.

[1] OJ L 247, 13.10.1995, p. 1.

[2] Entered into force on 1 February 1996 (see OJ L 316, 30.12.1995).

2. In order to attain the objectives mentioned in paragraph 1:

2.1. The Parties, within their respective competences, shall ensure enforcement of laws addressing restrictions on competition by enterprises within their jurisdiction.

2.2. The Parties shall refrain from granting export aids favouring certain undertakings or the production of products other than primary products. The Parties also declare their readiness, as from the third year from the date of entry into force of the Agreement on Partnership and Cooperation, to establish for other aids which distort or threaten to distort competition in so far as they affect trade between the Community and Russia, strict disciplines, including the outright prohibition of certain aids. These categories of aids and the disciplines applicable to each shall be defined jointly within a period of three years after entry into force of the Agreement on Partnership and Cooperation.

Upon request by one Party, the other Party shall provide information on its aid schemes or in particular individual cases of State aid.

2.3. During a transitional period expiring five years after the entry into force of the Agreement on Partnership and Cooperation, Russia may take measures inconsistent with paragraph 2.2, second sentence, provided that these measures are introduced and applied in the circumstances referred to in Annex III.

2.4. In the case of State monopolies of a commercial character, the Parties declare their readiness, as from the third year from the date of entry into force of the Agreement on Partnership and Cooperation, to ensure that there is no discrimination between nationals and companies of the Parties regarding the conditions under which goods are procured or marketed.

In the case of public undertakings or undertakings to which Member States or Russia grant exclusive rights, the Parties declare their readiness, as from the third year from the date of entry into force of the Agreement on Partnership and Cooperation, to ensure that there is neither enacted nor maintained any measure distorting trade between the Community and Russia to an extent contrary to the Parties' respective interests. This provision shall not obstruct the performance, in law or fact, of the particular tasks assigned to such undertakings.

2.5. The period defined in paragraphs 2.2 and 2.4 may be extended by agreement of the Parties.

3. Consultations may take place within the Joint Committee at the request of the Community or Russia on the restrictions or distortions of competition referred to in paragraphs 1 and 2 and on the enforcement of their competition rules, subject to limitations imposed by laws regarding disclosure of information, confidentiality and business secrecy. Consultations may also comprise questions on the interpretation of paragraphs 1 and 2.

4. The Party with experience in applying competition rules shall give full consideration to providing the other Party, upon request and within available resources, technical assistance for the development and implementation of competition rules.

5. The above provisions in no way affect a Party's rights to apply adequate measures, notably those referred to in Article 11, in order to address distortions of trade.

[...]

Article 31

1. This Agreement shall remain in force until the entry into force of the Agreement on Partnership and Cooperation signed on 24 June 1994.

[...]

ANNEX II

DEROGATIONS FROM ARTICLE 8 (QUANTITATIVE RESTRICTIONS)

1. Exceptional measures which derogate from the provisions of Article 8 may be taken by Russia in the form of quantitative restrictions on a non-discriminatory basis as provided for in Article XIII of the GATT. Such measures can only be taken after the end of the first calendar year following signature of the Agreement on Partnership and Cooperation.

2. Those measures may only be taken in the circumstances mentioned in Annex III.

[...]

ANNEX III

TRANSITIONAL PERIOD FOR PROVISIONS ON COMPETITION AND FOR THE INTRODUCTION OF QUANTITATIVE RESTRICTIONS

The circumstances mentioned in Article 17 (2.3) and in Annex II, paragraph 2 are understood in respect of sectors of the Russian economy which:

- are undergoing restructuring, or
- are facing serious difficulties, particularly where these entail serious social problems in Russia, or
- face the elimination or a drastic reduction of the total market share held by Russian companies or nationals in a given sector or industry in Russia, or
- are newly emerging industries in Russia.

[...]

PROTOCOL 1

ON THE ESTABLISHMENT OF A COAL AND STEEL CONTACT GROUP

1. A Contact Group is established between the Parties. The Group is composed of representatives of the Community and of Russia.

2. The Contact Groups exchanges information on the situation of the coal and steel industries in both territories and on trade between them, particularly with the purpose of identifying such problems as might arise.

3. The Contact Group also examines the situation of the coal and steel industries at world level, including developments in international trade.

4. The Contact Group exchanges all useful information on the structure of the industries concerned, the development of their production capacities, the science and research progress in the relevant fields, and the evolution of employment. The Group also examines pollution and environmental problems.

5. The Contact Group also examines the progress made in the framework of technical assistance between the Parties, including assistance to financial, commercial and technical management.

6. The Contact Group exchanges all relevant information as to attitudes taken, or to be taken in the appropriate international organizations or fora.

7. As and when both Parties agree that the presence and/or participation of representatives of the industries is appropriate, the Contact Group is enlarged to include them.

8. The Contact Group meets twice a year, alternately on the territories of each Party.

9. The chairmanship of the Contact Group is held alternately by a representative of the Commission of the European Communities and a representative of the Government of the Russian Federation.

[...]

JOINT DECLARATION IN RELATION TO ARTICLE 17 (2.2)

'Primary products' are those defined as such in the GATT.

[...]

COMMUNITY DECLARATION IN RELATION TO ARTICLE 17

The provisions of the Agreement are without prejudice to the competences of the European Community and its Member States in the field of competition.

[...]

12. Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Ukraine of the other part [1] [2]

[...]

Article 11

(PCA Ukraine: Article 19)

[...]

In respect of anti-dumping or subsidies investigations, each Party agrees to examine submissions by the other Party and to inform the interested parties concerned of the essential facts and considerations on the basis of which a final decision is to be made. Before definitive anti-dumping and countervailing duties are imposed, the Party shall do the utmost to bring about a constructive solution to the problem.

[...]

TITLE III

PAYMENTS, COMPETITION AND OTHER ECONOMIC PROVISIONS

(PCA Ukraine: Titles V and VI)

[...]

Article 17

(PCA Ukraine: Article 49)

1. The Parties agree to work to remedy or remove, through the application of their competition laws or otherwise, restrictions on competition by enterprises or caused by State intervention in so far as they may affect trade between the Community and Ukraine.

---

[1] OJ L 311, 23.12.1995, p. 1.

[2] Entered into force on 1 February 1996 (see OJ L 316, 30.12.1995).

2. In order to attain the objectives mentioned in paragraph 1:

2.1. The Parties shall ensure that they have and enforce laws addressing restrictions on competition by enterprises within their jurisdiction.

2.2. The Parties shall refrain from granting State aids favouring certain undertakings or the production of goods other than primary products as defined in the GATT, or the provision of services, which distort or threaten to distort competition in so far as they affect trade between the Community and Ukraine.

2.3. Upon request by one Party, the other Party shall provide information on its aid schemes or on particular individual cases of State aid. No information needs to be provided which is covered by legislative requirements of the Parties on professional or commercial secrets.

2.4. In the case of State monopolies of a commercial character, the Parties declare their readiness, as from the fourth year from the date of entry into force of this Agreement, to ensure that there is no discrimination between nationals of the Parties regarding the conditions under which goods are procured or marketed.

2.5. In the case of public undertakings or undertakings to which Member States of the European Union or the Ukraine grant exclusive rights, the Parties declare their readiness, as from the fourth year from the date of entry into force of this Agreement, to ensure that there is neither enacted nor maintained any measure distorting trade between the Community and Ukraine to an extent contrary to the Parties' respective interests. This provision shall not obstruct the performance, in law or fact, of the particular tasks assigned to such undertakings.

2.6. The period defined in paragraphs 2.4 and 2.5 may be extended by agreement of the Parties.

3. Consultations may take place within the Joint Committee at the request of the Community or Ukraine on the restrictions or distortions of competition referred to in paragraphs 1 and 2 and on the enforcement of their competition rules, subject to limitations imposed by laws regarding disclosure of information, confidentiality and business secrecy. Consultations may also comprise questions on the interpretation of paragraphs 1 and 2.

4. The Parties with experience in applying competition rules shall give full consideration to providing other Parties, upon request and within available resources, technical assistance for the development and implementation of competition rules.

5. The above provisions in no way affect the Parties' rights to apply adequate measures, notably those referred to in Article 11, in order to address distortions of trade in goods or services.

[...]

Article 30

1. This Agreement shall be applicable until the entry into force of the Partnership and Cooperation Agreement signed on 14 June 1994.

[...]

JOINT DECLARATION CONCERNING ARTICLE 11

It is understood that the provisions of Article 11 are neither intended to, nor shall slow down, hinder or impede the procedures provided for in the respective legislations of the Parties regarding anti-dumping and subsidies investigations.

[...]

13. Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Republic of Moldova, of the other part [1] [2]

[...]

Article 10

(PCA Moldova: Article 18)

[...]

In respect of anti-dumping or subsidies investigations, each Party agrees to examine submissions by the other Party and to inform the interested parties concerned of the essential facts and considerations on the basis of which a final decision is to be made. Before definitive anti-dumping and countervailing duties are imposed, the Party shall do the utmost to bring about a constructive solution to the problem.

[...]

TITLE III

PAYMENTS, COMPETITION AND OTHER ECONOMIC PROVISIONS

(PCA Moldova: Titles V and VI)

[...]

Article 16

(PCA Moldova: Article 48)

1. The Parties agree to work to remedy or remove, through the application of their competition laws or otherwise, restrictions on competition by enterprises or caused by State intervention in so far as they may affect trade between the Community and the Republic of Moldova.

[1] OJ L 40, 17.2.1996, p.10.

[2] Entered into force on 1 May 1996 (see OJ L 90, 11.4.1996).

2. In order to attain the objectives mentioned in paragraph 1:

2.1. the Parties shall ensure that they have and enforce laws addressing restrictions on competition by enterprises within their jurisdiction;

2.2. the Parties shall refrain from granting State aids favouring certain undertakings or the production of goods other than primary products as defined in the GATT, or the provision of services, which distort or threaten to distort competition in so far as they affect trade between the Community and the Republic of Moldova;

2.3. upon request by one Party, the other Party shall provide information on its aid schemes or on particular individual cases of State aid. No information needs to be provided which is covered by legislative requirements of the Parties on professional or commercial secrets;

2.4. in the case of State monopolies of a commercial character, the Parties declare their readiness, as from the fourth year from the date of entry into force of their Agreement, to ensure that there is no discrimination between nationals of the Parties regarding the conditions under which goods are procured or marketed;

2.5. in the case of public undertakings or undertakings to which Member States of the European Union or the Republic of Moldova grant exclusive rights, the Parties declare their readiness, as from the fourth year from the date of entry into force of this Agreement, to ensure that there is neither enacted nor maintained any measure distorting trade between the Community and the Republic of Moldova to an extent contrary to the Parties' respective interests. This provision shall not obstruct the performance, in law or fact, of the particular tasks assigned to such undertakings;

2.6. the period defined in paragraphs 2.4 and 2.5 may be extended by agreement of the Parties.

3. Consultations may take place within the Joint Committee at the request of the Community or the Republic of Moldova on the restrictions or distortions of competition referred to in paragraph 1 and 2 and on the enforcement of their competition rules, subject to limitations imposed by laws regarding disclosure of information, confidentiality and business secrecy. Consultations may also comprise questions on the interpretation of paragraphs 1 and 2.

4. The Parties with experience in applying competition rules shall give full consideration to providing other Parties, upon request and within available resources, technical assistance for the development and implementation of competition rules.

5. The above provisions in no way affect the Parties' rights to apply adequate measures, notably those referred to in Article 10, in order to address distortions of trade in goods or services.

[...]

Article 29

1. This Agreement shall be applicable until the entry into force of the Partnership and Cooperation Agreement signed on 28 November 1994.

[...]

JOINT DECLARATION CONCERNING ARTICLE 10

It is understood that the provisions of Article 10 are neither intended to, nor shall slow down, hinder or impede the procedures provided for in the respective legislation of the Parties regarding anti-dumping and subsidies investigations.

[...]

14. Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Republic of Kazakhstan, of the other part [1]

[...]

TITLE III

PAYMENTS, COMPETITION AND OTHER ECONOMIC PROVISIONS

(PCA Kazakhstan: Title IV)

[...]

Article 14

The Parties agree to examine ways to apply their respective competition laws on a concerted basis in such cases where trade between them is affected.

[...]

Article 27

1. This Agreement shall be applicable until the entry into force of the Partnership and Cooperation Agreement signed on 23 January 1995.

[...]

[1] OJ L 147, 20.6.1996, p. 1.

V – Agreement between the European Communities and the Government of the United States of America regarding the applications of their competition laws

Decision of the Council and the Commission of 10 April 1995

(95/145/EC, ECSC) [1]

[...]

Article I

PURPOSE AND DEFINITIONS

1. The purpose of this Agreement is to promote cooperation and coordination and lessen the possibility or impact of differences between the Parties in the application of their competition laws.

2. For the purpose of this Agreement, the following terms shall have the following definitions:

A. 'competition law(s)' shall mean:

(i) for the European Communities, Articles 85, 86, 89 and 90 of the Treaty establishing the European Economic Community, Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, Articles 65 and 66 of the Treaty establishing the European Coal and Steel Community (ECSC), and their implementing Regulations including High Authority Decision No 24-54, and

(ii) for the United States of America, the Sherman Act (15 USC 1-7), the Clayton Act (15 USC 12-27), the Wilson Tariff Act (15 USC 8-11), and the Federal Trade Commission Act (15 USC 41-68, except as these sections relate to consumer protection functions),

as well as such other laws or regulations as the Parties shall jointly agree in writing to be a 'competition law' for purposes of this Agreement;

B. 'competition authorities' shall mean:

(i) for the European Communities, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Communities, and

(ii) for the United States, the Antitrust Division of the United States Department of Justice and the Federal Trade Commission;

[1] OJ L 95, 27.4.1995, p. 47; OJ L 131, 15.6.1995, p. 38.

C. 'enforcement activities' shall mean any application of competition law by way of investigation or proceeding conducted by the competition authorities of a Party; and

D. 'anticompetitive activities' shall mean any conduct or transaction that is impermissible under the competition laws of a Party.

Article II

NOTIFICATION

1. Each Party shall notify the other whenever its competition authorities become aware that their enforcement activities may affect important interests of the other Party.

2. Enforcement activities as to which notification ordinarily will be appropriate include those that:

(a) are relevant to enforcement activities of the other Party;

(b) involve anticompetitive activities (other than a merger or acquisition) carried out in significant part in the other Party's territory;

(c) involve a merger or acquisition which one or more of the parties to the transaction, or a company controlling one of more of the parties to the transaction, is a company incorporated or organized under the laws of the other Party or one of its States or Member States;

(d) involve conduct believed to have been required, encouraged or approved by the other Party; or

(e) involve remedies that would, in significant respects, require or prohibit conduct in the other Party's territory.

3. With respect to mergers or acquisitions required by law to be reported to the competition authorities, notification under this Article shall be made:

(a) in the case of the Government of the United States of America,

(i) not later than the time its competition authorities request, pursuant to 15 USC paragraph 18a(e), additional information or documentary material concerning the proposed transaction,

(ii) when its competition authorities decide to file a complaint challenging the transaction, and

(iii) where this is possible, far enough in advance of the entry of a consent decree to enable the other Party's views to be taken into account; and

(b) in the case of the Commission of the European Communities,

(i) when notice of the transaction is published in the Official Journal, pursuant to Article 4(3) of Council Regulation (EEC) No 4064/89, or when notice of the transaction is received under Article 66 of the ECSC Treaty and a prior authorization from the Commission is required under that provision,

(ii) when its competition authorities decide to initiate proceedings with respect to the proposed transaction, pursuant to Article 6(1)(c) of Council Regulation (EEC) No 4064/89, and

(iii) far enough in advance of the adoption of a decision in the case to enable the other Party's views to be taken into account.

4. With respect to other matters, notification shall ordinarily be provided at the stage in an investigation when it becomes evident that notifiable circumstances are present, and in any event far enough in advance of:

(a) the issuance of a statement of objections in the case of the Commission of the European Communities, or a complaint or indictment in the case of the Government of the United States of America; and

(b) the adoption of a decision or settlement in the case of the Commission of the European Communities, or the entry of a consent decree in the case of the Government of the United States of America;

to enable the other Party's views to be taken into account.

5. Each Party shall also notify the other whenever its competition authorities intervene or otherwise participate in a regulatory or judicial proceeding that does not arise from its enforcement activities, if the issues addressed in the intervention or participation may affect the other Party's important interests. Notification under this paragraph shall apply only to:

(a) regulatory or judicial proceedings that are public;

(b) intervention or participation that is public and pursuant to formal procedures; and

(c) in the case of regulatory proceeding in the United States, only proceedings before federal agencies.

Notification shall be made at the time of the intervention or participation or as soon thereafter as possible.

6. Notification under this Article shall include sufficient information to permit an initial evaluation by the recipient Party of any effects on its interests.

Article III

EXCHANGE OF INFORMATION

1. The Parties agree that it is in their common interest to share information that will (a) facilitate effective application of their respective competition laws, or (b) promote better understanding by them of economic conditions and theories relevant to their competition authorities' enforcement activities and interventions or participation of the kind described in Article II(5).

2. In furtherance of this common interest, appropriate officials from the competition authorities of each Party shall meet at least twice each year, unless otherwise agreed, to (a) exchange information on their current enforcement activities and priorities, (b) exchange information on economic sectors of common interest, (c) discuss policy changes which they are considering, and (d) discuss other matters of mutual interest relating to the application of competition laws.

3. Each Party will provide the other Party with any significant information that comes to the attention of its competition authorities about anticompetitive activities that its competition authorities believe is relevant to, or may warrant, enforcement activity by the other Party's competition authorities.

4. Upon receiving a request from the other Party, and within the limits of Articles VIII and IX, a Party will provide to the requesting Party such information within its possession as the requesting party may describe that is relevant to an enforcement activity being considered or conducted by the requesting Party's competition authorities.

Article IV

COOPERATION AND COORDINATION IN ENFORCEMENT ACTIVITIES

1. The competition authorities of each Party will render assistance to the competition authorities of the other Party in their enforcement activities, to the extent compatible with the assisting Party's laws and important interests, and within its reasonably available resources.

2. In cases where both Parties have an interest in pursuing enforcement activities with regard to related situations, they may agree that it is in their mutual interest to coordinate their enforcement activities. In considering whether particular enforcement activities should be coordinated, the Parties shall take account of the following factors, among others:

(a) the opportunity to make more efficient use of their resources devoted to the enforcement activities;

(b) the relative abilities of the Parties' competition authorities to obtain information necessary to conduct the enforcement activities;

(c) the effect of such coordination on the ability of both Parties to achieve the objectives of their enforcement activities; and

(d) the possibility of reducing costs incurred by persons subject to the enforcement activities.

3. In any coordination agreement, each Party shall conduct its enforcement activities expeditiously and, in so far as possible, consistently with the enforcement objectives of the other Party.

4. Subject to appropriate notice to the other Party, the competition authorities of either Party may limit or terminate their participation in a coordination arrangement and pursue their enforcement activities independently.

Article V

COOPERATION REGARDING ANTICOMPETITIVE ACTIVITIES IN THE TERRITORY OF ONE PARTY THAT ADVERSELY AFFECT THE INTERESTS OF THE OTHER PARTY

1. The Parties note that anticompetitive activities may occur within the territory of one Party that, in addition to violating that Party's competition laws, adversely affect important interests of the other Party. The Parties agree that it is in both their interests to address anticompetitive activities of this nature.

2. If a Party believes that anticompetitive activities carried out on the territory of the other Party are adversely affecting its important interests, the first Party may notify the other Party and may request that the other Party's competition authorities initiate appropriate enforcement activities. The notification shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the notifying Party, and shall include an offer of such further information and other cooperation as the notifying Party is able to provide.

3. Upon receipt of a notification under paragraph 2, and after such other discussion between the Parties as may be appropriate and useful in the circumstances, the competition authorities of the notified Party will consider whether or not to initiate enforcement activities, or to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the notification. The notified Party will advise the notifying Party of its decision. If enforcement activities are initiated, the notified Party will advise the notifying Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the notified Party under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the notified anticompetitive activities, or precludes the notifying Party from undertaking enforcement activities with respect to such anticompetitive activities.

Article VI

AVOIDANCE OF CONFLICTS OVER ENFORCEMENT ACTIVITIES

Within the framework of its own laws and to the extent compatible with its important interests, each Party will seek, at all stages in its enforcement activities, to take into account the important interests of the other Party. Each Party shall consider important interests of the other Party in decisions as to whether or not to initiate an investigation or proceeding, the scope of an investigation or proceeding, the nature of the remedies or penalties sought, and in other ways, as appropriate. In considering one another's important interests in the course of their enforcement activities, the Parties will take account of, but will not be limited to, the following principles:

1. While an important interest of a Party may exist in the absence of official involvement by the Party with the activity in question, it is recognized that such interests would normally be reflected in antecedent laws, decisions or statements of policy by its competent authorities.

2. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize, however, that as a general matter the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

3. Where it appears that one Party's enforcement activities may adversely affect important interests of the other Party, the Parties will consider the following factors, in addition to any other factors that appear relevant in the circumstances, in seeking an appropriate accommodation of the competing interests:

(a) the relative significance to the anticompetitive activities involved of conduct within the enforcing Party's territory as compared with conduct within the other Party's territory;

(b) the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the enforcing Party's territory;

(c) the relative significance of the effects of the anticompetitive activities on the enforcing Party's interests as compared with the effects on the other Party's interests;

(d) the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;

(e) the degree of conflict or consistency between the enforcement activities and the other Party's laws or articulated economic policies; and

(f) the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or undertakings resulting from such activities, may be affected.

Article VII

CONSULTATION

1. Each Party agrees to consult promptly with the other Party in response to a request by the other Party for consultation regarding any matter related to this Agreement and to attempt to conclude consultations expeditiously with a view to reaching mutually satisfactory conclusions. Any request for consultations shall include the reasons therefore and shall state whether procedural time-limits or other considerations require the consultations to be expedited.

These consultations shall take place at the appropriate level, which may include consultations between the heads of the competition authorities concerned.

2. In each consultation under paragraph 1, each Party shall take into account the principles of cooperation set forth in this Agreement and shall be prepared to explain to the other Party the specific results of its application of those principles to the issue that is the subject of consultation.

Article VIII

CONFIDENTIALITY OF INFORMATION

1. Notwithstanding any other provisions of this Agreement, neither Party is required to provide information to the other Party if disclosure of that information to the requesting Party (a) is prohibited by the law of the Party possessing the information, or (b) would be incompatible with important interests of the Party possessing the information.

2. Each Party agrees to maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other Party under this Agreement and to oppose, to the fullest extent possible, any application for disclosure of such information by a third party that is not authorized by the Party that supplied the information.

Article IX

EXISTING LAW

Nothing in this Agreement shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the laws, of the United States of America or the European Communities or of their respective States or Member States.

Article X

COMMUNICATIONS UNDER THIS AGREEMENT

Communications under this Agreement, including notifications under Articles II and V, may be carried out by direct oral, telephonic, written or facsimile communication from one Party's competition authorities to the other Party's authority. Notifications under Articles II, V and XI, and requests under Article VII, shall be confirmed promptly in writing through diplomatic channels.

Article XI

ENTRY INTO FORCE, TERMINATION AND REVIEW

1. This Agreement shall enter into force upon signature.

2. This Agreement shall remain in force until 60 days after the date on which either Party notifies the other Party in writing that it wishes to terminate the Agreement.

3. The Parties shall review the operation of this Agreement not more than 24 months from the date of its entry into force, with a view to assessing their cooperative activities, identifying additional areas in which they could usefully cooperate and identifying any other ways in which the Agreement could be improved.

The Parties agree that this review will include, among other things, an analysis of actual or potential cases to determine whether their interests could be better served through closer cooperation.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE at Washington, in duplicate, this twenty-third day of September 1991, in the English language.

For the Commission of the European Communities

For the Government of the United States of America

CORRIGENDA [1]

Corrigenda to Decision 95/145/EC, ECSC of the Council and the Commission of 10 April 1995 concerning the conclusion of the Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws

(*Official Journal of the European Communities*, L 95, 27.4.1995)

The exchange of interpretative letters with the Government of the United States of America should be replaced by the following text:

Exchange of interpretative letters with the Government of the United States of America

[...]

Dear [name],

As you are aware, on 9 August 1994, the Court of Justice of the European Communities held that the European Commission was not competent to conclude the 'Agreement between the Commission of the European Communities and the Government of the United States of America regarding the application of their competition rules'.

In order to remedy this situation and to assure the continuation of the application of the Agreement, the Council has decided on [date] to conclude the Agreement. However, as the Agreement will now be concluded by the Council on behalf of the European Community and by the Commission on behalf of the European Coal and Steel Community, certain corrections to the text of the Agreement are necessary. These are set out in detail in the Annex to this letter, which forms an integral part of this letter.

As these corrections do not affect the substance of the Agreement, we consider that they can be made through an exchange of letters. We should therefore be grateful if you would confirm your acceptance of the corrections contained in this letter.

Moreover, in order to ensure a clear understanding of the European Communities' interpretation of the Agreement, we set out below two interpretative statements:

1. In the light of Article IX of the Agreement, Article VIII(1) should be understood to mean that the information covered by the provisions of Article 20 of Council Regulation 17/62 or by equivalent provisions in other regulations in the field of competition may not under any circumstances be communicated by the Commission to the US antitrust authorities, save with the express agreement of the source concerned.

[1] OJ L 131, 15.6.1995, p. 38.

Similarly, the information referred to in Articles II(6) and III of the Agreement may not include information covered by Article 20 of Regulation 17/62 nor by equivalent provisions in other regulations in the field of competition, save with the express agreement of the source concerned.

2. In the light of Article VIII(2) of the Agreement, all information provided in confidence by either of the Parties in accordance with the Agreement will be considered as confidential by the receiving party which should oppose any request for disclosure to a third party unless such disclosure is:

(a) authorized by the Party supplying the information, or

(b) required under the law of the receiving Party.

This is understood to mean that:

- each Party assures the confidentiality of all information provided in confidence by the other Party in accordance with the receiving Party's applicable rules, including those rules intended to assure the confidentiality of information gathered during a Party's own enforcement activities,
- each Party shall use all the legal means at its disposal to oppose the disclosure of this information. The European Communities recall the principles which govern the relationship between the Commission and the Member States in the application of the competition rules as enshrined, for example, in Council Regulation 17/62. The Commission after notice to the US competition authorities, will inform the Member State or Member States whose interests are affected of the notifications sent to it by the US antitrust authorities. The Commission, after consultation with the US competition authorities, will also inform such Member State or Member States of any cooperation and coordination of enforcement activities. However, as regards such activities, either competition authorities will respect the other's request not to disclose the information which it provides when necessary to ensure confidentiality, subject to any contrary requirement of the applicable law.

We should be grateful if you would also confirm that these interpretative statements do not present any difficulties for the US Government.

Yours sincerely,

ANNEX

CHANGES TO THE TEXT OF THE AGREEMENT NECESSITATED BY THE CONCLUSION OF THE AGREEMENT BY THE COMMISSION ON BEHALF OF THE EUROPEAN COAL AND STEEL COMMUNITY AND BY THE COUNCIL ON BEHALF OF THE EUROPEAN COMMUNITY [1]

Title

Agreement between *the European Communities* and the Government of the United States of America regarding the application of their competition laws

Parties

The European Community and the European Coal and Steel Community on the one hand (hereinafter referred to as 'the European Communities')

Recital No 2

Noting that *the European Communities* and the Government of the United States of America share the view that the sound and effective enforcement of competition law is a matter of importance to the efficient operation of their respective markets and to trade between them;

Execution

For the European Community

For the European Coal and Steel Community

For the Government of the United States of America.

[1] All changes have been underlined (italic in this publication).

VI – Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (CE-TR 106/1/95)

CHAPTER IV – APPROXIMATION OF LAWS [1]

[...]

SECTION II

Competition

A – COMPETITION RULES OF THE CUSTOMS UNION

Article 32

1. The following shall be prohibited as incompatible with the proper functioning of the Customs Union, in so far as they may affect trade between the Community and Turkey: all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their objective or effect the prevention, restriction or distortion of competition, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production markets, technical development or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall automatically be void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

– any agreement or category of agreements between undertakings;

– any decision or category of decisions by associations of undertakings;

– any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

[1] OJ L 35, 13.2.1996, p. 1.

Article 33

1. Any abuse by one of more undertakings of a dominant position in the territories of the Community and/or Turkey as a whole or in a substantial part thereof shall be prohibited as incompatible with the proper functioning of the Customs Union, in so far as it may affect trade between the Community and Turkey.

2. Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 34

1. Any aid granted by Member States of the Community or by Turkey through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Community and Turkey, be incompatible with the proper functioning of the Customs Union.

2. The following shall be compatible with the functioning of the Customs Union:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division;

(d) for a period of five years from the entry into force of this Decision, aid to promote economic development of Turkey's less-developed regions, provided that such aid does not adversely affect trading conditions between the Community and Turkey to an extent contrary to the common interest.

3. The following may be considered to be compatible with the functioning of the Customs Union:

(a) in conformity with Article 43(2) of the Additional Protocol, aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State of the Community or of Turkey;

(c) for a period of five years after the entry into force of this Decision, in conformity with Article 43(2) of the Additional Protocol, aids aiming at accomplishing structural adjustment necessitated by the establishment of the Customs Union. The Association Council shall review the application of that clause after the aforesaid period;

(d) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions between the Community and Turkey to an extent contrary to the common interest;

(e) aid to promote culture and heritage conservation where such aid does not adversely affect trading conditions between the Community and Turkey to an extent contrary to the common interest;

(f) such other categories of aid as may be specified by the Association Council.

Article 35

Any practices contrary to Articles 32, 33 and 34 shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European Community and its secondary legislation.

Article 36

The Parties shall exchange information, taking into account the limitations imposed by the requirements of professional and business secrecy.

Article 37

1. The Association Council shall, within two years following the entry into force of the Customs Union, adopt by decision the necessary rules for the implementation of Articles 32, 33 and 34 and related parts of Article 35. These rules shall be based upon those already existing in the Community and shall *inter alia* specify the role of each competition authority.

2. Until these rules are adopted:

(a) the authorities of the Community or Turkey shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in accordance with Articles 32 and 33;

(b) the provisions of the GAT Subsidies Code shall be applied as the rules for the implementation of Article 34.

Article 38

1. If the Community or Turkey considers that a particular practice is incompatible with the terms of Article 32, 33 or 34, and:

- is not adequately dealt with under the implementing rules referred to in Article 37, or
- in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interest of the other Party or material injury to its domestic industry,

it may take appropriate measures after consultation within the Joint Customs Union Committee or after 45 working days following referral for such consultation. Priority shall be given to such measures that will least disturb the functioning of the Customs Union.

2. In the case of practices incompatible with Article 34, such appropriate measures may, where the General Agreement on Tariffs and Trade applies thereto, only be adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties.

B – APPROXIMATION OF LEGISLATION

Article 39

1. With a view to achieving the economic integration sought by the Customs Union, Turkey shall ensure that its legislation in the field of competition rules is made compatible with that of the European Community, and is applied effectively.

2. To comply with the obligations of paragraph 1, Turkey shall:

(a) before the entry into force of the Customs Union, adopt a law which shall prohibit behaviours of undertakings under the conditions laid down in Articles 85 and 86 of the EC Treaty. It shall also ensure that, within one year after the entry into force of the Customs Union, the principles contained in block exemption regulations in force in the Community, as well as in the case-law developed by EC authorities, shall be applied in Turkey. The Community shall inform Turkey as soon as possible of any procedure related to the adoption, abolition, or modification of block exemption regulations by the EC after the entry into force of the Customs Union. After such information has been given, Turkey shall have one year to adapt its legislation, if necessary;

(b) before the entry into force of the Customs Union, establish a competition authority which shall apply these rules and principles effectively;

(c) before the entry into force of this Decision, adapt all its aids granted to the textile and clothing sector to the rules laid down in the relevant Community frameworks and guidelines under Articles 92 and 93 of the EC Treaty. Turkey shall inform the Community of all its aid schemes to this sector as adapted in accordance with these frameworks and guidelines. The Community shall inform Turkey as soon as possible of any procedure related to the adoption, abolition or modification of such frameworks and guidelines by

the Community after the entry into force of the Customs Union. After such information has been given, Turkey shall have one year to adapt its legislation;

(d) within two years after the entry into force of this Decision, adapt all aid schemes other than those granted to the textile and clothing sector to the rules laid down in Community frameworks and guidelines under Articles 92 and 93 of the EC Treaty. The Community shall inform Turkey as soon as possible of any procedure related to the adoption, abolition or modification of such frameworks and guidelines by the Community. After such information has been given, Turkey shall have one year to adapt its legislation;

(e) within two years after the entry into force of the Customs Union, inform the Community of all aid schemes in force in Turkey as adapted in accordance with point (d). If a new scheme is to be adopted, Turkey shall inform the Community as soon as possible of the content of such scheme;

(f) notify the Community in advance of any individual aid to be granted to an enterprise or a group of enterprises that would be notifiable under Community frameworks or guidelines had it been granted by a Member State, or of individual aid awards outside of Community frameworks or guidelines above an amount of ECU 12 million and which would have been notified under EC law had it been granted by a Member State.

Regarding individual aids granted by Member States and subject to the analysis by the Commission, on the basis of Article 93 of the EC Treaty, Turkey will be informed on the same basis as the Member States.

3. The Community and Turkey shall communicate to each other all amendments to their laws concerning restrictive practices by undertakings. They shall also inform each other of the cases when these laws have been applied.

4. In relation to information supplied under paragraph 2, points (c), (e) and (f), the Community shall have the right to raise objections against an aid granted by Turkey which it would have deemed unlawful under EC law had it been granted by a Member State. If Turkey does not agree with the Community's opinion, and if the case is not resolved within 30 days, the Community and Turkey shall each have the right to refer the case to arbitration.

5. Turkey shall have the right to raise objections and seize the Association Council against an aid granted by a Member State which it deems to be unlawful under EC law. If the case is not resolved by the Association Council within three months, the Association Council may decide to refer the case to the Court of Justice of the European Communities.

Article 40

1. The Community shall inform Turkey as soon as possible of the adoption of any decision under Articles 85, 86 and 92 of the EC Treaty which might affect Turkey's interests.

2. Turkey shall be entitled to ask for information about any specific case decided by the Community under Articles 85, 86 and 92 of the EC Treaty.

Article 41

With regard to public undertakings to which special or exclusive rights have been granted, Turkey shall ensure that, by the end of the first year following the entry into force of the Customs Union, the principles of the Treaty establishing the European Economic Community, notably Article 90, as well as the principles contained in the secondary legislation and the case-law developed on this basis, are upheld.

Article 42

Turkey shall progressively adjust, in accordance with the conditions and the timetable laid down by the Association Council, any State monopolies of a commercial character so as to ensure that, by the end of the second year following the entry into force of this Decision, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of Turkey.

Article 43

1. If the Community or Turkey believes that anticompetitive activities carried out on the territory of the other Party are adversely affecting its interests or the interests of its undertakings, the first Party may notify the other Party and may request that the other Party's competition authority initiate appropriate enforcement action. The notification shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the notifying Party, and shall include an offer for such further information and other cooperation as the notifying Party is able to provide.

2. Upon receipt of a notification under paragraph 1 and after such other discussion between the Parties as may be appropriate and useful in the circumstances, the competition authority of the notified Party will consider whether or not to initiate enforcement action, with respect to the anticompetitive activities identified in the notification. The notified Party will advise the notifying Party of its decision. If enforcement action is initiated, the notified Party will advise the notifying Party of its outcome and, to the extent possible, of significant interim developments.

3. Nothing in this Article limits the discretion of the notified Party under its competition laws and enforcement policies as to whether or not to undertake enforcement action with respect to the notified anticompetitive activities, or precludes the notifying Party from undertaking enforcement action with respect to such anticompetitive activities.

[...]

VII – Free trade agreements and association agreements

1. Agreement between the European Economic Community and the Swiss Confederation

Additional Agreement concerning the validity for the Principality of Liechtenstein, of the Agreement between the European Economic Community and the Swiss Confederation

Regulation (EEC) No 2840/72 of the Council of 19 December 1972 [1]

[...]

Article 1

The aim of this Agreement is:

(a) to promote through the expansion of reciprocal trade the harmonious development of economic relations between the European Economic Community and the Swiss Confederation and thus to foster in the Community and in Switzerland the advance of economic activity, the improvement of living and employment conditions, and increased productivity and financial stability;

(b) to provide fair conditions of competition for trade between the Contracting Parties;

(c) to contribute in this way, by the removal of barriers to trade, to the harmonious development and expansion of world trade.

[...]

Article 23

1. The following are incompatible with the proper functioning of the Agreement in so far as they may affect trade between the Community and Switzerland:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition as regards the production of or trade in goods;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Contracting Parties as a whole or in a substantial part thereof;

[1] OJ L 300, 31.12.1972 (French version); OJ Special Edition, 31.12.1972 (English version).

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Should a Contracting Party consider that a given practice is incompatible with this Article, it may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 27.

[...]

Article 27

1. In the event of a Contracting Party subjecting imports of products liable to give rise to the difficulties referred to in Articles 24 and 26 to an administrative procedure, the purpose of which is to provide rapid information on the trend of trade flows, it shall inform the other Contracting Party.

2. In the cases specified in Articles 22 to 26, before taking the measures provided for therein or, in cases to which paragraph 3(d) applies, as soon as possible, the Contracting Party in question shall supply the Joint Committee with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Contracting Parties.

In the selection of measures, priority must be given to those which least disturb the functioning of the Agreement.

The safeguard measures shall be notified immediately to the Joint Committee and shall be the subject of periodical consultations within the Committee, particularly with a view to their abolition as soon as circumstances permit.

3. For the implementation of paragraph 2, the following provisions shall apply:

(a) As regards Article 23, either Contracting Party may refer the matter to the Joint Committee if it considers that a given practice is incompatible with the proper functioning of the Agreement within the meaning of Article 23(1).

The Contracting Parties shall provide the Joint Committee with all relevant information and shall give it the assistance it requires in order to examine the case and, where appropriate, to eliminate the practice objected to.

If the Contracting Party in question fails to put an end to the practice objected to within the period fixed by the Joint Committee, or in the absence of agreement in the Joint Committee within three months of the matter being referred to it, the Contracting Party concerned may adopt any safeguard measures it considers necessary to deal with the serious difficulties resulting from the practices in question; in particular, it may withdraw tariff concessions.

(b) As regards Article 24, the difficulties arising from the situation referred to in that Article shall be referred for examination to the Joint Committee, which may take any decision needed to put an end to such difficulties.

If the Joint Committee or the exporting Contracting Party has not taken a decision putting an end to the difficulties within 30 days of the matter being referred, the importing Contracting Party is authorized to levy a compensatory charge on the product imported.

The compensatory charge shall be calculated according to the incidence on the value of the goods in question of the tariff disparities in respect of the raw materials or intermediate products incorporated therein.

(c) As regards Article 25, consultation in the Joint Committee shall take place before the Contracting Party concerned takes the appropriate measures.

(d) Where exceptional circumstances requiring immediate action make prior examination impossible, the Contracting Party concerned may, in the situations specified in Articles 24, 25 and 26 and also in the case of export aids having a direct and immediate incidence on trade, apply forthwith the precautionary measures strictly necessary to remedy the situation.

[...]

DECLARATION BY THE EUROPEAN ECONOMIC COMMUNITY CONCERNING THE REGIONAL APPLICATION OF CERTAIN PROVISIONS OF THE AGREEMENT

The European Economic Community declares that the application of any measures it may take under Article 23, 24, 25 or 26 of the Agreement, in accordance with the procedure and under the arrangement set out in Article 27, or under Article 28, may be limited to one of its regions by virtue of Community rules.

DECLARATION BY THE EUROPEAN ECONOMIC COMMUNITY CONCERNING ARTICLE 23(1) OF THE AGREEMENT

The European Economic Community declares that in the context of the autonomous implementation of Article 23(1) of the Agreement which is incumbent on the Contracting Parties, it will assess any practices contrary to that Article on the basis of criteria arising from the application of the rules of Articles 85, 86, 90 and 92 of the Treaty establishing the European Economic Community.

Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation [1]

[...]

Article 18

1. The following are incompatible with the proper functioning of the Agreement in so far as they may affect trade between the Community and Switzerland:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition as regards the production of or trade in goods;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Contracting Parties as a whole or in a substantial part thereof;

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Should a Contracting Party consider that a given practice is incompatible with this Article, it may take the appropriate measures under the conditions and in accordance with the procedures laid down in Article 23.

Article 19

If the offers made by Swiss undertakings are likely to be detrimental to the functioning of the common market and if any such detriment is attributable to a difference in the conditions of competition as regards prices, Member States may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 23.

[...]

Article 23

1. In the event of a Contracting Party subjecting imports of products liable to give rise to the difficulties referred to in Articles 20 and 22 to an administrative procedure, the purpose of which is to provide rapid information on the trend of trade flows, it shall inform the other Contracting Party.

2. In the cases specified in Articles 17 to 22, before taking the measures provided for therein or, in cases to which paragraph 3(e) applies, as soon as possible, the Contracting Party in question shall supply the Joint Committee with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Contracting Parties.

[1] OJ L 350, 19.12.1973, p. 13.

In the selection of measures, priority must be given to those which least disturb the functioning of the Agreement.

The safeguard measures shall be notified immediately to the Joint Committee and shall be the subject of periodical consultations within the Committee, particularly with a view to their abolition as soon as circumstances permit.

3. For the implementation of paragraph 2, the following provisions shall apply:

(a) As regards Article 18, either Contracting Party may refer the matter to the Joint Committee if it considers that a given practice is incompatible with the proper functioning of the Agreement within the meaning of Article 18(1).

The Contracting Parties shall provide the Joint Committee with all relevant information and shall give it the assistance it requires in order to examine the case and, where appropriate, to eliminate the practice objected to.

If the Contracting Party in question fails to put an end to the practice objected to within the period fixed by the Joint Committee, or in the absence of agreement in the Joint Committee within three months of the matter being referred to it, the Contracting Party concerned may adopt any safeguard measures it considers necessary to deal with the serious difficulties resulting from the practices in question; in particular, it may withdraw tariff concessions.

(b) As regards Article 19, the Contracting Parties shall provide the Joint Committee with all relevant information and shall give it the assistance it requires in order to examine the case and, where necessary, to consider appropriate measures.

If Switzerland fails to put an end to the practice objected to within the period fixed by the Joint Committee, or in the absence of agreement in the Joint Committee, the Member States may adopt the safeguard measures they consider necessary to avoid, or put an end to, any detriment to the functioning of the common market; in particular, they may withdraw tariff concessions.

(c) As regards Article 20, the difficulties arising from the situation referred to in that Article shall be referred for examination to the Joint Committee, which may take any decision needed to put an end to such difficulties.

If the Joint Committee or the exporting Contracting Party has not taken a decision putting an end to the difficulties within 30 days of the matter being referred, the importing Contracting Party is authorized to levy a compensatory charge on the product imported.

The compensatory charge shall be calculated according to the incidence on the value of the goods in question of the tariff disparities in respect of the raw materials or intermediate products incorporated therein.

(d) As regards Article 21, consultation in the Joint Committee shall take place before the Contracting Party concerned takes the appropriate measures.

(e) Where exceptional circumstances requiring immediate action make prior examination impossible, the Contracting Party concerned may, in the situations specified in Articles 20, 21 and 22 and also in the case of export aids having a direct and immediate incidence on trade, apply forthwith the precautionary measures strictly necessary to deal with the situation.

[...]

2. Agreement between the European Economic Community and the State of Israel

Regulation (EEC) No 1274/75 of the Council of 20 May 1975 [1]

[...]

Article 1

The aim of this Agreement is:

(a) to promote through the expansion of reciprocal trade the harmonious development of economic relations between the European Economic Community and the State of Israel and thus to foster in the Community and in Israel the advance of economic activity, the improvement of living and employment conditions, and increased productivity and financial stability;

(b) to promote cooperation in areas which are of reciprocal interest to the Contracting Parties;

(c) to provide fair conditions of competition for trade between the Contracting Parties;

(d) to contribute in this way, by the removal of barriers to trade, to the harmonious development and expansion of world trade.

[...]

The rest of the Articles of this Agreement has been amended by Decision of the Council and the Commission of 22 December 1995 on the conclusion by the European Community of an Interim Agreement on trade and trade-related matters between the European Community and the European Coal and Steel Community of the one part, and the State of Israel, on the other part (96/206/ECSC, EC) [2]

[1] OJ L 136, 28.5.1975, p. 3.
[2] OJ L 71, 20.3.1996, p. 1.

Decision of the Council and the Commission of 22 December 1995 on the conclusion by the European Community of an Interim Agreement on trade and trade-related matters between the European Community and the European Coal and Steel Community, of the one part, and the State of Israel, of the other part (96/206/ECSC, EC) [1]

[...]

TITLE III

TRADE-RELATED PROVISIONS

CHAPTER 1

Competition

Article 25

1. The following are incompatible with the proper functioning of this Agreement, in so far as they may affect trade between the Community and Israel:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or Israel as a whole or in a substantial part thereof;

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Until the necessary rules for implementation of paragraph 1 are adopted according to the provisions of the Association Agreement, the provisions of the Agreement on interpretation and application of Articles VI, XVI and XXIII of the GATT shall be applied as the rules for the implementation of paragraph 1 (iii).

3. Each Party shall ensure transparency in the area of public aid, *inter alia* by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

4. With regard to agricultural products referred to in Title II, Chapter 3, paragraph 1 (iii) does not apply.

[1] OJ L 71, 20.3.1996, p. 1.

5. If the Community or Israel considers that a particular practice is incompatible with the terms of paragraph 1, and if such practice causes or threatens to cause serious prejudice to the interest of the other Party or material injury to its domestic industry, including its service industry, it may take appropriate measures after consultation within the Cooperation Council or after 30 days following referral for such consultation.

With reference to practices incompatible with paragraph 1 (iii), such appropriate measures, when the GATT is applicable to them, may only be adopted in accordance with the procedures and under the conditions laid down by the GATT or by any other relevant instrument negotiated under its auspices and applicable to the Parties.

6. The Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

Article 26 (AA 37)

1. The Member States and Israel shall progressively adjust any State monopolies of a commercial character, so as to ensure that, by the end of the fifth year following the entry into force of the Association Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and Israel.

2. The Cooperation Council shall be informed about the measures adopted to implement this objective.

Article 27 (AA 38)

With regard to public undertakings and undertakings to which special or exclusive rights have been granted, the Parties shall take the necessary measures so as to ensure that as from the fifth year following the date of entry into force of the Association Agreement there is neither enacted nor maintained any measure distorting trade between the Community and Israel to an extent contrary to the Parties' interests. This provision should not obstruct the performance in law or in fact of the particular tasks assigned to those undertakings.

[...]

3. Protocol laying down the conditions and procedures for the implementation of the second stage of the Agreement establishing an association between the European Economic Community and the Republic of Cyprus and adapting certain provisions of the Agreement

Council Decision of 21 December 1987 (87/607/EEC) [1]

[...]

Article 13

Cyprus shall progressively adjust any State monopolies of a commercial character so as to ensure that, when the first phase of the second stage has ended, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States of the Community and nationals of Cyprus.

[...]

Article 27

1. The Contracting Parties recognize that the principles laid down in Articles 85 (agreements between undertakings), 86 (dominant position of an undertaking), 90 (public undertakings), 92 (State aid), 95 (taxation of products), 96 (repayments on exportation), 97 (turnover taxes), 98 (remissions and repayments in respect of exports) and 100 (approximation of laws) of the Treaty establishing the European Economic Community shall be applied in their relations within the Association Council.

2. The conditions and detailed rules for the application of these principles and the guarantees relating to their proper application shall be examined by the Contracting Parties during the first phase of the second stage within the Association Council.

3. The measures referred to in paragraph 2 that are essential to ensure the smooth functioning of the Customs Union shall be agreed between the Contracting Parties and laid down in a Protocol which shall enter into force at the beginning of the second phase at the latest.

[1] OJ L 393, 31.12.1987, p. 1.

Article 28

1. From the entry into force of the second stage in accordance with the principles set out in Article 27 concerning Articles 85, 86 and 92 of the Treaty establishing the European Economic Community, the following are incompatible with the proper functioning of the Agreement in so far as they may affect trade between the Community and Cyprus:

(a) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition as regards the production of or trade in goods;

(b) abuse by one or more undertakings of a dominant position in the territories of the Contracting Parties as a whole or in a substantial part thereof;

(c) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Should a Contracting Party note that any such practice as is referred to in paragraph 1 is being applied by its partner, it may take appropriate measures after consultations within the Association Council.

[...]

VIII – Framework Agreement for commercial and economic cooperation between the European Communities and Canada

Council Regulation (EEC) No 2300/76 of 20 September 1976 [1]

[...]

Article II

COMMERCIAL COOPERATION

1. The Contracting Parties undertake to promote the development and diversification of their reciprocal commercial exchanges to the highest possible level.

To this end, they shall, in accordance with their respective policies and objectives:

(a) cooperate at the international level and bilaterally in the solution of commercial problems of common interest;

(b) use their best endeavours to grant each other the widest facilities for commercial transactions in which one or the other has an interest;

(c) take fully into account their respective interests and needs regarding access to and further processing of resources.

2. The Contracting Parties shall use their best endeavours to discourage, in conformity with their legislation, restrictions of competition by enterprises of their respective industries, including pricing practices distorting competition.

3. The Contracting Parties agree, upon request, to consult and review these matters at the Joint Cooperation Committee referred to in Article IV.

[...]

[1] OJ L 260, 24.9.1976, p. 1.

PROTOCOL [1] CONCERNING COMMERCIAL AND ECONOMIC COOPERATION BETWEEN THE EUROPEAN COAL AND STEEL COMMUNITY AND CANADA

[...]

Article 1

The provisions of Articles I to V inclusive of the Framework Agreement for commercial and economic cooperation between the European Communities and Canada, signed in Ottawa on 6 July 1976, shall also apply in the matters covered by the Treaty establishing the European Coal and Steel Community.

[...]

[1] OJ L 260, 24.9.1976, p. 28.

Framework Agreement for commercial and economic cooperation between the European Communities and Canada

Commission Decision of 17 September 1976

(76/753/Euratom) [1]

[...]

Article II

COMMERCIAL COOPERATION

1. The Contracting Parties undertake to promote the developments and diversification of their reciprocal commercial exchanges to the highest possible level.

To this end, they shall, in accordance with their respective policies and objectives:

(a) cooperate at the international level and bilaterally in the solution of commercial problems of common interest;

(b) use their best endeavours to grant each other the widest facilities for commercial transactions in which one or the other has an interest;

(c) take fully into account their respective interests and needs regarding access to and further processing of resources.

2. The Contracting Parties shall use their best endeavours to discourage, in conformity with their legislation, restrictions of competition by enterprises of their respective industries, including pricing practices distorting competition.

3. The Contracting Parties agree, upon request, to consult and review these matters in the Joint Cooperation Committee referred to in Article IV.

[1] OJ L 260, 24.9.1976, p. 22.

IX – General Agreement on Tariffs and Trade 1947 [1]

[1] *Basic instruments and selected documents*, Volume IV, 1969.

Article XVI

Subsidies

Section A – Subsidies in general

1. If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the Contracting Parties in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. In any case in which it is determined that serious prejudice to the interests of any other contracting party is cause or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the Contracting Parties, the possibilities of limiting the subsidization.

Section B – Additional provisions on export subsidies

2. The Contracting Parties recognize that the granting by a contracting party of a subsidy on the export of any product may have harmful effects for other contracting parties, both importing and exporting, may cause undue disturbance to their normal commercial interests, and may hinder the achievement of the objectives of this Agreement.

3. Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operated to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product.

4. Further, as from 1 January 1958 or the earliest practicable date thereafter, contracting parties shall cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market. Until 31 December 1957, no contracting party shall extend the scope of any such subsidization beyond that existing on 1 January 1955 by the introduction of new, or the extension of existing, subsidies.

5. The Contracting Parties shall review the operation of the provisions of this Article from time to time with a view to examining its effectiveness, in the light of actual experience, in promoting the objectives of this Agreement and avoiding subsidization seriously prejudicial to the trade or interests of contracting parties.

Article XVII

State trading enterprises

1. (a) Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders.

   (b) The provisions of subparagraph (a) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such purchases or sales solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

   (c) No contracting party shall prevent any enterprise (whether or not an enterprise described in subparagraph (a) of this paragraph) under its jurisdiction from acting in accordance with the principles of subparagraphs (a) and (b) of this paragraph.

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods for sale. With respect to such imports, each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment.

3. The contracting parties recognize that enterprises of the kind described in paragraph 1(a) of this Article might be operated so as to create serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis designed to limit or reduce such obstacles are of importance to the expansion of international trade.

4. (a) Contracting parties shall notify the Contracting Parties of the products which are imported into or exported from their territories by enterprises of the kind described in paragraph 1(a) of this Article.

   (b) A contracting party establishing, maintaining or authorizing an import monopoly of a product, which is not the subject of a concession under Article II, shall, on the request of another contracting party having a substantial trade in the product concerned, inform the Contracting Parties of the import mark-up on the product during a recent representative period, or, when it is not possible to do so, of the price charged on the resale of the product.

   (c) The Contracting Parties may, at the request of a contracting party which has reason to believe that its interests under this Agreement are being adversely affected by the operations of an enterprise of the kind described in paragraph 1(a), request the contracting party establishing, maintaining or authorizing such enterprise to supply

information about its operations related to the carrying-out of the provisions of this Agreement.

(d) The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

ANNEX I

NOTES AND SUPPLEMENTARY PROVISIONS

Ad Article XVI

The exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

Section B

1. Nothing in Section B shall preclude the use by a contracting party of multiple rates of exchange in accordance with the Articles of Agreement of the International Monetary Fund.

2. For the purposes of Section B, a 'primary product' is understood to be any product of farm, forest or fishery, or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade.

Paragraph 3

1. The fact that a contracting party has not exported the product in question during the previous representative period would not in itself preclude that contracting party from establishing its right to obtain a share of the trade in the product concerned.

2. A system for the stabilization of the domestic price or of the return to domestic producers of a primary product independently of the movements of export prices, which results at times in the sale of the product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, shall be considered not to involve a subsidy on exports within the meaning of paragraph 3 if the Contracting Parties determine that:

(a) the system has also resulted, or is so designed as to result, in the sale of the product for export at a price higher than the comparable price charged for the like product to buyers in the domestic market; and

(b) the system is so operated, or is designed so to operate, either because of the effective regulation of production or otherwise, as not to stimulate exports unduly or otherwise seriously to prejudice the interests of other contracting parties.

Notwithstanding such determination by the Contracting Parties, operations under such a system shall be subject to the provisions of paragraph 3 where they are wholly or partly financed out of government funds in addition to the funds collected from producers in respect of the product concerned.

Paragraph 4

The intention of paragraph 4 is that the contracting parties should seek before the end of 1957 to reach agreement to abolish all remaining subsidies as from 1 January 1958; or, failing this, to reach agreement to extend the application of the standstill until the earliest date thereafter by which they can expect to reach such agreement.

Ad Article XVII

Paragraph 1

The operations of marketing boards, which are established by contracting parties and are engaged in purchasing or selling, are subject to the provisions of subparagraph (a) and (b).

The activities of marketing boards which are established by contracting parties and which do not purchase or sell but lay down regulations covering private trade are governed by the relevant Articles of this Agreement.

The charging by a State enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets.

Paragraph 1(a)

Government measures imposed to ensure standards of quality and efficiency in the operation of external trade, or privileges granted for the exploitation of national natural resources but which do not empower the government to exercise control over the trading activities of the enterprise in question, do not constitute 'exclusive or special privileges'.

Paragraph 1(b)

A country receiving a 'tied loan' is free to take this loan into account as a 'commercial consideration' when purchasing requirements abroad.

Paragraph 2

The term 'goods' is limited to products as understood in commercial practice, and is not intended to include the purchase or sale of services.

Paragraph 3

Negotiations which contracting parties agree to conduct under this paragraph may be directed towards the reduction of duties and other charges on imports and export or towards the conclusion of any other mutually satisfactory arrangement consistent with the provisions of this Agreement. (See paragraph 4 of Article 2 and the note to that paragraph.)

Paragraph 4(b)

The term 'import mark-up' in this paragraph shall represent the margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes within the purview of Article III, transportation, distribution, and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) exceeds the landed cost.

Council Decision of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations

(1986-94) 94/800/EC) [1]

ANNEX 1A

GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Understanding on the interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994 [2]

[...]

MEMBERS,

Noting that Article XVII provides for obligations on members in respect of the activities of the State trading enterprises referred to in paragraph 1 of Article XVII, which are required to be consistent with the general principles of non-discriminatory treatment prescribed in GATT 1994 for governmental measures affecting imports or exports by private traders,

Noting further that members are subject to their GATT 1994 obligations in respect of those governmental measures affecting State trading enterprises,

Recognizing that this Understanding is without prejudice to the substantive disciplines prescribed in Article XVII,

HEREBY AGREE AS FOLLOWS:

1. In order to ensure the transparency of the activities of State trading enterprises, members shall notify such enterprises to the Council for Trade in Goods, for review by the working party to be set up under paragraph 5, in accordance with the following working definition:

'Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports.'

This notification requirement does not apply to imports of products for immediate or ultimate consumption in governmental use or in use by an enterprise as specified above and not otherwise for resale or use in the production of goods for sale.

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[1] OJ L 336, 23.12.1994, p. 1.

[2] OJ L 336, 23.12.1994, p. 13.

2. Each member shall conduct a review of its policy with regard to the submission of notifications on State trading enterprises to the Council for Trade in Goods, taking account of the provisions of this Understanding. In carrying out such a review, each member should have regard to the need to ensure the maximum transparency possible in its notifications so as to permit a clear appreciation of the manner of operation of the enterprises notified and the effect of their operations on international trade.

3. Notifications shall be made in accordance with the questionnaire on State trading adopted on 24 May 1960 (BISD 9S/184-185), it being understood that members shall notify the enterprises referred to in paragraph 1 whether or not imports or exports have in fact taken place.

4. Any member which has reason to believe that another member has not adequately met its notification obligation may raise the matter with the member concerned. If the matter is not satisfactorily resolved, it may make a counternotification to the Council for Trade in Goods, for consideration by the working party set up under paragraph 5, simultaneously informing the member concerned.

5. A working party shall be set up, on behalf of the Council for Trade in Goods, to review notifications and counternotifications. In the light of this review and without prejudice to paragraph 4(c) of Article XVII, the Council for Trade in Goods may make recommendations with regard to the adequacy of notifications and the need for further information. The working party shall also review, in the light of the notifications received, the adequacy of the abovementioned questionnaire on State trading and the coverage of State trading enterprises notified under paragraph 1. It shall also develop an illustrative list showing the kinds of relationships between governments and enterprises, and the kinds of activities, engaged in by these enterprises, which may be relevant for the purposes of Article XVII. It is understood that the Secretariat will provide a general background paper for the working party on the operations of State trading enterprises as they relate to international trade. Membership of the working party shall be open to all members indicating their wish to serve on it. It shall meet within a year of the date of entry into force of the WTO Agreement and thereafter at least once a year. It shall report annually to the Council for Trade in Goods. [1]

[...]

[1] The activities of this working party shall be coordinated with those of the working group provided for in Section III of the Ministerial Decision on notification procedures adopted on 15 April 1994.

Agreement on subsidies and countervailing measures [1]

PART I – GENERAL PROVISIONS

Article 1

Definition of a subsidy

1.1. For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a) (1) there is a financial contribution by a government or any public body within the territory of a member (referred to in this Agreement as 'government', i.e. where:

(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits); [2]

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the types of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

or

(a) (2) there is any form of income or price support in the sense of Article XVI of GATT 1994;

and

(b) a benefit is thereby conferred.

1.2. A subsidy as defined in paragraph 1 shall be subject to the provisions of Part II or shall be subject to the provisions of Part III or V only if such a subsidy is specific in accordance with the provisions of Article 2.

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[1] OJ L 336, 23.12.1994, p. 156.
See also Council Regulation (EC) No 3284/94 of 22 December 1994 on protection against subsidized imports from countries not members of the European Community (OJ L 349, 31.12.1994, p. 22).

[2] In accordance with the provisions of Article XVI of GATT 1994 (note to Article XVI) and the provisions of Annexes I through III to this Agreement, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

Article 2

Specificity

2.1. In order to determine whether a subsidy, as defined in paragraph 1 of Article 1, is specific to an enterprise or industry or group of enterprises or industries (referred to in this Agreement as 'certain enterprises') within the jurisdiction of the granting authority, the following principles shall apply:

(a) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific.

(b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions [1] governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification.

(c) If, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are the use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.[2] In applying this subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

2.2. A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Agreement.

2.3. Any subsidy falling under the provisions of Article 3 shall be deemed to be specific.

2.4. Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.

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[1] Objective criteria or conditions, as used herein, mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise.

[2] In this regard, in particular, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall be considered.

PART II – PROHIBITED SUBSIDIES

Article 3

Prohibition

3.1. Except as provided in the Agreement on agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:

(a) subsidies contingent, in law or in fact, [1] whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I; [2]

(b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

3.2. A member shall neither grant nor maintain subsidies referred to in paragraph 1.

Article 4

Remedies

4.1. Whenever a member has reason to believe that a prohibited subsidy is being granted or maintained by another member, such member may request consultations with such other member.

4.2. A request for consultations under paragraph 1 shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

4.3. Upon request for consultations under paragraph 1, the member believed to be granting or maintaining the subsidy in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually agreed solution.

4.4. If no mutually agreed solution has been reached within 30 days [3] of the request for consultations, any member party to such consultations may refer the matter to the Dispute Settlement Body (DSB) for the immediate establishment of a panel, unless the DSB decides by consensus not to establish a panel.

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[1] This standard is met when the facts demonstrate that the granting of the subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.

[2] Measures referred to in Annex I as not constituting export subsidies shall not be prohibited under this or any other provision of this Agreement.

[3] Any time-periods mentioned in this Article may be extended by mutual agreement.

4.5. Upon its establishment, the panel may request the assistance of the Permanent Group of Experts [1] (referred to in this Agreement as the 'PGE') with regard to whether the measure in question is a prohibited subsidy. If so requested, the PGE shall immediately review the evidence with regard to the existence and nature of the measure in question and shall provide an opportunity for the member applying or maintaining the measure to demonstrate that the measure in question is not a prohibited subsidy. The PGE shall report its conclusion to the panel within a time-limit determined by the panel. The PGE's conclusions on the issue of whether or not the measure in question is a prohibited subsidy shall be accepted by the panel without modification.

4.6. The panel shall submit its final report to the parties to the dispute. The report shall be circulated to all members within 90 days of the date of the composition and the establishment of the panel's terms of reference.

4.7. If the measure in question is found to be a prohibited subsidy, the panel shall recommend that the subsidizing member withdraw the subsidy without delay. In this regard, the panel shall specify in its recommendation the time-period within which the measure must be withdrawn.

4.8. Within 30 days of the issuance of the panel's report to all members, the report shall be adopted by the DSB unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report.

4.9. Where a panel report is appealed, the Appellate Body shall issue its decision within 30 days from the date when the party to the dispute formally notifies its intention to appeal. When the Appellate Body considers that it cannot provide its report within 30 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 60 days. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report within 20 days following its issuance to the members. [2]

4.10. In the event the recommendation of the DSB is not followed within the time-period specified by the panel, which shall commence from the date of adoption of the panel's report or the Appellate Body's report, the DSB shall grant authorization to the complaining member to take appropriate [3] countermeasures, unless the DSB decides by consensus to reject the request.

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[1] As established in Article 24.

[2] If a meeting of the DSB is not scheduled during this period, such a meeting shall be held for this purpose.

[3] This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited.

4.11. In the event a party to the dispute requests arbitration under paragraph 6 of Article 22 of the Dispute Settlement Understanding (DSU), the arbitrator shall determine whether the countermeasures are appropriate. [1]

4.12. For purposes of disputes conducted pursuant to this Article, except for time-periods specifically prescribed in this Article, time-periods applicable under the DSU for the conduct of such disputes shall be half the time prescribed therein.

PART III – ACTIONABLE SUBSIDIES

Article 5

Adverse effects

No member should cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, adverse effects to the interests of other members, i.e.:

(a) injury to the domestic industry of another member. [2]

(b) nullification or impairment of benefits accruing directly or indirectly to other members under GATT 1994 in particular the benefits of concessions bound under Article II of GATT 1994. [3]

(c) serious prejudice to the interests of another member. [4]

This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on agriculture.

Article 6

Serious prejudice

6.1. Serious prejudice in the sense of paragraph (c) of Article 5 shall be deemed to exist in the case of:

(a) the total *ad valorem* subsidization [5] of a product exceeding 5%; [6]

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[1] This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited.

[2] The term 'injury to the domestic industry' is used here in the same sense as it is used in Part V.

[3] The term 'nullification or impairment' is used in this Agreement in the same sense as it is used in the relevant provisions of GATT 1994, and the existence of such nullification or impairment shall be established in accordance with the practice of application of these provisions.

[4] The term 'serious prejudice to the interests of another member' is used in this Agreement in the same sense as it is used in paragraph 1 of Article XVI of GATT 1994, and includes threat of serious prejudice.

[5] The total *ad valorem* subsidization shall be calculated in accordance with the provisions of Annex IV.

[6] Since it is anticipated that civil aircraft will be subject to specific multilateral rules, the threshold in this subparagraph does not apply to civil aircraft.

(b) subsidies to cover operating losses sustained by an industry;

(c) subsidies to cover operating losses sustained by an enterprise, other than one-time measures which are non-recurrent and cannot be repeated for that enterprise and which are given merely to provide time for the development of long-term solutions and to avoid acute social problems;

(d) direct forgiveness of debt, i.e. forgiveness of government-held debt, and grants to cover debt repayment. [1]

6.2. Notwithstanding the provisions of paragraph 1, serious prejudice shall not be found if the subsidizing member demonstrates that the subsidy in question has not resulted in any of the effects enumerated in paragraph 3.

6.3. Serious prejudice in the sense of paragraph (c) of Article 5 may arise in any case where one or several of the following apply:

(a) the effect of the subsidy is to displace or impede the imports of a like product of another member into the market of the subsidizing member;

(b) the effect of the subsidy is to displace or impede the exports of a like product of another member from a third-country market;

(c) the effect of the subsidy is a significant price undercutting by the subsidized product as compared with the price of a like product of another member in the same market or significant price suppression, price depression or lost sales in the same market;

(d) the effect of the subsidy is an increase in the world market share of the subsidizing member in a particular subsidized primary product or commodity[2] as compared with the average share it had during the previous period of three years and this increase follows a consistent trend over a period when subsidies have been granted.

6.4. For the purpose of paragraph 3(b), the displacement or impeding of exports shall include any case in which, subject to the provisions of paragraph 7, it has been demonstrated that there has been a change in relative shares of the market to the disadvantage of the non-subsidized like product (over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the product concerned, which, in normal circumstances, shall be at least one year. 'Change in relative shares of the market' shall include any of the following situations: (a) there is an increase in the market share of the subsidized product; (b) the market share of the subsidized product remains constant in circumstances in which, in the absence of the subsidy, it would have declined; (c) the market share of the subsidized product declines, but at a slower rate than would have been the case in the absence of the subsidy.

6.5. For the purpose of paragraph 3(c), price undercutting shall include any case in which such price undercutting has been demonstrated through a comparison of prices of the subsidized

[1] Members recognize that where royalty-based financing for a civil aircraft programme is not being fully repaid due to the level of actual sales falling below the level of forecast sales, this does not in itself constitute serious prejudice for the purposes of this subparagraph.

[2] Unless other multilaterally agreed specific rules apply to the trade in the product or commodity in question.

product with prices of a non-subsidized like product supplied to the same market. The comparison shall be made at the same level of trade and at comparable times, due account being taken of any other factor affecting price comparability. However, if such a direct comparison is not possible, the existence of price undercutting may be demonstrated on the basis of export unit values.

6.6. Each member in the market of which serious prejudice is alleged to have arisen shall, subject to the provisions of paragraph 3 of Annex V, make available to the parties to a dispute arising under Article 7, and to the panel established pursuant to paragraph 4 of Article 7, all relevant information that can be obtained as to the changes in market shares of the parties to the dispute as well as concerning prices of the products involved.

6.7. Displacement or impediment resulting in serious prejudice shall not arise under paragraph 3 where any of the following circumstances exist[1] during the relevant period:

(a) prohibition or restriction on exports of the like product from the complaining member or on imports from the complaining member into the third-country market concerned;

(b) decision by an importing government operating a monopoly of trade or State trading in the product concerned to shift, for non-commercial reasons, imports from the complaining member to another country or countries;

(c) natural disasters, strikes, transport disruptions or other *force majeure* substantially affecting production, qualities, quantities or prices of the product available for export from the complaining member;

(d) existence of arrangements limiting exports from the complaining member;

(e) voluntary decrease in the availability for export of the product concerned from the complaining member (including, *inter alia*, a situation where firms in the complaining member have been autonomously reallocating exports of this product to new markets);

(f) failure to conform to standards and other regulatory requirements in the importing country.

6.8. In the absence of circumstances referred to in paragraph 7, the existence of serious prejudice should be determined on the basis of the information submitted to or obtained by the panel, including information submitted in accordance with the provisions of Annex V.

6.9. This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on agriculture.

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[1] The fact that certain circumstances are referred to in this paragraph does not, in itself, confer upon them any legal status in terms of either GATT 1994 or this Agreement. These circumstances must not be isolated, sporadic or otherwise insignificant.

Article 7

Remedies

7.1. Except as provided in Article 13 of the Agreement on agriculture, whenever a member has reason to believe that any subsidy referred to in Article 1, granted or maintained by another member, results in injury to its domestic industry, nullification or impairment or serious prejudice, such member may request consultations with such other member.

7.2. A request for consultations under paragraph 1 shall include a statement of available evidence with regard to (a) the existence and nature of the subsidy in question, and (b) the injury caused to the domestic industry, or the nullification or impairment, or serious prejudice[1] caused to the interests of the member requesting consultations.

7.3. Upon request for consultations under paragraph 1, the member believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually agreed solution.

7.4. If consultations do not result in a mutually acceptable solution within 60 days,[2] any member party to such consultations may refer the matter to the DSB for the establishment of a panel, unless the DSB decides by consensus not to establish a panel. The composition of the panel and its terms of reference shall be established within 15 days from the date when it is established.

7.5. The panel shall review the matter and shall submit its final report to the parties to the dispute. The report shall be circulated to all members within 120 days of the date of the composition and establishment of the panel's terms of reference.

7.6. Within 30 days of the issuance of the panel's report to all members, the report shall be adopted by the DSB[3] unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report.

7.7. Where a panel report is appealed, the Appellate Body shall issue its decision within 60 days from the date when the party to the dispute formally notifies its intention to appeal. When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days. The

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[1] In the event that the request relates to a subsidy deemed to result in serious prejudice in terms of paragraph 1 of Article 6, the available evidence of serious prejudice may be limited to the available evidence as to whether the conditions of paragraph 1 of Article 6 have been met or not.

[2] Any time-periods mentioned in this Article may be extended by mutual agreement.

[3] If a meeting of the DSB is not scheduled during this period, such a meeting shall be held for this purpose.

appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report within 20 days following its issuance to the members. [1]

7.8. Where a panel report or an Appellate Body report is adopted in which it is determined that any subsidy has resulted in adverse effects to the interests of another member within the meaning of Article 5, the member granting or maintaining such subsidy shall take appropriate steps to remove the adverse effects or shall withdraw the subsidy.

7.9. In the event the member has not taken appropriate steps to remove the adverse effects of the subsidy or withdraw the subsidy within six months from the date when the DSB adopts the panel report or the Appellate Body report, and in the absence of agreement on compensation, the DSB shall grant authorization to the complaining member to take countermeasures, commensurate with the degree and nature of the adverse effects determined to exist, unless the DSB decides by consensus to reject the request.

7.10. In the event that a party to the dispute requests arbitration under paragraph 6 of Article 22 of the DSU, the arbitrator shall determine whether the countermeasures are commensurate with the degree and nature of the adverse effects determined to exist.

PART IV – NON-ACTIONABLE SUBSIDIES

Article 8

Identification of non-actionable subsidies

8.1. The following subsidies shall be considered as non-actionable: [2]

(a) subsidies which are not specific within the meaning of Article 2;

(b) subsidies which are specific within the meaning of Article 2 but which meet all of the conditions provided for in paragraphs 2(a), 2(b) or 2(c) below.

[1] If a meeting of the DSB is not scheduled during this period, such a meeting shall be held for this purpose.

[2] It is recognized that government assistance for various purposes is widely provided by members and that the mere fact that such assistance may not qualify for non-actionable treatment under the provisions of this Article does not in itself restrict the ability of members to provide such assistance.

8.2. Notwithstanding the provisions of Parts III and V, the following subsidies shall be non-actionable:

(a) assistance for research activities conducted by firms or by higher education or research establishments on a contract basis with firms if: [1, 2, 3]

the assistance covers [4] not more than 75% of the costs of industrial research [5] or 50% of the costs of pre-competitive development activity; [6, 7]

and provided that such assistance is limited exclusively to:

(i) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);

(ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;

(iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;

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[1] Since it is anticipated that civil aircraft will be subject to specific multilateral rules, the provisions of this subparagraph do not apply to that product.

[2] Not later than 18 months after the date of entry into force of the WTO Agreement, the Committee on Subsidies and Countervailing Measures provided for in Article 24 (referred to in this Agreement as 'the Committee') shall review the operation of the provisions of subparagraph 2(a) with a view to making all necessary modifications to improve the operation of these provisions. In its consideration of possible modifications, the Committee shall carefully review the definitions of the categories set forth in this subparagraph in the light of the experience of members in the operation of research programmes and the work in other relevant international institutions.

[3] The provisions of this Agreement do not apply to fundamental research activities independently conducted by higher education or research establishments. The term 'fundamental research' means an enlargement of general scientific and technical knowledge not linked to industrial or commercial objectives.

[4] The allowable levels of non-actionable assistance referred to in this subparagraph shall be established by reference to the total eligible costs incurred over the duration of an individual project.

[5] The term 'industrial research' means planned research or critical investigation aimed at discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes or services, or in bringing about a significant improvement to existing products, processes or services.

[6] The term 'pre-competitive development activity' means the translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services whether intended for sale or use, including the creation of a first prototype which would not be capable of commercial use. It may further include the conceptual formulation and design of products, processes or services alternatives and initial demonstration or pilot projects, provided that these same projects cannot be converted or used for industrial application or commercial exploitation. It does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, and other ongoing operations even through those alterations may represent improvements.

[7] In the case of programmes which span industrial research and pre-competitive development activity, the allowable level of non-actionable assistance shall not exceed the simple average of the allowable levels of non-actionable assistance applicable to the above two categories, calculated on the basis of all eligible costs as set forth in points (i) to (v) of this subparagraph.

(iv) additional overhead costs incurred directly as a result of the research activity;

(v) other running costs (such as those of material, supplies and the like), incurred directly as a result of the research activity;

(b) assistance to disadvantaged regions within the territory of a member given pursuant to a general framework of regional development[1] and non-specific (within the meaning of Article 2) within eligible regions provided that:

(i) each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity;

(ii) the region is considered as disadvantaged on the basis of neutral and objective criteria,[2] indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;

(iii) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors:

- one of either income per capita or household per capita, or DGP per capita, which must not be above 85% of the average for the territory concerned;
- unemployment rate, which must be at least 110% of the average for the territory concerned;

as measured over a three-year period; such measurement, however, may be a composite one and may include other factors;

(c) assistance to promote adaptation of existing facilities[3] to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms, provided that the assistance:

(i) is a one-time non-recurring measure; and

(ii) is limited to 20% of the cost of adaptation; and

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[1] A 'general framework of regional development' means that regional subsidy programmes are part of an internally consistent and generally applicable regional development policy and that regional development subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of the region.

[2] 'Neutral and objective criteria' means criteria which do not favour certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy. In this regard, regional subsidy programmes shall include ceilings on the amount of assistance which can be granted to each subsidized project. Such ceilings must be differentiated according to the different levels of development of assisted regions and must be expressed in terms of investment costs or cost of job creation. Within such ceilings, the distribution of assistance shall be sufficiently broad and even to avoid the predominant use of a subsidy by, or the granting of disproportionately large amounts of subsidy to certain enterprises as provided for in Article 2.

[3] The term 'existing facilities' means facilities which have been in operation for at least two years at the time when new environmental requirements are imposed.

(iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms; and

(iv) is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and

(v) is available to all firms which can adopt the new equipment and/or production processes.

8.3. A subsidy programme for which the provisions of paragraph 2 are invoked shall be notified in advance of its implementation to the Committee in accordance with the provisions of Part VII. Any such notification shall be sufficiently precise to enable other members to evaluate the consistency of the programme with the conditions and criteria provided for in the relevant provisions of paragraph 2. Members shall also provide the Committee with yearly updates of such notifications, in particular by supplying information on global expenditure for each programme, and on any modification of the programme. Other members shall have the right to request information about individual cases of subsidization under a notified programme. [1]

8.4. Upon request of a member, the Secretariat shall review a notification made pursuant to paragraph 3 and, where necessary, may require additional information from the subsidizing member concerning the notified programme under review. The Secretariat shall report its findings to the Committee. The Committee shall, upon request, promptly review the findings of the Secretariat (or, if a review by the Secretariat has not been requested, the notification itself), with a view to determining whether the conditions and criteria laid down in paragraph 2 have not been met. The procedure provided for in this paragraph shall be completed at the latest at the first regular meeting of the Committee following the notification of a subsidy programme, provided that at least two months have elapsed between such notification and the regular meeting of the Committee. The review procedure described in this paragraph shall also apply, upon request, to substantial modifications of a programme notified in the yearly updates referred to in paragraph 3.

8.5. Upon the request of a member, the determination by the Committee referred to in paragraph 4, or a failure by the Committee to make such a determination, as well as the violation, in individual cases, of the conditions set out in a notified programme, shall be submitted to binding arbitration. The arbitration body shall present its conclusions to the members within 120 days from the date when the matter was referred to the arbitration body. Except as otherwise provided in this paragraph, the DSU shall apply to arbitrations conducted under this paragraph.

[1] It is recognized that nothing in this notification provision requires the provision of confidential information, including confidential business information.

Article 9

Consultations and authorized remedies

9.1. If, in the course of implementation of a programme referred to in paragraph 2 of Article 8, notwithstanding the fact that the programme is consistent with the criteria laid down in that paragraph, a member has reasons to believe that this programme has resulted in serious adverse effects to the domestic industry of that member, such as to cause damage which would be difficult to repair, such member may request consultations with the member granting or maintaining the subsidy.

9.2. Upon request for consultations under paragraph 1, the member granting or maintaining the subsidy programme in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

9.3. If no mutually acceptable solution has been reached in consultations under paragraph 2 within 60 days of the request for such consultations, the requesting member may refer the matter to the Committee.

9.4. Where a matter is referred to the Committee, the Committee shall immediately review the facts involved and the evidence of the effects referred to in paragraph 1. If the Committee determines that such effects exist, it may recommend to the subsidizing member to modify this programme in such a way as to remove these effects. The Committee shall present its conclusions within 120 days from the date when the matter is referred to it under paragraph 3. In the event the recommendation is not followed within six months, the Committee shall authorize the requesting member to take appropriate countermeasures commensurate with the nature and degree of the effects determined to exist.

PART V – COUNTERVAILING MEASURES

Article 10

Application of Article VI of GATT 1994 [1]

Members shall take all necessary steps to ensure that the imposition of a countervailing duty[2] on any product of the territory of any member imported into the territory of another member is in accordance with the provisions of Article VI of GATT 1994 and the terms of this Agreement. Countervailing duties may only be imposed pursuant to investigations initiated[3] and conducted in accordance with the provisions of this Agreement and the Agreement on agriculture.

Article 11

Initiation and subsequent investigation

11.1. Except as provided in paragraph 6, an investigation to determine the existence, degree and effect of any alleged subsidy shall be initiated upon a written application by or on behalf of the domestic industry.

11.2. An application under paragraph 1 shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement, and (c) a causal link between the subsidized imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the application on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on

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[1] The provisions of Part II or III may be invoked in parallel with the provisions of Part V; however, with regard to the effects of a particular subsidy in the domestic market of the importing member, only one form of relief (either a countervailing duty, if the requirements of Part V are met, or a countermeasure under Article 4 or 7) shall be available. The provisions of Parts III and V shall not be invoked regarding measures considered non-actionable in accordance with the provisions of Part IV. However, measures referred to in paragraph 1(a) of Article 8 may be investigated in order to determine whether or not they are specific within the meaning of Article 2. In addition, in the case of a subsidy referred to in paragraph 2 of Article 8 conferred pursuant to a programme which has not been notified in accordance with paragraph 3 of Article 8, the provisions of Part III or V may be invoked, but such subsidy shall be treated as non-actionable if it is found to conform to the standards set forth in paragraph 2 of Article 8.

[2] The term 'countervailing duty' shall be understood to mean a special duty levied for the purpose of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise, as provided for in paragraph 3 of Article VI of GATT 1994.

[3] The term 'initiated' as used hereinafter means procedural action by which a member formally commences an investigation as provided in Article 11.

behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(ii) a complete description of the allegedly subsidized product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) evidence with regard to the existence, amount and nature of the subsidy in question;

(iv) evidence that alleged injury to a domestic industry is caused by subsidized imports through the effects of the subsidies; this evidence includes information on the evolution of the volume of the allegedly subsidized imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 15.

11.3. The authorities shall review the accuracy and adequacy of the evidence provided in the application to determine the evidence is sufficient to justify the initiation of an investigation.

11.4. An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed[1] by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.[2] The application shall be considered to have been made 'by or on behalf of the domestic industry' if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25% of total production of the like product produced by the domestic industry.

11.5. The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation.

11.6. If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of the existence of a subsidy, injury and causal link, as described in paragraph 2, to justify the initiation of an investigation.

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[1] In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

[2] Members are aware that in the territory of certain members employees of domestic producers of the like product or representative of those employees may make or support an application for an investigation under paragraph 1.

11.7. The evidence of both subsidy and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation and (b) thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

11.8. In cases where products are not imported directly from the country of origin but are exported to the importing member from an intermediate country, the provisions of this Agreement shall be fully applicable and the transaction or transactions shall, for the purposes of this Agreement, be regarded as having taken place between the country of origin and the importing member.

11.9. An application under paragraph 1 shall be rejected and an investigation shall be determined promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case. There shall be immediate termination in cases where the amount of subsidy is *de minimis*, or where the volume of subsidized imports, actual or potential, or the injury, is negligible. For the purpose of this paragraph, the amount of the subsidy shall be considered to be *de minimis* if the subsidy is less than 1% *ad valorem*.

11.10. An investigation shall not hinder the procedures of customs clearance.

11.11. Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

Article 12

Evidence

12.1. Interested members and all interested parties in a countervailing duty investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

12.1.1. Exporters, foreign producers or interested members receiving questionnaires used in a countervailing duty investigation shall be given at least 30 days for reply.[1] Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable.

12.1.2. Subject to the requirement to protect confidential information, evidence presented in writing by one interested member or interested party shall be made available promptly to other interested members or interested parties participating in the investigation.

[1] As a general rule, 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 date on which it was sent to the respondent or transmitted to the appropriate diplomatic representatives of the exporting member or, in the case of a separate customs territory member of the WTO, an official representative of the exporting territory.

12.1.3. As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 11 to the known exporters[1] and to the authorities of the exporting member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the protection of confidential information, as provided for in paragraph 4.

12.2. Interested members and interested parties also shall have the right, upon justification, to present information orally. Where such information is provided orally, the interested members and interested parties subsequently shall be required to reduce such submissions to writing. Any decision of the investigating authorities can only be based on such information and arguments as were on the written record of this authority and which were available to interested members and interested parties participating in the investigation, due account having been given to the need to protect confidential information.

12.3. The authorities shall, whenever practicable, provide timely opportunities for all interested members and interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 4, and that is used by the authorities in a countervailing duty investigation, and to prepare presentations on the basis of this information.

12.4. Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom the supplier acquired the information) or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without the specific permission of the party submitting it. [2]

12.4.1. The authorities shall require interested members or interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such members or 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.

12.4.2. If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information

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[1] It being understood that where the number of exporters involved is particularly high, the full text of the application should instead be provided only to the authorities of the exporting member or to the relevant trade association who then should forward copies to the exporters concerned.

[2] Members are aware that in the territory of certain members disclosure pursuant to a narrowly drawn protective order may be required.

unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct. [1]

12.5. Except in circumstances provided for in paragraph 7, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested members or interested parties upon which their findings are based.

12.6. The investigating authorities may carry out investigations in the territory of other members as required, provided that they have notified in good time the member in question and unless that member objects to the investigation. Further, the investigating authorities may carry out investigations on the premises of a firm and may examine the records of a firm if (a) the firm so agrees and (b) the member in question is notified and does not object. The procedures set forth in Annex VI shall apply to investigations on the premises of a firm. Subject to the requirements to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 8, to the firms to which they pertain and may take such results available to the applicants.

12.7. In cases in which any interested member or interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determination, affirmative or negative, may be made on the basis of the facts available.

12.8. The authorities shall, before a final determination is made, inform all interested members and interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

12.9. For the purposes of this Agreement, 'interested parties' shall include:

(i) an exporter or foreign producer or the importer of a product subject to investigation or a trade or business association a majority of members of which are producers, exporters or importers of such product; and

(ii) a producer of the like product in the importing member or a trade and business association a majority of the members of which produce the like product in the territory of the importing member.

This list shall not preclude members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

12.10. The authorities shall provide opportunities for industrial use of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding subsidization, injury and causality.

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[1] Members agree that requests for confidentiality should not be arbitrarily rejected. Members further agree that the investigating authority may request the waiving of confidentiality only regarding information relevant to the proceedings.

12.11. The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

12.12. The procedures set out above are not intended to prevent the authorities of a member from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative of negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

Article 13

Consultations

13.1. As soon as possible after an application under Article 11 is accepted, and in any event before the initiation of any investigation, members the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of Article 11 and arriving at a mutually agreed solution.

13.2. Furthermore, throughout the period of investigation, members the product of which are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations with a view to clarifying the factual situation and to arriving at a mutually agreed solution. [1]

13.3. Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of a member from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.

13.4. The member which intends to initiate any investigation or is conducting such an investigation shall permit, upon request, the member or members the products of which are subject to such investigation access to non-confidential evidence, including the non-confidential summary of confidential data being used for initiating or conducting the investigation.

[1] It is particularly important, in accordance with the provisions of this paragraph, that no affirmative determination whether preliminary or final be made without reasonable opportunity for consultations having been given. Such consultations may establish the basis for proceeding under the provisions of Part II, III or X.

Article 14

Calculation of the amount of a subsidy in terms of the benefit to the recipient

For the purpose of Part V, any method used by the investigating authority to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 shall be provided for in the national legislation or implementing regulations of the member concerned and its application to each particular case shall be transparent and adequately explained. Furthermore, any such method shall be consistent with the following guidelines:

(a) government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of that member;

(b) a loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference between these two amounts;

(c) a loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a comparable commercial loan minus the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees;

(d) the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

Article 15

Determination of injury [1]

15.1. A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market

[1] Under this Agreement the term 'injury' shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry, and shall be interpreted in accordance with the provisions of this Article.

for like products,[1] and (b) the consequent impact of these imports on the domestic producers of such products.

15.2. With regard to the volume of the subsidized imports, the investigating authorities shall consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the importing member. With regard to the effect of the subsidized imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the importing member, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one nor several of these factors can necessarily give decisive guidance.

15.3. Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the investigating authorities may cumulatively assess the effects of such imports only in they determine that (a) the amount of subsidization established in relation to the imports from each country is more than *de minimis* as defined in paragraph 9 of Article 11 and 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 the imported products and the conditions of competition between the imported products and the like domestic product.

15.4. The examination of the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

15.5. It must be demonstrated that the subsidized imports are, through the effects[2] of subsidies, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidized imports. Factors which may be relevant in this respect include, *inter alia*, the volumes and prices of non-subsidized imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between

[1] Throughout this Agreement, the term 'like product' (*produit similaire*) shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

[2] As set forth in paragraphs 2 and 4.

the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

15.6. The effect of the subsidized imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which include the like product, for which the necessary information can be provided.

15.7. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the investigating authorities shall consider, *inter alia*, such factors as:

(i) the nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;

(ii) a significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importation;

(iii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidized exports to the importing member's market, taking into account the availability of other export markets to absorb any additional exports;

(iv) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(v) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further subsidized exports are imminent and that, unless protective action is taken, material injury would occur.

15.8. With respect to cases where injury is threatened by subsidized imports, the application of countervailing measures shall be considered and decided with special care.

Article 16

Definition of domestic industry

16.1. For the purposes of this Agreement, the term 'domestic industry' shall, except as provided in paragraph 2, be interpreted as referring to the domestic producers as a whole of the like products or of to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that when

producers are related[1] to the exporters or importers or are themselves importers of the allegedly subsidized product or a like product from other countries, the term 'domestic industry' may be interpreted as referring to the rest of the producers.

16.2. In exceptional circumstances, the territory of a member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of subsidized imports into such an isolated market and provided further that the subsidized imports are causing injury to the producers of all or almost all of the production within such market.

16.3. When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 2, countervailing duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing member does not permit the levying of countervailing duties on such a basis, the importing members may levy the countervailing duties without limitation only if (a) the exporters shall have been given an opportunity to cease exporting at subsidized prices to the area concerned or otherwise give assurance pursuant to Article 18, and adequate assurances in this regard have not been promptly given, and (b) such duties cannot be levied only on products of specific producers which supply the area in question.

16.4. Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the characteristics of a single unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraphs 1 and 2.

16.5. The provisions of paragraph 6 of Article 15 shall be applicable to this Article.

Article 17

Provisional measures

17.1. Provisional measures may be applied only if:

(a) an investigation has been initiated in accordance with the provisions of Article 11, a public notice has been given to that effect and interested members and interested parties have been given adequate opportunities to submit information and make comments;

[1] For the purpose of this paragraph, producers shall be deemed 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.

(b) a preliminary affirmative determination has been made that a subsidy exists and that there is injury to a domestic industry caused by subsidized imports; and

(c) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.

17.2. Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization.

17.3. Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

17.4. The application of provisional measures shall be limited to as short a period as possible, not exceeding four months.

17.5. The relevant provisions of Article 19 shall be followed in the application of provisional measures.

Article 18

Undertakings

18.1. Proceedings may [1] be suspended or terminated without the imposition of provisional measures or countervailing duties upon receipt of satisfactory voluntary undertakings under which:

(a) the government of the exporting member agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(b) the exporter agrees to revise its prices so that the investigating authorities are satisfied that the injurious effect of the subsidy is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the amount of the subsidy. It is desirable that the price increases be less than the amount of subsidy if such increases would be adequate to remove the injury to the domestic industry.

18.2. Undertakings shall not be sought or accepted unless the authorities of the importing member have made a preliminary affirmative determination of subsidization and injury caused by such subsidization and, in case of undertakings from exporters, have obtained the consent of the exporting member.

18.3. Undertakings offered need not be accepted if the authorities of the importing member consider their acceptance impractical, for example if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have

[1] The word 'may' shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of undertakings, except as provided in paragraph 4.

led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporters an opportunity to make comments thereon.

18.4. If an undertaking is accepted, the investigation of subsidization and injury shall nevertheless be completed if the exporting member so desires or the importing member so decides. In such a case, if a negative determination of subsidization or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases, the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of subsidization and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

18.5. Price undertakings may be suggested by the authorities of the importing member, but no exporter shall be forced to enter into such undertakings. The fact that governments or exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the subsidized imports continue.

18.6. Authorities of an importing member may require any government or exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking, and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

Article 19

Imposition and collection of countervailing duties

19.1. If, after reasonable efforts have been made to complete consultations, a member makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this Article unless the subsidy or subsidies are withdrawn.

19.2. The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less are decisions to be made by the authorities of the importing member. It is desirable that the imposition should be permissive in the territory of all members, that the duty should be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry, and that procedures should be established which would allow the

authorities concerned to take due account of representations made by domestic interested parties[1] whose interests might be adversely affected by the imposition of a countervailing duty.

19.3. When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and causing injury, except as to imports from those sources which have renounced any subsidies in question or from which undertakings under the terms of this Agreement have been accepted. Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to cooperate shall be entitled to an expedited review in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter.

19.4. No countervailing duty shall be levied[2] on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.

Article 20

Retroactivity

20.1. Provisional measures and countervailing duties shall only be applied to products which enter for consumption after the time when the decision under paragraph 1 of Article 17 and paragraph 1 of Article 19, respectively, enter into force, subject to the exceptions set out in this Article.

20.2. Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat or injury, where the effect of the subsidized imports would, in the absence of the provisional measures, have led to a determination of injury, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

20.3. If the definitive countervailing duty is higher than the amount guaranteed by the cash deposit or bond, the difference shall not be collected. If the definitive duty is less than the amount guaranteed by the cash deposit or bond, the excess amount shall be reimbursed or the bond released in an expeditious manner.

20.4. Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive countervailing duty may be imposed only from the date of the determination of threat or injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

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[1] For the purpose of this paragraph, the term 'domestic interested parties' shall include consumers and industrial users of the imported product subject to investigation.

[2] As used in this Agreement, 'levy' shall mean the definitive or final legal assessment or collection of a duty or tax.

20.5. Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

20.6. In critical circumstances where for the subsidized product in question the authorities find that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from subsidies paid or bestowed inconsistently with the provisions of GATT 1994 and of this Agreement and where it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports, the definitive countervailing duties may be assessed on imports which were entered for consumption not more than 90 days prior to the date of application of provisional measures.

Article 21

Duration and review of countervailing duties and undertakings

21.1. A countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidization which is causing injury.

21.2. The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive countervailing duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset subsidization, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the countervailing duty is no longer warranted, it shall be terminated immediately.

21.3. Notwithstanding the provisions of paragraphs 1 and 2, any definitive countervailing duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both subsidization and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury. [1] The duty may remain in force pending the outcome of such a review.

21.4. The provisions of Article 12 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

[1] When the amount of the countervailing duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.

21.5. The provisions of this Article shall apply *mutatis mutandis* to undertakings accepted under Article 18.

Article 22

Public notice and explanation of determinations

22.1. When the authorities are satisfied that there is sufficient evidence to justify the initiation of an investigation pursuant to Article 11, the member or members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.

22.2. A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report, [1] adequate information on the following:

(a) the name of the exporting country or countries and the product involved;

(b) the date of initiation of the investigation;

(c) a description of the subsidy practice or practices to be investigated;

(d) a summary of the factors on which the allegation of injury is based;

(e) the address to which representations by interested members and interested parties should be directed; and

(f) the time-limits allowed to interested members and interested parties for making their views known.

22.3. Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 18, of the termination of such an undertaking, and of the termination of a definitive countervailing duty. Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the member or members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

22.4. A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on the existence of a subsidy and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

[1] Where authorities provide information and explanations under the provisions of this Article in a separate report, they shall ensure that such a report is readily available to the public.

(i) the names of the suppliers or, when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined;

(iv) considerations relevant to the injury determination as set out in Article 15;

(v) the main reasons leading to the determination.

22.5. A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of an undertaking shall contain, or otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of an undertaking, due regard being paid to the requirement for the protection of confidential information.

In particular, the notice or report shall contain the information described in paragraph 4, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by interested members and by the exporters and importers.

22.6. A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 18 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.

22.7. The provisions of this Article shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Article 21 and to decisions under Article 20 to apply duties retroactively.

Article 23

Judicial review

Each member whose national legislation contains provisions on countervailing duty measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 21. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question, and shall provide all interested parties who participated in the administrative proceeding and are directly and individually affected by the administrative actions with access to review.

PART VI – INSTITUTIONS

Article 24

Committee on Subsidies and Countervailing Measures and subsidiary bodies

24.1. There is hereby established a Committee on Subsidies and Countervailing Measures composed of representatives from each of the members. The Committee shall elect its own chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the members and it shall afford members the opportunity of consulting on any matter relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

24.2. The Committee may set up subsidiary bodies as appropriate.

24.3. The Committee shall establish a Permanent Group of Experts composed of five independent persons, highly qualified in the fields of subsidies and trade relations. The experts will be elected by the Committee and one of them will be replaced every year. The PGE may be requested to assist a panel, as provided for in paragraph 5 of Article 4. The Committee may also seek an advisory opinion on the existence and nature of any subsidy.

24.4. The PGE may be consulted by any member and may give advisory opinions on the nature of any subsidy proposed to be introduced or currently maintained by that member. Such advisory opinions will be confidential and may not be invoked in proceedings under Article 7.

24.5. In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a member, it shall inform the member involved.

PART VII – NOTIFICATION AND SURVEILLANCE

Article 25

Notifications

25.1. Members agree that, without prejudice to the provisions of paragraph 1 of Article XVI of GATT 1994, their notifications of subsidies shall be submitted not later than 30 June of each year and shall conform to the provisions of paragraphs 2 to 6.

25.2. Members shall notify any subsidy as defined in paragraph 1 of Article 1, which is specific within the meaning of Article 2, granted or maintained within their territories.

25.3. The content of notifications should be sufficiently specific to enable other members to evaluate the trade effects and to understand the operation of notified subsidy programmes. In this connection, and without prejudice to the contents and form of the questionnaire on subsidies, [1] members shall ensure that their notifications contain the following information:

(a) form of a subsidy (i.e. grant, loan, tax concession, etc.);

(b) subsidy per unit or, in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy (indicating, if possible, the average subsidy per unit in the previous year);

(c) policy objective and/or purpose of a subsidy;

(d) duration of a subsidy and/or any other time-limits attached to it;

(e) statistical data permitting an assessment of the trade effects of a subsidy.

25.4. Where specific points in paragraph 3 have not been addressed in a notification, an explanation shall be provided in the notification itself.

25.5. If subsidies are granted to specific products or sectors, the notifications should be organized by product or sector.

25.6. Members which consider that there are no measures in their territories requiring notification under paragraph 1 of Article XVI of GATT 1994 and this Agreement shall so inform the Secretariat in writing.

25.7. Members recognize that notification of a measure does not prejudge either its legal status under GATT 1994 and in this Agreement, the effects under this Agreement, or the nature of the measure itself.

25.8. Any member may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another member (including any subsidy referred to in Part IV), or for an explanation of the reasons for which a specific measure has been considered as not subject to the requirement of notification.

25.9. Members so requested shall provide such information as quickly as possible and in a comprehensive manner, and shall be ready, upon request, to provide additional information to the requesting member. In particular, they shall provide sufficient details to enable the other member to assess their compliance with the terms of this Agreement. Any member which considers that such information has not been provided may bring the matter to the attention of the Committee.

25.10. Any member which considers that any measure of another member having the effects of a subsidy has not been notified in accordance with the provisions of paragraph 1 of Article XVI of GATT 1994 and this Article may bring the matter to the attention of such other member. If the alleged subsidy is not thereafter notified promptly, such member may itself bring the alleged subsidy in question to the notice of the Committee.

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[1] The Committee shall establish a working party to review the contents and form of the questionnaire as contained in BISD 9S/193-194.

25.11. Members shall report without delay to the Committee all preliminary or final actions taken with respect to countervailing duties. Such reports shall be available in the Secretariat for inspection by other members. Members shall also submit, on a semi-annual basis, reports on any countervailing duty actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form.

25.12. Each member shall notify the Committee (a) which of its authorities are competent to initiate and conduct investigations referred to in Article 11 and (b) its domestic procedures governing the initiation and conduct of such investigations.

Article 26

Surveillance

26.1. The Committee shall examine new and full notifications submitted under paragraph 1 of Article XVI of GATT 1994 and paragraph 1 of Article 25 of this Agreement at special sessions held every third year. Notifications submitted in the intervening years (updating notifications) shall be examined at each regular meeting of the Committee.

26.2. The Committee shall examine reports submitted under paragraph 11 of Article 25 at each regular meeting of the Committee.

PART VIII – DEVELOPING COUNTRY MEMBERS

Article 27

Special and differential treatment of developing country members

27.1. Members recognize that subsidies may play an important role in economic development programmes of developing country members.

27.2. The prohibition of paragraph 1(a) of Article 3 shall not apply to:

(a) developing country members referred to in Annex VII.

(b) other developing country members for a period of eight years from the date of entry into force of the WTO Agreement, subject to compliance with the provisions in paragraph 4.

27.3. The prohibition of paragraph 1(b) of Article 3 shall not apply to developing country members for a period of five years, and shall not apply to least-developed country members for a period of eight years, from the date of entry into force of the WTO Agreement.

27.4. Any developing country member referred to in paragraph 2(b) shall phase out its export subsidies within the eight-year period, preferably in a progressive manner. However, a developing country member shall not increase the level of its export subsidies,[1] and shall eliminate them within a period shorter than that provided for in this paragraph when the use of such export subsidies is inconsistent with its development needs. If a developing country member deems it necessary to apply such subsidies beyond the eight-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the developing country member in question. If the Committee determines that the extension is justified, the developing country member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the developing country member shall phase out the remaining export subsidies within two years from the end of the last authorized period.

27.5. A developing country member which has reached export competitiveness in any given product shall phase out its export subsidies for such product(s) over a period of two years. However, for a developing country member which is referred to in Annex VII and which has reached export competitiveness in one or more products, export subsidies on such products shall be gradually phased out over a period of eight years.

27.6. Export competitiveness in a product exists if a developing country member's export of that product have reached a share of at least 3.25% in world trade of that product for two consecutive calendar years. Export competitiveness shall exist either (a) on the basis of notification by the developing country member having reached expert competitiveness, or (b) on the basis of a computation undertaken by the Secretariat at the request of any member. For the purpose of this paragraph, a product is defined as a section heading of the Harmonized System Nomenclature. The Committee shall review the operation of this provision five years from the date of the entry into force of the WTO Agreement.

27.7. The provisions of Article 4 shall not apply to a developing country member in the case of export subsidies which are in conformity with the provisions of paragraphs 2 through 5. The relevant provisions in such a case shall be those of Article 7.

27.8. There shall be no presumption in terms of paragraph 1 of Article 6 that a subsidy granted by a developing country member results in serious prejudice, as defined in this Agreement. Such serious prejudice, where applicable under the terms of paragraph 9, shall be demonstrated by positive evidence, in accordance with the provisions of paragraphs 3 through 8 of Article 6.

27.9. Regarding actionable subsidies granted or maintained by a developing country member other than those referred to in paragraph 1 of Article 6, action may not be authorized or taken under Article 7 unless nullification or impairment of tariff concessions or other obligations

[1] For a developing country member not granting export subsidies as of the date of entry into force of the WTO Agreement, this paragraph shall apply on the basis of the level of export subsidies granted in 1986.

under GATT 1994 is found to exist as a result of such a subsidy, in such a way as to displace or impede imports of a like product of another member into the market of the subsidizing developing country member or unless injury to a domestic industry in the market of an importing member occurs.

27.10. Any countervailing duty investigation of a product originating in a developing country member shall be determined as soon as the authorities concerned determine that:

(a) the overall level of subsidies granted upon the product in question does not exceed 2% of its value calculated on a per unit basis; or

(b) the volume of the subsidized imports represents less than 4% of the total imports of the like product in the importing member, unless imports from developing country members whose individual shares of total imports represent less than 4% collectively account for more than 9% of the total imports of the like product in the importing member.

27.11. For those developing country members within the scope of paragraph 2(b) which have eliminated export subsidies prior to the expiry of the period of eight years from the date of entry into force of the WTO Agreement, and for those developing country members referred to in Annex VII, the number in paragraph 10(a) shall be 3% rather than 2%. This provision shall apply from the date that the elimination of export subsidies is notified to the Committee, and for so long as export subsidies are not granted by the notifying developing country member. This provision shall expire eight years from the date of entry into force of the WTO Agreement.

27.12. The provisions of paragraphs 10 and 11 shall govern any determination of *de minimis* under paragraph 3 of Article 15.

27.13. The provisions of Part III shall not apply to direct forgiveness of debts, subsidies to cover social costs, in whatever form, including relinquishment of government revenue and other transfer of liabilities when such subsidies are granted within and directly linked to a privatization programme of a developing country member, provided that both such programme and the subsidies involved are granted for a limited period and notified to the Committee and that the programme results in eventual privatization of the enterprise concerned.

27.14. The Committee shall, upon request by an interested member, undertake a review of a specific export subsidy practice of a developing country member to examine whether the practice is in conformity with its development needs.

27.15. The Committee shall, upon request by an interested developing country member, undertake a review of a specific countervailing measure to examine whether it is consistent with the provisions of paragraphs 10 and 11 as applicable to the developing country member in question.

PART IX – TRANSITIONAL ARRANGEMENTS

Article 28

Existing programmes

28.1. Subsidy programmes which have been established within the territory of any member before the date on which such a member signed the WTO Agreement and which are inconsistent with the provisions of this Agreement shall be:

(a) notified to the Committee not later than 90 days after the date of entry into force of the WTO Agreement for such member; and

(b) brought into conformity with the provisions of this Agreement within three years of the date of entry into force of the WTO Agreement for such member and until then shall not be subject to Part II.

28.2. No member shall extend the scope of any such programme, nor shall such a programme be renewed upon its expiry.

Article 29

Transformation into a market economy

29.1. Members in the process of transformation from a centrally planned into the market, free-enterprise economy may apply programmes and measures necessary for such a transformation.

29.2. For such members, subsidy programmes falling within the scope of Article 3, and notified according to paragraph 3, shall be phased out or brought into conformity with Article 3 within a period of seven years from the date of entry into force of the WTO Agreement. In such a case, Article 4 shall not apply. In addition during the same period:

(a) subsidy programmes falling within the scope of paragraph 1(d) of Article 6 shall not be actionable under Article 7;

(b) with respect to other actionable subsidies, the provisions of paragraph 9 of Article 27 shall apply.

29.3. Subsidy programmes falling within the scope of Article 3 shall be notified to the Committee by the earliest practicable date after the date of entry into force of the WTO Agreement. Further notifications of such subsidies may be made up to two years after the date of entry into force of the WTO Agreement.

29.4. In exceptional circumstances members referred to in paragraph 1 may be given departures from their notified programmes and measures and their time-frame by the Committee if such departures are deemed necessary for the process of transformation.

PART X – DISPUTE SETTLEMENT

Article 30

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

PART XI – FINAL PROVISIONS

Article 31

Provisional application

The provisions of paragraph 1 of Article 6 and the provisions of Article 8 and Article 9 shall apply for a period of five years, beginning with the date of entry into force of the WTO Agreement. Not later than 180 days before the end of this period, the Committee shall review the operation of those provisions, with a view to determining whether to extend their application, either as presently drafted or in a modified form, for a further period.

Article 32

Other final provisions

32.1. No specific action against a subsidy of another member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement. [1]

32.2. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other members.

32.3. Subject to paragraph 4, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a member of the WTO Agreement.

32.4. For the purposes of paragraph 3 of Article 21, existing countervailing measures shall be deemed to be imposed on a date not later than the date of entry into force for a member of the WTO Agreement, except in cases in which the domestic legislation of a member in force at that date already included a clause of the type provided for in that paragraph.

32.5. Each member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply to the member in question.

[1] This paragraph is not intended to preclude action under other relevant provisions of GATT 1994, where appropriate.

32.6. Each member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

32.7. The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

32.8. The Annexes to this Agreement constitute an integral part thereof.

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ANNEX I – ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

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

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

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

(d) The provision by government or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provisions of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available [1] on world markets to their exporters.

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

(e) The full or partial exemption remission, or deferral specifically related to exports, of direct taxes [1] or social welfare charges paid or payable by industrial or commercial enterprises. [2]

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

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[1] For the purpose of this agreement:
The term 'direct taxes' shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;
The term 'import charges' shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;
The term 'indirect taxes' shall mean sales, excise, turnover, value-added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;
'Prior stage' indirect taxes are those levied on goods or services used directly or indirectly in making the product;
'Cumulative' indirect taxes are multistaged 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;
'Remission' of taxes includes the refund or rebate of taxes;
'Remission or drawback' includes the full or partial exemption or deferral of import charges.

[2] The members recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The member reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any member may draw the attention of another member to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances, the members shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of members under GATT 1994, including the right of consultation created in the preceding sentence.
Paragraph (e) is not intended to limit a member from taking measures to avoid the double taxation of foreign-source income earned by its enterprises or the enterprises of another member.

(g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes [1] in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

(h) The exemption, remission or deferral of prior-stage cumulative indirect taxes [1] on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). [2] This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II.

(i) The remission or drawback of import charges [3] in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal

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[1] For the purpose of this agreement:
The term 'direct taxes' shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;
The term 'import charges' shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;
The term 'indirect taxes' shall mean sales, excise, turnover, value-added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;
'Prior stage' indirect taxes are those levied on goods or services used directly or indirectly in making the product;
'Cumulative' indirect taxes are multistaged 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;
'Remission' of taxes includes the refund or rebate of taxes;
'Remission or drawback' includes the full or partial exemption or deferral of import charges.

[2] Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).

[3] For the purpose of this agreement:
The term 'direct taxes' shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;
The term 'import charges' shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;
The term 'indirect taxes' shall mean sales, excise, turnover, value-added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;
'Prior stage' indirect taxes are those levied on goods or services used directly or indirectly in making the product;
'Cumulative' indirect taxes are multistaged 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;
'Remission' of taxes includes the refund or rebate of taxes;
'Remission or drawback' includes the full or partial exemption or deferral of import charges.

allowance for waste), provided, however, that in particular cases a firm may use a quantity of home-market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time-period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III.

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

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

Provided however that if a member is a party to an international undertaking on official export credits to which at least 12 original members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original members), or if, in practice a member 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 prohibited by this Agreement.

(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.

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ANNEX II – GUIDELINES ON CONSUMPTION OF INPUTS IN THE PRODUCTION PROCESS [1]

I

1. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).

2. The illustrative list of export subsidies in Annex I to this Agreement makes reference to the term 'inputs that are consumed in the production of the exported product' in paragraphs (h) and (i). Pursuant to paragraph (h), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of the exported product. Pursuant to paragraph (i), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of the exported product. Paragraph (i) also provides for substitution, where appropriate.

II

In examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis:

1. Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the investigating authorities should first determine whether the government of the exporting member has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The investigating authorities may deem it necessary to carry out, in accordance with paragraph 6 of Article 12, certain practical tests in order to verify information or to satisfy themselves that the system or procedure is being effectively applied.

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[1] Inputs consumed in the production process are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the exported product.

2. Where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting member based on the actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred. If the investigating authorities deemed it necessary, a further examination would be carried out in accordance with paragraph 1.

3. Investigating authorities should treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. The members note that an input need not be present in the final product in the same form in which it entered the production process.

4. In determining the amount of a particular input that is consumed in the production of the exported product, a 'normal allowance for waste' should be taken into account, and such waste should be treated as consumed in the production of the exported product. The term 'waste' refers to that portion of a given input which does not serve an independent function in the production process, is not consumed in the production of the exported product (for reasons such as inefficiencies) and is not recovered, used or sold by the same manufacturer.

5. The investigating authority's determination of whether the claimed allowance for waste is 'normal' should take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate. The investigating authority should bear in mind that an important question is whether the authorities in the exporting member have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission.

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ANNEX III – GUIDELINES IN THE DETERMINATION OF SUBSTITUTION DRAWBACK SYSTEMS AS EXPORT SUBSIDIES

I

Drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product and where the export of this latter product contains domestic inputs having the same quality and characteristics as those substituted for the imported inputs. Pursuant to paragraph (i) of the illustrative list of export subsidies in Annex I, substitution drawback system can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed.

II

In examining any substitution drawback system as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis:

1. Paragraph (i) of the illustrative list stipulates that home-market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported inputs being substituted. The existence of a verification system or procedure is important because it enables the government of the exporting member to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported inputs in question.

2. Where it is alleged that a substitution drawback system conveys a subsidy, the investigating authorities should first proceed to determine whether the government of the exporting member has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that the procedures are determined to meet this test and are effectively applied, no subsidy should be presumed to exist. It may be deemed necessary by the investigating authorities to carry out, in accordance with paragraph 6 of Article 12, certain practical tests in order to verify information or to satisfy themselves that the verification procedures are being effectively applied.

3. Where there are no verification procedures, where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not applied effectively, there may be a subsidy. In such cases, a further examination by the exporting member based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the investigating authorities deemed it necessary, a further examination would be carried out in accordance with paragraph 2.

4. The existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy.

5. An excess drawback of import charges in the sense of paragraph (i) would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.

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ANNEX IV – CALCULATION OF THE TOTAL *AD VALOREM* SUBSIDIZATION (PARAGRAPH 1(A) OF ARTICLE 6) [1]

1. Any calculation of the amount of a subsidy for the purpose of paragraph 1(a) of Article 6 shall be done in terms of the cost to the granting government.

2. Except as provided in paragraphs 3 through 5, in determining whether the overall rate of subsidization exceeds 5% of the value of the product, the value of the product shall be calculated as the total value of the recipient firm's [2] sales in the most recent 12-month period, for which sales data are available, preceding the period in which the subsidy is granted. [3]

3. Where the subsidy is tied to the production or sale of a given product, the value of the product shall be calculated as the total value of the recipient firm's sales of that product in the most recent 12-month period, for which sales data are available, preceding the period in which the subsidy is granted.

4. Where the recipient firm is in a start-up situation, serious prejudice shall be deemed to exist if the overall rate of subsidization exceeds 15% of the total funds invested. For purposes of this paragraph, a start-up period will not extend beyond the first year of production. [4]

5. Where the recipient firm is located in an inflationary economy country, the value of the product shall be calculated as the recipient firm's total sales (or sales of the relevant product, if the subsidy is tied) in the preceding calendar year indexed by the rate of inflation experienced in the 12 months preceding the month in which the subsidy is to be given.

6. In determining the overall rate of subsidization in a given year, subsidies given under different programmes and by different authorities in the territory of a member shall be aggregated.

7. Subsidies granted prior to the date of entry into force of the WTO Agreement, the benefits of which are allocated to future production, shall be included in the overall rate of subsidization.

8. Subsidies which are non-actionable under relevant provisions of this Agreement shall not be included in the calculation of the amount of a subsidy for the purpose of paragraph 1(a) of Article 6.

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[1] An understanding among members should be developed, as necessary, on matters which are not specified in this Annex or which need further clarification for the purposes of paragraph 1(a) of Article 6.

[2] The recipient firm is a firm in the territory of the subsidizing member.

[3] In the case of tax-related subsidies, the value of the product shall be calculated as the total value of the recipient firm's sales in the fiscal year in which the tax-related measure was earned.

[4] Start-up situations include instances where financial commitments for product development or construction of facilities to manufacture products benefiting from the subsidy have been made, even though production has not begun.

ANNEX V – PROCEDURES FOR DEVELOPING INFORMATION CONCERNING SERIOUS PREJUDICE

1. Every member shall cooperate in the development of evidence to be examined by a panel in procedures under paragraphs 4 through 6 of Article 7. The parties to the dispute and any third-country member concerned shall notify to the DSB, as soon as the provisions of paragraph 4 of Article 7 have been invoked, the organization responsible for administration of this provision within its territory and the procedures to be used to comply with requests for information.

2. In cases where matters are referred to the DSB under paragraph 4 of Article 7, the DSB shall, upon request, initiate the procedure to obtain such information from the government of the subsidizing member as necessary to establish the existence and amount of subsidization, the value of total sales of the subsidized firms, as well as information necessary to analyse the adverse effects caused by the subsidized product. [1] This process may include, where appropriate, presentation of questions to the government of the subsidizing member and of the complaining member to collect information, as well as to clarify and obtain elaboration of information available to the parties to a dispute through the notification procedure set forth in Part VII. [2]

3. In the case of effects in third-country markets, a party to a dispute may collect information including through the use of questions to the government of the third-country member, necessary to analyse adverse effects, which is not otherwise reasonably available from the complaining member or the subsidizing member. This requirement should be administered in such a way as not to impose an unreasonable burden on the third-country member. In particular, such a member is not expected to make a market or price analysis specially for that purpose. The information to be supplied is that which is already available or can be readily obtained by this member (e.g. most recent statistics which have already been gathered by relevant statistical services but which have not yet been published, customs data concerning imports and declared values of the products concerned, etc.). However, if a party to a dispute undertakes a detailed market analysis at its own expense, the task of the person or firm conducting such an analysis shall be facilitated by the authorities of the third-country member and such a person or firm shall be given access to all information which is not normally maintained confidential by the government.

4. The DSB shall designate a representative to serve the function of facilitating the information-gathering process. The sole purpose of the representative shall be to ensure the timely development of the information necessary to facilitate expeditious subsequent multilateral review of the dispute. In particular, the representative may suggest ways to solicit most efficiently necessary information as well as encourage the cooperation of the parties.

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[1] In cases where the existence of serious prejudice has to be demonstrated.

[2] The information-gathering process by the DSB shall take into account the need to protect information which is by nature confidential or which is provided on a confidential basis by any member involved in this process.

5. The information-gathering process outlined in paragraphs 2 through 4 shall be completed within 60 days of the date on which the matter has been referred to the DSB under paragraph 4 of Article 7. The information obtained during this process shall be submitted to the panel established by the DSB in accordance with the provisions of Part X. This information should include, *inter alia*, data concerning the amount of the subsidy in question (and, where appropriate, the value of total sales of the subsidized firms), prices of the subsidized product, prices of the non-subsidized product, prices of other suppliers to the market, changes in the supply of the subsidized product to the market in question and changes in market shares. It should also include rebuttal evidence, as well as such supplemental information as the panel deems relevant in the course of reaching its conclusions.

6. If the subsidizing and/or third-country member fail to cooperate in the information-gathering process, the complaining member will present its case of serious prejudice, based on evidence available to it, together with facts and circumstances of the non-cooperation of the subsidizing and/or third-country member. Where information is unavailable due to non-cooperation by the subsidizing and/or third-country member, the panel may complete the record as necessary relying on best information otherwise available.

7. In making its determination, the panel should draw adverse inferences from instances of non-cooperation by any party involved to the information-gathering process.

8. In making a determination to use either best information available or adverse inferences, the panel shall consider the advice of the DSB representative nominated under paragraph 4 as to the reasonableness of any requests for information and the efforts made by parties to comply with these requests in a cooperative and timely manner.

9. Nothing in the information-gathering process shall limit the ability of the panel to seek such additional information it deems essential to a proper resolution to the dispute, and which was not adequately sought or developed during that process. However, ordinarily the panel should not request additional information to complete the record where the information would support a particular party's position and the absence of that information in the record is the result of unreasonable non-cooperation by that party in the information-gathering process.

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ANNEX VI – PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 6 OF ARTICLE 12

1. Upon initiation of an investigation, the authorities of the exporting member and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.

2. If in exceptional circumstances it is intended to include non-governmental experts in the investigation team, the firms and the authorities of the exporting member should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.

3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting member before the visit is finally scheduled.

4. As soon as the agreement of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting member of the names and addresses of the firms to be visited and the dates agreed.

5. Sufficient advance notice should be given to the firms in question before the visit is made.

6. Visits to explain the questionnaire should only be made at the request of an exporting firm. In case of such a request, the investigating authorities may place themselves at the disposal of the firm: such a visit may only be made if (a) the authorities of the importing member notify the representatives of the government of the member in question and (b) the latter do not object to the visit.

7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting member is informed by the investigating authorities of the anticipated visit and does not object to it: further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

8. Enquiries or questions put by the authorities or firms of the exporting members and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

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ANNEX VII – DEVELOPING COUNTRY MEMBERS REFERRED TO IN PARAGRAPH 2(A) OF ARTICLE 27

The developing country members not subject to the provisions of paragraph 1(a) of Article 3 under the terms of paragraph 2(a) of Article 27 are:

(a) least-developed countries designated as such by the United Nations which are members of the WTO;

(b) each of the following developing countries which are members of the WTO shall be subject to the provisions which are applicable to other developing country members according to paragraph 2(b) of Article 27 when GNP per capita has reached USD 1 000 per annum. [1] Bolivia, Cameroon, Congo, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe.

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Agreement on trade-related investment measures [2]

[...]

Article 9

Review by the Council for Trade in Goods

Not later than five years after the date of entry into force of the WTO Agreement, the Council for Trade in Goods shall review the operation of this Agreement and, as appropriate, propose to the Ministerial Conference amendments to its text. In the course of this review, the Council for Trade in Goods shall consider whether the Agreement should be complemented with provisions on investment policy and competition policy.

[1] The inclusion of developing country members in the list in paragraph (b) is based on the most recent data from the World Bank on GNP per capita.

[2] OJ L 336, 23.12.1994, p. 100.

ANNEX 1B

GENERAL AGREEMENT ON TRADE IN SERVICES [1]

[...]

Article VIII

Monopolies and exclusive service suppliers

1. Each member shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner consistent with that member's obligations under Article II and specific commitments.

2. Where a member's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that member's specific commitments, the member shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. The Council for Trade in Services may, at the request of a member which has a reason to believe that a monopoly supplier of a service of any other member is acting in a manner inconsistent with paragraph 1 or 2, request the member establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of the WTO Agreement, a member grants monopoly rights regarding the supply of a service covered by its specific commitments, that member shall notify the Council for Trade in Services no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 2, 3 and 4 of Article XXI shall apply.

5. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a member, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

[...]

Article IX

Business practices

1. Members recognize that certain business practices of service suppliers, other than those falling under Article VIII, may restrain competition and thereby restrict trade in services.

[1] OJ L 336, 23.12.1994, p. 190.

2. Each member shall, at the request of any other member, enter into consultations with a view to eliminating practices referred to in paragraph 1. The member addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The member addressed shall also provide other information available to the requesting member, subject to its domestic law and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting member.

[...]

Article XV

Subsidies

1. Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects.[1] The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of members, particularly developing country members, for flexibility in this area. For the purpose of such negotiations, members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.

2. Any member which considers that it is adversely affected by a subsidy of another member may request consultations with that member on such matters. Such requests shall be accorded sympathetic consideration.

[...]

[1] A future work programme shall determine how, and in what time-frame, negotiations on such multilateral disciplines will be conducted.

ANNEX 1C

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS [1]

[...]

Control of anticompetitive practices in contractual licences

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include, for example, exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that member.

3. Each member shall enter, upon request, into consultations with any other member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the member to which the request for consultation has been addressed is undertaking practices in violation of the requesting member's laws and regulations on the subject matter of this section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either member. The member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting member, and shall cooperate through supply of publicly, available non-confidential information of relevance to the matter in question and of other information available to the member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting member.

4. A member whose nationals or domiciliaries are subject to proceedings in another member concerning alleged violation of that other member's laws and regulations on the subject matter of this section, shall, upon request, be granted an opportunity for consultations by the other member under the same conditions as those foreseen in paragraph 3.

[...]

[1] OJ L 336, 23.12.1994, p. 213.

ANNEX 3

TRADE POLICY REVIEW MECHANISM: DECLARATION ON DISPUTE SETTLEMENT PURSUANT TO THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994 OR PART V OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES [1]

[...]

DECLARATION ON DISPUTE SETTLEMENT

MINISTERS

RECOGNIZE, with respect to dispute settlement pursuant to the Agreement on implementation of Article VI of GATT 1994 or Part V of the Agreement on subsidies and countervailing measures, the need for the consistent resolution of disputes arising from anti-dumping and countervailing duty measures.

Understanding on commitments in financial services [2]

Participants in the Uruguay Round have been enabled to take on specific commitments with respect to financial services under the General Agreement on Trade in Services (hereinafter referred to as the 'Agreement') on the basis of an alternative approach to that covered by the provisions of Part II of the Agreement. It was agreed that this approach could be applied subject to the following understanding:

(i) it does not conflict with the provisions of the Agreement;

(ii) it does not prejudice the right of any member to schedule its specific commitments in accordance with the approach under Part III of the Agreement;

(iii) resulting specific commitments shall apply on a most-favoured-nation basis;

(iv) no presumption has been created as to the degree of liberalization to which a member is committing itself under the Agreement.

Interested members, on the basis of negotiations, and subject to conditions and qualifications where specified, have inscribed in their schedule specific commitments conforming to the approach set out below.

A – Standstill

Any conditions, limitations and qualifications to the commitments noted below shall be limited to existing non-conforming measures.

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[1] OJ L 336, 23.12.1994, p. 261.

[2] OJ L 336, 23.12.1994, p. 270.

B – Market access

Monopoly rights

1. In addition to Article VIII of the Agreement, the following shall apply:

Each member shall list in its schedule pertaining to financial services existing monopoly rights and shall endeavour to eliminate them or reduce their scope. Notwithstanding subparagraph 1(b) of the Annex on financial services, this paragraph applies to the activities referred to in subparagraph 1(b)(iii) of the Annex.

Financial services purchased by public entities

2. Notwithstanding Article XIII of the Agreement, each member shall ensure that financial service suppliers of any other member established in its territory are accorded most-favoured-nation treatment and national treatment as regards the purchase or acquisition of financial services by public entities of the member of its territory.

Cross-border trade

3. Each member shall permit non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, and under terms and conditions that accord national treatment, the following services:

(a) insurance of risks relating to:

  (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and

  (ii) goods in international transit;

(b) reinsurance and retrocession and the services auxiliary to insurance as referred to in subparagraph 5(a)(iv) of the Annex;

(c) provision and transfer of financial information and financial data processing as referred to in subparagraph 5(a)(xv) of the Annex and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph 5(a)(xvi) of the Annex.

4. Each member shall permit its residents to purchase in the territory of any other member the financial services indicated in:

(a) subparagraph 3(a),

(b) subparagraph 3(b), and

(c) subparagraphs 5(a)(v) to (xvi) of the Annex.

Commercial presence

5. Each member shall grant financial service suppliers of any other member the right to establish or expand within its territory, including through the acquisition of existing enterprises, a commercial presence.

6. A member may impose terms, conditions and procedures for authorization of the establishment and expansion of a commercial presence in so far as they do not circumvent the member's obligation under paragraph 5 and they are consistent with the other obligations of the Agreement.

New financial services

7. A member shall permit financial service suppliers of any other member established in its territory to offer in its territory any new financial service.

Transfers of information and processing of information

8. No member shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this paragraph restricts the right of a member to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of the Agreement.

Temporary entry of personnel

9. (a) Each member shall permit temporary entry into its territory of the following personnel of a financial service supplier of any other member that is establishing or has established commercial presence in the territory of the member:

   (i) senior managerial personnel processing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and

   (ii) specialists in the operation of the financial service supplier.

   (b) Each member shall permit, subject to the availability of qualified personnel in its territory, temporary entry into its territory of the following personnel associated with a commercial presence of a financial service supplier of any other member:

   (i) specialists in computer services, telecommunication services and accounts of the financial service supplier; and

   (ii) actuarial and legal specialists.

Non-discriminatory measures

10. Each member shall endeavour to remove or to limit any significant adverse effects on financial service suppliers of any other member of:

(a) non-discriminatory measures that prevent financial service suppliers from offering in the member's territory, in the form determined by the member, all the financial services permitted by the member;

(b) non-discriminatory measures that limit the expansion of the activities of financial service suppliers into the entire territory of the member;

(c) measures of a member, when such a member applies the same measures to the supply of both banking and securities services, and a financial service supplier of any other member concentrates its activities in the provision of securities services; and

(d) other measures that, although respecting the provisions of the Agreement, affect adversely the ability of financial service suppliers of any other member to operate, compete or enter the member's market;

provided that any action taken under this paragraph would not unfairly discriminate against financial service suppliers of the member taking such action.

11. With respect to the non-discriminatory measures referred to in subparagraphs 10(a) and (b), a member shall endeavour not to limit or restrict the present degree of market opportunities nor the benefits already enjoyed by financial service suppliers of all other members as a class in the territory of the member, provided that this commitment does not result in unfair discrimination against financial service suppliers of the member applying such measures.

C – National treatment

1. Under terms and conditions that accord national treatment, each member shall grant to financial service suppliers of any other member established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the member's lender of last resort facilities.

2. When membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a member in order for financial service suppliers of any other member to supply financial services on an equal basis with financial service suppliers of the member, or when the member provides directly or indirectly such entities, privileges or advantages in supplying financial services, the member shall ensure that such entities accord national treatment to financial service suppliers of any other member resident in the territory of the member.

D – Definitions

For the purpose of this approach:

1. A non-resident supplier of financial services is a financial service supplier of a member which supplies a financial service into the territory of another member from an establishment located in the territory of another member, regardless of whether such a financial service supplier has or has not a commercial presence in the territory of the member in which the financial service is supplied.

2. 'Commercial presence' means an enterprise within a member's territory for the supply of financial services and includes wholly- or partly-owned subsidiaries, joint ventures, partnerships, sole proprietorships, franchising operations, branches, agencies, representative offices or other organizations.

3. A new financial service is a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a particular member but which is supplied in the territory of another member.

X – Council Decision of 14 December 1992 (93/112/EEC) [1]

[1] OJ L 44, 22.2.1993, p. 1.

Council Decision of 14 December 1992 extending the Decision of 4 April 1978 on the application of certain guidelines in the field of officially supported export credits

[...]

Article 1

The Annex to the Decision of 4 April 1978 is hereby replaced by the consolidated text of the Arrangement on guidelines for officially supported export credits, which is attached to this Decision.

Article 2

Article 5 of the Decision of 4 April 1978 is hereby replaced by the following:

'Article 5

This Decision shall apply from 16 October 1992 onward.'

Article 3

The Decision of 23 March 1992 is hereby repealed.

Article 4

The Decision shall apply from 16 October 1992.

Article 5

The Decision is addressed to the Member States.

[...]

ANNEX

(Translation)

ARRANGEMENT ON GUIDELINES FOR OFFICIALLY SUPPORTED EXPORT CREDITS

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I – FORM AND SCOPE OF THE ARRANGEMENT

1. EXPORT CREDIT TRANSACTIONS COVERED

(a) Participants shall apply the guidelines contained in the informal Agreement to officially supported* export credits with a repayment term* of two years or more relating to contracts for sales of goods and/or services or to leases equivalent in effect to such sales contracts.

(b) Special guidelines apply to the following sectors in accordance with the provisions of paragraph 9:

1. ships,
2. nuclear power plants,
3. power plants other than nuclear power plants,
4. aircraft.

(c) This Arrangement does not apply to export credits relating to exports of:

1. military equipment,
2. agricultural commodities.

2. PARTICIPATION

Present participants are listed in Annex I to this Arrangement. Countries willing to apply these guidelines may become participants upon the prior invitation of the then existing participants.

II – GUIDELINES FOR BASIC EXPORT CREDIT TERMS AND CONDITIONS

3. CASH PAYMENTS

Participants shall require purchasers of exported goods and services receiving officially supported export credits to make cash payments* at or before the starting point* equal to a minimum of 15% of the export contract value.* Participants shall not provide official support for such cash payments other than insurance and guarantees against the usual pre-credit risks.

4. REPAYMENT

Participants shall apply the following guidelines for the repayment of export credits that are officially supported by way of direct credit, refinancing, eligibility for an interest rate subsidy, guarantee or insurance.

(a) Maximum repayment term

For the three categories of countries* of destination, the following maximum repayment terms shall apply. The export credit agreement and ancillary documents shall not permit the extension of the relevant repayment term.

Countries of destination	Maximum repayment terms
Category I: relatively rich	Five years; but after prior notification in accordance with paragraph 15(b)(1), eight-and-a-half years
Category II: intermediate	Eight-and-a-half years;[1]
Category III: relatively poor	Ten years

(b) Repayment of principal and payment of interest

1. Principal of an export credit shall normally be repaid in equal and regular instalments not less frequently than every six months commencing not later than six months after the starting point. In the case of leases, this repayment procedure may be applied either for the amount of principal only or else for the amount of principal and interest combined.

2. Interest* as set forth in paragraph 5 shall normally not be capitalized during the repayment term but shall be payable not less frequently than every six months commencing not later than six months after the starting point.

3. If a participant intends not to follow the normal practices for repayments of principal or for payment of interest set forth in 1 and 2, the participant shall give prior notification in accordance with the procedure set forth in paragraph 15(b)(1).

5. MINIMUM INTEREST RATES

Participants providing official financing support by way of direct credit, refinancing or interest rate subsidy shall apply the following minimum rates of interest:

(a) Commercial interest reference rates (CIRRs)*

Participants shall apply the relevant commercial interest reference rates.[2] The interest rate shall not be fixed for a period longer than 120 days. If the terms of the official financing support are fixed before the date of contract, a premium of 20 basis points (bp) is added to the commercial interest reference rate. The commercial interest reference rate is also used to compute the discount rate to be used in the calculation of the concessionality level of tied or partially untied aid financing in accordance with paragraph 24(n).

(b) Special drawing rights (SDRs) based rate[3]

1. Notwithstanding (a), participants may also choose to apply a minimum annual interest rate of SDR[3] + 50 bp where the country of destination is classified in category III.

2. Base rates for the above SDR rate are revised semi-annually and subject to adjustment on 15 January and 15 July according to the following method:

   (i) an adjustment is made if the SDR-weighted average of the monthly interest rates referred to in footnote 3, p. 324, for the immediately preceding December or June respectively differs by 50 basis points or more from the SDR-weighted average interest rate underlying the preceding adjustment in SDR-based rate. When such a change occurs, the levels of the SDR-based rate set out above shall be adjusted by the same number of basis points as the difference in the SDR-weighted averages; the recalculated SDR-based rate being rounded off to the nearest five basis points;

   (ii) the interest rates for the currencies constituting the SDR-weighted average are the secondary market yields of financing instruments reported to the OECD pursuant to paragraph 20(a)(i).

(c) Interest rate system choice

Participants are prohibited from taking any action that allows banks to offer throughout the life of a floating rate loan the option of either 1 the SDR-based rate, 2 the CIRR (at the time of the original contract), or 3 the short-term market rate, whichever is lower.

6. LOCAL COSTS*

(a) Category II or III countries

Participants shall not finance, guarantee or insure credit for more than 100% of the value of the goods and services exported, including goods and services supplied by third countries. Thus, the amount of local costs supported on credit terms and conditions will not exceed the amount of the cash payment. They shall not grant such support for local costs financed on conditions more favourable than those supported for the exports to which such local costs are related.

(b) Category I countries

The provisions of (a) shall apply, provided that any official support is confined to insurance or guarantees.

7. MAXIMUM PERIOD OF VALIDITY OF COMMITMENTS,* PRIOR COMMITMENTS AND CERTAIN AID COMMITMENTS

(a) Participants shall not fix credit terms and conditions for an individual export credit or line of credit* whether new or being renewed or prolonged, for a period exceeding

six months. Commitments that were in effect prior to a modification of the guidelines of this Arrangement and that became non-conforming because of this modification may not remain in effect for more than six months following the date of the modification.[4]

(b) Participants shall not fix more than one year credit terms and conditions for individual tied or partially untied aid credits that have a concessionality level below the appropriate minimum specified in paragraph 12(b)(i). Aid protocols, aid credit lines or similar agreements may not be valid for more than two years after their signature. Extension of a concessional credit line shall be notified as if it were a new transaction with a note, explaining that it is an extension and that it is renewed at terms allowed at the time of the notification of the extension.

8. TRADE-RELATED CONCESSIONAL OR AID CREDITS[5]

(a) Eligibility

This subparagraph does not apply to concessional or aid credits whether tied or partially untied* with a value of less than 2 million SDR or to those where the concessionality level is 80% or more, except for concessional or aid credits or grants that form part of an associated (mixed) credit package, which remain subject to the provisions of footnote 12, p. 326, in any case, derogation from these rules will be possible if the participants agree through a common line procedure.[6]

(i) Tied or partially untied concessional or aid credits, except for credits to least-developed countries (LDCs), shall not be extended to public or private projects that normally should be commercially viable if financed on market or Arrangement terms.

The key tests for such aid eligibility are:

- whether the project is financially non-viable – i.e. does the project lack capacity with appropriate pricing determined on market principles to generate sufficient cash flow to cover the project's operating costs and to service the capital employed – or
- whether it is reasonable to conclude, based on communication with other participants, that it is unlikely that the projects can be financed on market or Arrangement terms.

The above tests are intended to describe how a project should be evaluated to determine whether it should be financed with such aid or with export credits on market or Arrangement terms. Through the consultation process, a body of experience is expected to develop over time that will more precisely define, for both export credit and aid agencies, *ex ante* guidance as to the line between the two categories of projects.

(ii) There shall be no tied or partially untied concessional or aid credits to countries whose per capita GNP would make them ineligible for 17- or 20-years loans from the World Bank.[7]

(b) Procedure for derogation

Participants may derogate from the rules in paragraph 8(a) by following the procedures in paragraph 14.

(c) Notification procedure

(i) If a participant intends to support trade-related tied or partially untied aid financing:

- with a value of 2 million SDR or more and a concessionality level of 80% or more, or
- with a value of less than 2 million SDR and a concessionality level of 50% or more,

the participant shall give notification in accordance with the procedure in paragraph 15(d) to all participants and the Secretariat.

(ii) If a participant intends to support trade-related untied, tied or partially untied aid credits not covered by (i), the participant shall without prejudice to official developments assistance procedures administered by the Development Assistance Committee, give notification in accordance with the procedures set forth in paragraph 15(c), if the concessionality level* is less than 80%. Concessional or aid credits or grants that form part of an associated (mixed) credit package shall remain subject to the provisions of footnote 12, p. 326.

(iii) No notification is required for untied aid financing with a value of less than 2 million SDR and a grant element of more than 50%.

(iv) Exception for small projects and technical assistance

The reporting requirements of paragraphs 12(b) and 15(c) and (d) do not apply to the following transactions:

- aid financing where the official development aid component consists solely of technical cooperation that is less than either 3% of the total value of the transaction or USD 1 million, whichever is lower, and
- capital projects of less than USD 1 million that are funded entirely by development assistance grants.

9. SPECIAL SECTORS

Participants shall apply the following special guidelines to the sectors listed below:

(a) *Ships*

The guidelines of this Arrangement shall apply to ships not covered by the OECD Understanding on export credits for ships (Annex II to this Arrangement). Efforts shall be pursued to arrive at common provisions for all ships. Until common provisions for all ships are agreed upon, if, for any type of ship that is covered by that Understanding and therefore not by the guidelines of the Arrangement, a participant intends to support terms that would be more favourable than those terms permitted by this Arrangement, the participant shall notify all other participants of such terms in accordance with the procedure set forth in paragraph 15(b)(1).

(b) *Nuclear power plants*

This Arrangement shall apply, except that, where relevant, the provisions of the Sector Understanding on export credits for nuclear power plants (Annex III to this Arrangement), which complements this Arrangement, shall apply in lieu of the corresponding provisions of the Arrangement.

(c) *Power plants other than nuclear power plants**

This Arrangement shall apply, except that the maximum repayment term shall be 12 years. If a participant intends to support a repayment term longer than five years in transactions with category I countries or a repayment term longer than the relevant maximum term set forth in paragraph 4(a) for category II and III countries, the participant will give prior notification in accordance with the procedure set forth in paragraph 15(b)(1).

(d) *Aircraft*

This Arrangement shall apply, except that, where relevant, the provisions of the Sector Understanding on export credits for civil aircraft (Annex IV to this Arrangement), which complements this Arrangement, shall apply in lieu of the corresponding provisions of the Arrangement.

10. BEST ENDEAVOURS

(a) Objectives

1. The guidelines set out in this Arrangement represent the most generous credit terms and conditions that participants may offer when giving official support. All participants recognize that in the course of time these guidelines may come to be regarded as the normal terms and conditions. They therefore undertake to take the necessary steps to prevent this risk from materializing.

2. In particular, if, in an individual branch of trade or industrial sector to which this Arrangement applies, credit terms and conditions less generous to buyers than those set forth above in the Arrangement are customary, participants shall continue to respect such customary terms and conditions and shall do everything in their power to prevent these from being eroded as a result of recourse to the credit terms and conditions set forth in this Arrangement.

(b) Firm undertaking

In keeping with the objectives in (a), the participants, recognizing the advantages which can accrue if a clearly defined common attitude towards the credit terms and conditions for a particular transaction can be achieved, firmly undertake:

1. to respect strictly the existing procedures for notification and in particular to give prior notification at the latest at the stipulated moment before commitment as well as to supply all the information in the detail called for in the form set forth in Annex V;

2. to make maximum use of the framework for information exchange (see Annex VI) at an early stage with a view to forming a common line towards credit terms and conditions for particular transactions;

3. to consider favourably face-to-face consultation if a participant so requests in the case of important transactions as set out in the Protocol to this Arrangement.

(c) Maximum delays for replies

If, in an exchange of information referred to under (b), a participant informs another participant of the credit terms and conditions that it envisages supporting for a particular transaction and requests similar information from the other participants, then, in the absence of a satisfactory reply within seven calendar days, the enquiring participants may assume that the other will support the transaction on the most-favourable credit terms and conditions permitted by these guidelines. In cases of particular urgency, the enquiring participant may request a more rapid reply.

11. MATCHING

A participant has the right to match credit terms and conditions notifiable under paragraph 15, as well as credit terms and conditions offered by a non-participant. The validity of a matching commitment may not exceed the termination date of the commitment being matched. Participants shall match by offering terms that comply with this Arrangement unless the initiating offer does not comply with this Arrangement. A participant intending to match credit terms and conditions:

(a) notified by another participant shall follow the procedures set forth in paragraph 16(a) or (c) as appropriate;

(b) offered by a non-participant shall follow the procedures set forth in paragraph 16(b).

12. NO-DEROGATION ENGAGEMENT

A participant shall not:

(a) derogate with respect to maximum repayment terms (whatever the form of support), to minimum interest rates or to the limitation of the validity of commitments to a maximum of six months or extend the relevant repayment terms through an extension of the grace period before the start of the repayment beyond the normal practice of six months after the starting point; or

(b) avail themselves of the possibilities provided under paragraph 15 of this Arrangement to support tied or partially untied aid financing that:

(i) has a concessionality level of less than 35 or 50% if the beneficiary country is a least-developed country as defined by the United Nations; or

(ii) does not conform to the provisions on eligibility for aid financing in paragraph 8(a)(ii) of this Arrangement.[6]

13. ACTION TO AVOID OR MINIMIZE LOSSES

The provisions of this Arrangement are without prejudice to the right of the export credit or insurance authority to take appropriate action after the export credit agreement and ancillary documents become effective to avoid or minimize losses.

III – PROCEDURES

14. CONSULTATIONS

(a) 1. Any participant seeking clarification about possible trade motivation for a tied or partially untied aid credit may request that a full aid quality assessment (see Annex VII) be supplied. Any participant may request consultations[8] in accordance with paragraph 14(a)(2) to (a)(4) with other participants, including face-to-face consultations, to discuss:

– first, whether an aid offer meets the requirements of the rules in paragraph 8(a);

– second, if necessary, whether an aid offer is justified even if the requirements of the rules in paragraph 8(a) are not met.

2. The consultation shall be completed and the findings on both questions in 1 notified by the Secretariat to all participants at least 10 working days before the earlier of the bid closing date or commitment date. If there is disagreement among the consulting parties, the Secretariat shall invite other participants to express their views within five working days. It shall report these views to the notifying participant, who should reconsider going forward if there appears to be no substantial support for an aid offer.

3. A donor wishing to proceed with a project despite the lack of substantial support shall provide prior notification to other participants and shall, in a letter to the Secretary-General of the OECD, outline the results of the consultations and explain the overriding non-trade-related national interest that forces this action. The participants expect that such an occurrence will be unusual and infrequent.

4. The Secretariat shall monitor the progress and results of the consultation.

(b) There shall be consultations for all offers of tied or partially untied concessional or aid credits for projects larger than 50 million SDR with a concessionality level of less than 80%. Concessional or aid credits or grants that form part of an associated (mixed) credit package shall remain subject to the provisions of footnote 12, p. 326. In such consultation, special weight shall be given to the expected availability of financing at market or Arrangement terms when considering the appropriateness of such aid credits.

15. PRIOR AND PROMPT NOTIFICATIONS

(a) Derogations: Procedure for prior notification and discussion

1. If a participant intends to take the initiative to support terms and conditions not in conformity with this Arrangement, the participant shall notify all other participants of the terms and conditions it intends to support at least 10 calendar days before issuing any commitment. If any other participant requests a discussion during this period, the initiating participant shall wait an additional 10 calendar days before issuing any commitment on such terms. Normally this discussion will be by means of instant communication.

2. If the initiating participant moderates or withdraws its intention to support the notified non-conforming terms and conditions, it must immediately inform all other participants accordingly.

3. A participant intending to match notified derogating terms and conditions shall follow the procedure set forth in paragraph 16(a)(1).

(b) Deviations: Procedure for prior notification without discussion

1. A participant shall notify, at least 10 calendar days before issuing any commitment, all other participants of the terms and conditions if it intends:

   (i) to support a credit with a repayment term of more than five but not exceeding eight-and-a-half years to a relatively rich country;

   (ii) not to follow normal payment practices with respect to principal or interest referred to in paragraph 4(b);

   (iii) to support a credit for a power plant other than a nuclear power plant with a repayment term longer than the relevant maximum set forth in paragraph 4(a), but not exceeding 12 years; or

(iv) to support, for any kind of ship to which the OECD Understanding on export credits for ships applies, credit terms and conditions that would be more favourable than those credit terms and conditions permitted by this Arrangement.

2. If the initiating participant moderates or withdraws its intention to give such support to the notified deviating credit conditions, it must immediately inform all other participants accordingly.

3. A participant intending to match notified deviating terms and conditions shall follow the procedure set forth in paragraph 16(a)(2).

(c) Procedures for prior notification of aid financing

The procedure set out in paragraph 15(b) shall apply where a participant intends to provide or support a transaction covered by paragraph 8(c)(ii), except that, wherever paragraph 15(b) refers to a period of 10 calendar days, a period of 30 working days before the bid closing date or commitment date,* whichever comes first, shall apply and that participants intending to match shall use the procedures of paragraph 16(a)(3). Notification according to this paragraph cannot substitute procedures for derogation in paragraph 8(b).

(d) Procedure for prompt notification*

As soon as a participant commits itself to supporting a transaction covered by paragraph 8(c)(i), the participants will promptly notify all other participants accordingly.

(e) Tying status

Any participants may request additional information relevant to the tying status of any credit.

16. PROCEDURES FOR MATCHING

(a) Matching terms and conditions notified in accordance with paragraph 15

1. Matching of notified derogations: On and after the expiry of the first 10-calendar-day period referred to in paragraph 15(a)(1), if not discussion is requested (or on and after the expiry of the second 10-calendar-day period if discussion is requested) and unless the participant intending to match has received notice from the initiating participant that the latter has withdrawn its intention to support non-conforming terms and conditions, any participants will have the right to support:

(i) in a case of 'identical matching', terms and conditions that include the identical non-conforming element but that otherwise conform to the guidelines, provided that the matching participant gives as early as possible notification of its intention to match; or

(ii) in a case of 'other support' prompted by the initial derogation, any other non-conforming element of the terms subject to the restrictions of paragraph 11, provided that the responding participant introducing a fresh derogation initiates a five-calendar-day prior notification and five-calendar-day discussion procedure and awaits its completion. This period can run concurrently with that of the prior notification and discussion procedure initiated by the originally derogating participant but cannot elapse before the end of the applicable 10- or 20-calendar-day period referred to under paragraph 15(a)(1).

2. Matching of notified derivations: On and after the expiry of the 10-calendar-day period referred to in paragraph 15(b)(1) and unless the matching participant has received notice from the initiating participant that the latter has withdrawn its intention to support the terms and conditions notified in accordance with paragraph 15(b)(1), any participant will have the right to support:

   (i) in a case of 'identical matching', terms and conditions that include the identical element notified in accordance with paragraph 15(b)(1) but that otherwise conform to the guidelines, provided that the matching participant gives notification as early as possible of its intention to match;

   (ii) in a case of 'other support', any other element of the terms which does not conform to the guidelines subject to the restrictions of paragraph 11, provided that the responding participant initiates a five-calendar-day prior notification procedure without discussion and awaits its completion. This period can run concurrently with that of the prior notification procedure started by the initiating participant, but may not elapse before the end of the applicable 10-calendar-day period referred to under paragraph 15(b)(1).

3. Matching of a prior notification of aid financing: The procedures set out in paragraph 16(a)(2) shall apply where a participant intends to match aid financing, except that where paragraph 16(a)(2) refers to a period of 10 calendar days, a period of 30 working days before the bid closing date or commitment date, whichever comes first, shall apply.

4. Matching of a prompt notification: No prior notification need be given if a participant intends to match terms and conditions that were subject to a prompt notification according to paragraph 15(d).

5. Discount rate in matching: In matching aid financing, identical matching means matching with an identical concessionality level recalculated with the discount rate in force at the time of matching.

(b) Matching terms and conditions offered by a non-participant

1. Before considering meeting non-confirming terms and conditions assumed to be offered by a non-participant, a participant shall make every effort to verify that these terms are receiving official support. The participants shall inform all other participants of the nature and outcome of these efforts.

2. A participant that intends to match non-conforming terms offered by a non-participant shall follow the prior notification and discussion procedure under paragraph 15(a)(1).

(c) Matching non-conforming prior commitments

1. A participant intending to match a prior commitment shall make reasonable efforts to determine whether the non-conforming terms and conditions of the individual transaction or credit line in question will be used to support a particular transaction. This participant will be considered to have made such reasonable efforts if it has informed by means of instant communication the participant assumed to offer such non-conforming terms and conditions of its intention to match, but in reply to the instant communication has not been informed within three working days, exclusive of the day of reception, that this prior commitment will not be used to support the transaction in question.

(2) A prior credit line may be matched by an individual transaction or by means of a credit line. In both cases, the dates of expiry of the matching offer shall not be later than that of the credit line being matched.

(3) A participant intending to match another participant's non-conforming prior commitment shall, in the case of:

(i) 'identical matching', follow the procedure set forth in paragraph 16(a)(1)(i) when matching a derogation and paragraph 16(a)(2)(i) when matching a deviation;

(ii) 'other support', follow the procedure set forth in paragraph 16(a)(1)(ii) when matching a derogation prior commitment and the procedure set forth in paragraph 16(a)(2)(ii) when matching a deviating prior commitment.

17. INFORMATION ON COMMITMENTS

As soon as a participant commits credit terms and conditions that it had notified in accordance with paragraph 15 or 16, it shall, in all cases, inform all other participants accordingly by including the notification reference number on the relevant creditor reporting system (CRS) 1c form.

18. INFORMATION TO BE SUPPLIED UNDER THE NOTIFICATION AND MATCHING PROCEDURES

The notifications called for by the above procedures shall be made in accordance with and contain the information set out in the standard form in Annex V and be copied to the Secretariat of the OECD.

19. MONITORING

The Secretariat shall monitor the implementation of the Arrangement.

IV – OPERATIONAL PROVISIONS

20. REGULAR NOTIFICATION AND CIRCULATION OF INFORMATION ON SELECTED INTEREST RATES

(a) Yields on government or public-sector bonds

1. Participants whose currencies constitute the IMF's special drawing rights shall notify by means of instant communication each month to the Secretariat for distribution to all participants the monthly information on yields of government or public-sector bonds as reported in the OECD financial statistics under reference number II (2), (b), that is:

   France:

   Public and semi-public-sector bonds on the secondary market

   Germany:

   Public-sector bonds on the secondary market (8 to 15 years)

   Japan:

   Central government bonds on the secondary market

   United Kingdom:

   Government bonds on the secondary market (10 years)

   United States:

   US Government notes and bonds on the secondary market (composite: over 10 years).

   This information shall reach the Secretariat at the latest five days after the end of the month covered by this information.

2. Upon receipt of this information, the Secretariat shall calculate the SDR-weighted average of interest rates for immediate circulation to all participants.

3. At the beginning of July and of January, the Secretariat will, in accordance with the method set forth in paragraph 5(b)(2), calculate on the basis of the SDR-weighted averages the semi-annual adjustments to be made to the SDR-based minimum interest rates set forth in paragraph 5(b)(1).

(b) Commercial interest reference rates (CIRRs)

1. Commercial interest reference rates for currencies that are subject to the provisions of paragraph 5(a) shall be sent by means of instant communication at least monthly to the Secretariat for circulation to all participants.

2. Such notification shall reach the Secretariat not later than five days after the end of each month covered by this information. The Secretariat shall then inform

immediately all participants of the applicable rates. Any changes in these rates shall come into effect on the 15th day after the end of each month.

3. When market developments require the notification of a change in a commercial interest reference rate in the course of a month, the changed rate shall be implemented 10 days after the date of receipt of the notification of this change.

21. REVIEWS

(a) Annual review

1. The participants shall review at least annually the functioning of the Arrangement. The reviews will normally take place in the northern spring of each year. In the review, they shall examine, *inter alia*, notification procedures, derogations, implementation and operation of the differentiated discount rate system, rules and procedures on tied aid, questions of matching, prior commitments, practices on credits for agricultural commodities and possibilities of wider participation in this Arrangement. They shall also review possible modification of the SDR-based rate, notably with the aim of bringing it closer to the market interest rates.[9]

2. These reviews shall be based on information, on participants' experience and on their suggestions for improving the operation and efficacy of the Arrangement and shall take account of the objectives of the Arrangement and the prevailing economic and monetary situation. The information and suggestions that participants which to put forward to this end shall reach the Secretariat not later than 45 days before the date of review.

(b) Review of commercial interest reference rates

1. The participants shall review periodically the operation in practice of the commercial interest reference rates with a view to ensuring that the notified rates reflect current market conditions and meet the aims underlying the establishing of the rates in operation. Such reviews shall also cover the premium to be added when these rates are applied.

2. Any participant may submit to the chairman a substantiated request for an extraordinary review in case this participant considers that the commercial interest reference rates for one of more currencies no longer reflect current market conditions.

22. VALIDITY AND DURATION

The provisions of this Arrangement are applicable without time-limit, unless revised as a result of the review referred to in paragraph 21.

23. WITHDRAWAL

Any participant may withdraw from this Arrangement upon not less than 60 calendar days' prior written notice to the other participants.

V – DEFINITIONS AND INTERPRETATIONS

24. For the purposes of this Arrangement, the participants agreed to the following definitions and interpretations.

(a) Cash payments mean payments to be received for goods and services exported by the completion of the exporter's contractual obligations, the date of completion being determined by the starting point.

The quantum of the minimum cash payments is established by reference to the total export contract value, except that, in the case of a transaction involving some goods or services supplied from outside the exporter's country, the total export contact value may be reduced proportionately if the official support from which the exporter benefits does not cover those goods and services.

Retention payments due after the latest appropriate starting point referred to under (1) do not count as cash payments for the purpose of conformity with the guidelines.

(b) Export contract value means the total amount to be paid by the buyer, exclusive of interest in the case of an export sale of goods and/or services or to be paid by the lessee, exclusive of the portion of the lease payment equivalent to interest in the case of a cross-border lease.

(c) The classification of countries into categories in paragraph 4(a) is based on the following criteria:

Category I:

Countries with a GNP per capita income over USD 4 000 per annum according to the definitive 1979 figures shown in the 1981 World Bank Atlas.

Category II:

Countries not classified in category I or III.

Category III:

Countries eligible for IDA credits plus any other low-income countries or territories, the GNP per capita of which would not exceed the IDA eligibility level.

(d) Repayment term and interest rates

1. Repayment term means the period of time commencing at the starting point and terminating on the contractual date of the final payment.

2. Interest excludes:

(i) any payment by way of premium or other charge for insuring or guaranteeing supplier credits or financial credits;

(ii) any other payment by way of banking fees or commissions associated with the export credit, other than annual or semi-annual bank charges payable throughout the repayment term; and

(iii) withholding taxes imposed by the importing country.

3. In the case of an export through a relay country, the relevant interest rate and repayment term set out in paragraph 4 and 5 are those corresponding to the country of final destination in cases:

(i) where the relay country makes payment, if and when received from the country of final destination, to the exporting country on the basis of the latter's portion in the total export value;

(ii) where there is security or payment by the country of final destination.

(e) Commercial interest reference rate means an interest rate established in accordance with Annex VIII to this Arrangement.

(f) Local costs mean expenditure, excluding commissions payable to the exporter's agent in the buying country, for the supply from the buyer's country of goods and services, that are necessary either for executing the exporter's contract or for completing the project of which the exporter's contract forms part.

(g) Commitment means any arrangement for or declaration on credit conditions, in whatever form, by means of which the intention or willingness to refinance, insure or guarantee supplier credits or to grant, refinance, insure or guarantee financial credits is brought to the attention of the recipient country, the buyer or the borrower, the exporter, or the financial institution.

(h) Line of credit means any understanding or statement, in whatever form, whereby the intention to grant credit benefiting from official support up to a ceiling and in respect of a series of transactions, linked or not to a specific project, is brought to the attention of the recipient country, the buyer or the borrower, or the financial institution.

(i) Tied aid financing[10] is defined as loans or grants or associated financing packages involving a concessionality level greater than 0% that is in effect tied to procurement of goods and services from the donor country. Partially untied aid financing[10] is defined as loans or grants or associated financing packages involving a concessionality level greater than 0% that is in effect tied to procurement of goods and services from the donor country and from a restricted number of countries.[11]

1. Such financing can take the form of either:

(i) official development assistance (ODA) loans;

(ii) official development assistance grants;

(iii) other official flows (OOF) including grants and loans but excluding officially supported export credits that are in conformity with this Arrangement; or

(iv) any association in law or in fact[12] either in the hands of the donor, lender or borrower among two or more of the following:

- official development assistance loans,
- official development assistance grants,
- other official flows (including grants and loans but excluding officially supported export credits that are in conformity with this Arrangement),
- an export credit that is officially supported by way of direct credit, refinancing, eligibility for an interest subsidy, guarantee or insurance to which this Arrangement applies, other funds at or near market terms or cash payments from the buyer's own resources.

2. Such financing is defined to be in effect to procurement of goods and services from one or a restricted number of countries as soon as:

(i) one of the financial components listed above is not freely and fully available to finance procurement from the recipient country, substantially all other developing countries and from participating countries, whether by a formal or informal understanding to that effect between the recipient and the donor country; or

(ii) it involves practices that the Development Assistance Committee (DAC) of the OECD or the participants may determine to result in such tying.[11]

3. The definition of 'official development assistance' is identical to that in the 'DAC guidelines principles for associated financing and tied and partially untied official development assistance'.

(j) Prompt notification means a maximum delay of two working days following the date of commitment within which notification is to be given.

(k) Prior notification means a maximum delay of 30 working days before the bid closing date or commitment date, whichever comes first.

(l) Starting point is the same as the Berne Union definition currently in use and is as follows:

1. in the case of a contract for the sale of capital goods consisting of individual items usable in themselves (e.g. locomotives), the starting point is the mean date or actual date when the buyer takes physical possession of the goods in his own country;

2. in the case of a contract for the sale of capital equipment for complete plant or factories where the supplier has no responsibility for commissioning, the starting

point is the date when the buyer is to take physical possession of the entire equipment (excluding spare parts) supplied under the contract;

3. in the case of construction contracts where the contractor has no responsibility for commissioning, the starting point is the date when construction has been completed;

4. in the case of any contract where the supplier or contractor has a contractual responsibility for commissioning, the starting point is the date when he has completed installation or construction and preliminary tests to ensure that it is ready for operation. This applies whether or not it is handed over to the buyer at that time in accordance with the terms of the contract and irrespective of any continuing commitment which the supplier or contractor may have, for example for guaranteeing its effective functioning or for training local personnel;

5. in the case of paragraphs 2, 3 and 4 where the contract involves the separate execution of individual parts of a project, the date of the starting point is the date of the starting point for each separate part, or the mean date of those starting points or, where the supplier has a contract, not for the whole project but for an essential part of it, the starting point may be that appropriate to the project as a whole.

(m) Interest rate and official support: Apart from agreement on the definition of interest set forth in paragraph 24(d)(2), it has not proved possible to establish common definitions of interest rate and official support in the light of differences between long-established national systems of export credit and export credit insurance now in operation in the participating countries. Efforts shall be pursued to elaborate solutions for these definitions. While such definitions are being elaborated, these guidelines do not prejudice present interpretations. In order to facilitate these efforts, notes concerning actual practices in this area, including information on annual or semi-annual bank charges payable throughout the repayment term and considered as part of interest, as they result from the different national systems, were transmitted to the Secretariat of the OECD and distributed to all participants in document TD/CSUS/78.12 and addenda.

(n) 1. Concessionality level is very similar in concept to the grant element used by the Development Assistance Committee of the OECD. In the case of grants, it is 100%. In the case of loans, it is the difference between the nominal value of the loan and the discounted present value of the future debt service payments to be made by the borrower, expressed as a percentage of the nominal value of the loan, and is calculated in accordance with the method of calculating the grant element used by the DAC, except that:

(i) the discount rate used in calculating the concessionality level of a loan in a given currency is subject to change on an annual basis on 15 January and is calculated as follows:

– for currencies where CIRR is less than 10%: CIRR + ¼ (10-CIRR),

– for other currencies: CIRR,

where CIRR is the average of the monthly CIRRs valid during the six-month period extending from 15 August of the previous year through 14 February of the current year. The calculated rate is rounded to the nearest 10 basis points. If there is more than one CIRR for the currency, the CIRR for the longest maturity shall be used for this calculation;

(ii) the base date for the calculation of the concessionality level is the starting point as defined in paragraph 24(l).

2. For the purpose of calculating the overall concessionality level of an associated financing package, the concessionality levels (i) of export credits that are in conformity with this Arrangement, (ii) of other funds at or near market rates, (iii) of other official funds with a concessionality level of less than the minimum permitted by paragraph 12(b), except in cases of matching,[14] or (iv) of cash payments that are from the buyer's own resources are considered to be zero. The overall concessionality level of a package is determined by dividing (i) the sum of the results obtained by multiplying the nominal value of each component of the package by the respective concessionality level of each component by (ii) the aggregate nominal value of the components.

3. The discount rate for a given aid loan is the rate that is in effect at the time of notification,[15] except in cases of prompt notification, where the discount rate is the rate in effect at the time of commitment. A change in the discount rate during the life of a loan does not change its concessionality level.

4. Without prejudice to 3, when calculating the concessionality level of individual transactions initiated under an aid credit line, the discount rate is the rate that was originally notified for the credit line.

(o) Power plants other than nuclear power plants are complete power stations not fuelled by nuclear power – or parts thereof – comprising all components, equipment, materials and services, including the training of personnel, directly required for the construction and commissioning of such non-nuclear power stations. Not included are items for which the buyer is usually responsible, in particular costs associated with land development, roads, construction village, power lines, switchyard and water supply, as well as costs arising in the buyer's country from official procedures (e.g. site permit, construction permit, fuel loading permit).

Notes and references

* The asterisk refers to the relevant definitions or interpretations set forth in paragraph 24.

[1] For countries in category II that were classified in category III before 6 July 1982, the maximum repayment term shall be 10 years.

[2] CIRRs shall equal a base rate plus 100 basis points. For each currency, the base rates may be either:

(i) three-year government bond yields for repayment terms up to and including five years, five-year government bond yields for over five up to and including eight-and-a-half years, and seven-year government bond yields for over eight-and-half years, or

(ii) five-year government bond yields for all maturities.

Each participant shall initially select one of the two base rate systems for its currency. Other participants shall use this system for financing offered in that currency. A participant, with a six-month advance notice and with the counsel of the participants may change to the other system for its currency, and other participants shall then use that system for that currency. The yen CIRR is the long-term prime rate minus 20 basis points for all maturities. The ecu CIRR is the secondary market yield on medium-term ecu bonds in the Luxembourg Stock Exchange plus 50 basis points.

[3] (i) SDR means the IMF special drawing right weighted average of the interest rates notified pursuant to paragraph 20(a). These currencies are the US dollar, German mark, Japanese yen, French franc and pound sterling. In the calculation of the average interest rate, each currency shall be given the weight set by the IMF for the valuation of the special drawing right.

(ii) After any semi-annual period, a change in the SDR-weighted average interest rate shall be computed only on the basis of the IMF weightings of the SDR valuation basket in effect at the end of the semi-annual period.

[4] Special transition rules for transactions under tied aid credit lines notified before 15 February 1992:

- a transitional period for existing credit lines, during which it will be possible to notify commercially viable projects without using the special consultations and procedures that are part of the Helsinki package, shall last until 15 August 1992;
- the validity of such notifications made after 15 February and at the latest 15 August shall be one year maximum;
- after 15 August 1992 it shall be possible to give tied aid to projects in countries with GNP above the threshold, but for the rest of the lifetime of the credit line only non-commercially viable projects will be financed;
- notifications of such projects will also have a validity of one year only;
- tied aid credit lines to countries with a GNP above the threshold cannot be prolonged; and
- for Mexico only, tied aid credits can be given to commercially viable projects even after 15 August and up to 31 December 1992, based on already notified tied aid credit lines. The validity of offers on such projects notified in the 15 August to 31 December period shall be one year at a maximum. In return, the credit lines to Mexico will not be prolonged after 31 December 1992, and it will not be possible to notify either commercial or non-commercial projects after 31 December 1992.

[5] The participants are agreed on the following general principle:

'OECD members' export credit and tied aid credit policies should be complementary; those for export credits should be based on open competition and the free play of market forces; those for tied aid credits should provide needed external resources to countries, sectors or projects with little or no access to the market financing, ensure best value for money, minimize trade distortion and contribute to developmentally effective use of these resources.'

[6] There are three means by which a participant may proceed with a non-conforming offer under paragraph 8(a):

- common lines;
- justification on aid grounds through support by a substantial body of participants – paragraphs 14(a)(1) and 14(a)(2); and
- through a letter to the Secretary-General – paragraph 14(a)(3), which the participants expect will be unusual and infrequent.

[7] GNP per capita over USD 2 465 in 1990. A country will only be moved to or from this category after its World Bank category has been unchanged for two consecutive years. Notwithstanding classifications of countries ineligible or eligible to receive tied aid, tied aid policy for Bulgaria, the Czech and Slovak Federal Republic, Hungary, Poland and Romania is covered by the participants' agreement, as long as such agreement is in force, to try to avoid such credits other than outright grants, food aid and humanitarian aid. The OECD ministers endorsed this policy in June 1991.

[8] At which time, they may request, among other items, the following information:

- assessment of a detailed feasibility study/project appraisal;
- whether there is a competing offer with non-concessional or aid financing;
- expectation of the project generating or saving foreign currency;
- whether there is cooperation with multilateral organizations such as the World Bank;
- presence of international competitive bidding (ICB), in particular if the donor country's supplier is the lowest evaluated bid;
- environmental implication;
- private-sector participation;
- timing of the notification (e.g. six months prior to bid closing or commitment date) of concessional or aid credits.

[9] Refer to Annex IX to the Arrangement, 'Future work'.

[10] It is understood that the terms 'tied aid financing' and 'partially untied aid financing' exclude aid programmes of multilateral or regional institutions.

[11] These definitions do not prejudge the distinction made in the DAC on the quality of aid as concerns tied, partially untied and untied aid.

[12] Associated financing transactions may take various forms, such as 'mixed credit', 'mixed financing', 'joint financing', 'parallel financing' or single integrated transactions. Their main characteristic is that the concessional component is linked in law in fact to the non-concessional component, that either the non-concessional or the concessional component or the whole financing package is in effect tied or partially untied and that the availability of concessional funds is conditional upon accepting the linked non-concessional component.

Association or linkage in fact is determined by such factors as the existence of informal understandings between the recipient and the donor authority, the intention by the donor through the use of ODA to facilitate the acceptability of a financing package, the effective tying of the whole financing package to procurement in the donor country, the tying status of ODA and the modality of tender and/or of the contract of each financing transaction or any other practice, identified by the DAC or the participants in which a *de facto* liaison exists between two or more financing components.

None of the following practices shall prevent the determination that an association or linkage in fact exists: contract splitting through the separate notification of component parts of one contract; splitting of contracts financed in several stages; non-notification of interdependent parts of a contract, non-notification arising from the partial untying of a financial package.

[13] In cases of uncertainty as to whether a certain financing practice falls within the scope of the above definition, the donor country shall furnish evidence in support of any claim to the effect that such a practice is untied.

[14] In identical matching, the concessionality level of any OOF in the initiating participant's offer shall be included in the calculation of the initial offer's concessionality level if the matching offer contains an OOF that is included in its concessionality level, even if the OOF in the initial offer has a concessionality level below the minimum permissible concessionality level.

[15] If a change of currency is made before the contract is concluded, a revision of the notification is required. The discount rate used to calculate the concessionality level will be the one applicable at the time of the revision. However, if the alternative currency is indicated in the original notification and all necessary information is provided, a revision is not necessary.

*

* *

PROTOCOL

THE PARTICIPANTS TO THE CONSENSUS,

Whereas at the OECD ministerial meeting of 17 and 18 May 1983, the ministers enjoined the competent bodies of the Organization for Economic Cooperation and Development to take prompt action to improve existing arrangements so as to strengthen transparency and discipline in the area of aid and trade-related concessional finance by all appropriate means;

Whereas the participants to the consensus recognize the advantage which can occur if a clearly defined common attitude toward the credit terms for a particular transaction can be achieved and if maximum use is made of the existing arrangements for exchanging information at an early stage;

Whereas the framework for information exchange (Annex VI) lays down rules for exchanging information amongst members of the OECD group on export credits and credit guarantees;

Whereas this framework outlines procedures to be followed in the event that all members taking part in an exchange of information agree to accept that the credit terms for a particular transaction should be the subject of a binding obligation;

Whereas at a meeting of the OECD consensus group in April 1984 all participants firmly undertook to consider favourably face-to-face consultations if a participant so requests in the case of important transactions;

Whereas this undertaking was motivated by the unsatisfactory functioning of existing procedures for exchanging information in a number of important transactions;

Whereas the implementation of the provisions of the consensus can be jeopardized if procedures for exchanging information do not function efficiently;

Whereas any weakening in consensus discipline risks provoking wasteful export credit and/or tied aid credit competition and increasing subsidies;

Whereas the search for a common attitude does not prejudice the possibility for participants to retain their rights and liberty as to whether to insure or finance credits for a particular transaction, in the framework of their international obligations,

HAVE DECIDED AS FOLLOWS:

Within the framework of existing procedures in the field of officially supported export credits and tied aid credits, and with a view to improving transparency, the participants:

1. confirm that they will strive to provide the fullest possible details on the credit terms and conditions which they may be considering offering for any transaction which is the subject of an exchange of information;

2. acknowledge that the interests of all participants are best served if agreement can be reached at an early stage on a common attitude on the export credit conditions for a particular transaction and if the provisions of that agreement are maintained;

3. reaffirm, therefore, the need to promote common attitudes, particularly on important transactions;

4. recognize that in certain instances, notably when existing exchange of information procedures are perceived to be functioning in an unsatisfactory manner, face-to-face consultations could facilitate the adoption of a common line;

5. undertake, in such circumstances, to respond favourably to any such request for early face-to-face consultations and to attend any meeting arranged in order to reach a common attitude on credit terms in conjunction with other interested participants. In this respect, particular attention will be paid to the observance and common interpretations of the guidelines;

6. confirm, moreover, the importance they attach to a strict observation of the formal notification procedures provided for in the Arrangement.

ANNEX I

LIST OF PARTICIPANTS

Australia

Austria

Canada

European Economic Community [1]

Finland

Japan

New Zealand

Norway

Sweden

Switzerland

United States

[1] Composed of the following Member States: Belgium, Denmark, Germany, Greece, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and the United Kingdom.

ANNEX II

UNDERSTANDING ON EXPORT CREDITS FOR SHIPS **

I

1. For any contract relating to any new seagoing ship or any conversion of a ship[1] to be negotiated from 1 December 1979 onwards, participants in this Understanding agree to abolish existing official facilities[2] and to introduce no new official facilities for export credits on terms providing:

   (i) a maximum duration exceeding eight-and-a-half years[3] from delivery and repayment other than by equal instalments at regular intervals of normally six months and a maximum of 12 months;

   (ii) payment by delivery of less than 20% of the contract price;

   (iii) an interest rate of less than 8% net of all charges.[4]

2. This minimum interest rate of 8% will apply to the credit granted with official support by the shipbuilder to the buyer (in a supplier-credit transaction) or by a bank or any other party in the shipbuilder's country to the buyer or any other party in the buyer's country (in a buyer-credit transaction) whether the official support is given for the whole amount of the credit or only part of it.

3. The minimum interest rate will also apply to the credit granted with support by government participating in the Understanding, in the shipbuilder's country to the shipbuilder or to any other party, to enable credit to be given to the shipowner or to any other party in the shipowner's country, whether this official support is given for the whole amount of the credit or only part of it.

4. In so far as other public bodies participate in measures to promote exports, the participants agree to use all possible influence to prevent the financing of exports on terms which contravene the above principles.

5. The participants, recognizing that it is highly desirable to set a limit to credit terms for exports, also agree to make their best endeavours to ensure that no more favourable terms than those set out above will be offered to buyers by any other means.

6. Any participants in the Understanding which wishes, for genuine aid reasons, to concede more favourable terms in a particular case is not precluded from doing so, provided that adequate notice of this decision is given to all the parties to the Understanding in accordance with the procedure established for this purpose. For those cases, 'adequate notice' shall be interpreted as requiring that notification be made to all participants if possible at least six weeks before a promise is given, at any stage of the negotiations,

** This Annex is equivalent to the Annex to the OECD Council resolution concerning a revision of the understanding on export credits for ships (30 July 1981), OECD reference ((81) 103 final), adopted on 30 July 1981.

to commit the use of funds for that purpose, and in any case at least six weeks authorization is given so as to commit them.

7. Prior notice shall also be given in accordance with the procedure agreed between the participants of any decision taken for exceptional reasons other than those specified in clause 6, to support terms more favourable in any way than those of the Understanding. Support (including the provision of aid) will be refused for any order finally placed[6] on more favourable terms before all other participants in the Understanding have been given prior notice in accordance with the procedure agreed.

8. Any participant in the Understanding may, provided that it applies the procedures agreed between the participants, support more favourable terms in a particular substantiated case to match terms of officially supported transactions, or contravention of the above terms by other participants, or competition from non-participating countries.

II

9. Any participant in the Understanding may obtain information from any other participant on terms of any official support for an export contract in order to ascertain whether the terms contravene this Understanding. The participants undertake to supply all possible information requested with all possible speed. According to the rules and practices of the OECD, any participant may ask the Secretary-General to act on its behalf in the aforementioned matter and to circulate the information obtained to all participants in the Understanding.

10. Each participant undertakes to notify the Secretary-General of its system for the provision of official support and of the means of implementation of the Understanding.

III

11. This Understanding becomes effective as soon as all members of Working Party No 6 have notified the Secretary-General of their adherence to it or as soon as the participants having so notified the Secretary-General decide that they constitute a representative majority of members of Working Party No 6; any participants which disagrees as to what constitutes a representative majority would not be bound by the others' decision. The Understanding is open to other member countries of the OECD.

12. This Understanding shall be subject to review as often as requested by the participants, and in any case at intervals not exceeding one year. Any participant may withdraw from this Understanding upon giving to its partners three calendar months' notice of its intention to do so. Within this period, at the request of any of these partners, there shall be a meeting of Working Party No 6 to review this Understanding, and any other participant, on notification to its partners, may withdraw from this Understanding on the same effective date as the participant which first gave notice.

Notes and references

[1] Ship conversion means any conversion of seagoing vessels of more than 1 000 grt on condition that conversion operations entail radical alterations to the cargo plan, the hull or the propulsion system.

[2] Official facilities are those which enable credits to be insured, guaranteed or financed by governments, by governmental institutions, or with any form of direct or indirect governmental participation.

[3] Given the special nature of the transactions for vessels transporting liquefied natural gas, the duration of authorized credit for this type of ship only is increased to 10 years.

[4] Interest rate, net of all charges, means that part of the credit costs (excluding any credit insurance premiums and/or any banking charges) which is paid at regular intervals throughout the credit period and which is directly related to the amount of credit.

[5] An order shall be deemed to have been finally placed as soon as the buyer has committed himself irrevocably under a written and signed agreement to buy from the exporter and to pay according to specified terms, even if the agreement is subject to reservations which can be withdrawn only by the exporter.

ANNEX III

SECTOR UNDERSTANDING ON EXPORT CREDITS FOR NUCLEAR POWER PLANTS

A. Form and scope

The Sector Understanding:

- complements the Arrangement on guidelines for officially supported export credits;
- sets out the particular complementary guidelines which are applicable to officially supported export credits relating to new contracts for the export of complete nuclear power stations or parts thereof, comprising all components, equipment, materials and services, including the training of personnel, directly required for the construction and commissioning of such nuclear power stations;[1]
- does not apply to items for which the buyer is usually responsible, in particular costs associated with land development, roads, construction village, power lines, switchyard and water supply, as well as costs arising in the buyer's country from official approval procedures (e.g. site permit, construction permit, fuel loading permit).

B. Credit terms and conditions

(a) Maximum interest rate

The maximum repayment terms of an officially supported credit shall be 15 years.

(b) Minimum interest rate

(i) Category I and II destination countries

Special commercial interest reference rate (SCIRR).

(ii) Category III destination countries

Current Arrangement SDR-based rate plus 100 basis points or the SCIRR, where the 'SDR-based rate' is defined as the relevant minimum interest rate specified in paragraph 5(b) of the Arrangement applicable to credits with the longest repayment terms destined for Category III.

(iii) Notwithstanding subparagraph (i) and (ii), in cases where the fixed interest rate commitment is limited initially to a maximum period not exceeding 15 years starting from the date of contract award, the minimum interest rate for that period shall be the current Arrangement SDR-based rate plus 75 basis points or the SCIRR. For the remaining period until the complete repayment of the loan, official support shall be limited to guarantees or interest rate support at the appropriate SCIRR prevailing at the time of roll-over. In no event shall the maximum repayment period exceed 15 years.

(iv) For all currencies that are used by participants in officially supported export credits, the special commercial interest reference rates (SCIRRs) are the appropriate Arrangement CIRRs plus 75 basis points.[2] If a currency has more than one CIRR, the CIRR for the longest term shall be used.

(c) Local cost and capitalization of interest

Official financing support at rates other than SCIRRs for both local cost and capitalization of interest accruing before the starting point taken together shall not cover an amount exceeding 15% of the export value.

C. Official support for nuclear fuel[3]

(i) The initial fuel load shall consist of no more than:

- the initially installed nuclear core, plus
- two subsequent reloads, together consisting of up to two thirds of a nuclear core.

Official support for the initial fuel load shall cover a maximum repayment term of four years from delivery. The minimum interest rate on the initial fuel load shall be at the rates in the Arrangement.

(ii) Official support for subsequent reloads of nuclear fuel shall be made available without interest rate support (i.e. only guarantees or financing at CIRRs may be offered) and shall be on repayment terms no longer than two years from delivery. It is understood that repayment terms of over six months are exceptional in recognition of which the procedure of paragraph 14(a) of the Arrangement will apply.

(iii) Reprocessing and spent-fuel management (including waste disposal) shall be paid for on a cash basis.

D. Free fuel or services

Participants shall not provide free nuclear fuel or services.

E. Tied aid credits

Participants shall not provide tied aid credits, associated financing (as defined by the DAC), aid loans or grants or provide any other kind of financing at credit conditions that are more favourable than those set out in this Understanding.

F. Prior notification and consultation

Participants shall notify and consult each other under the terms agreed upon in the Appendix to this Understanding.

G. Review

The provisions of the Sector Understanding are subject to review each year, normally at the spring meeting of the participants.

Notes and references

[1] Where a partial supplier provides equipment for which he has no responsibility of commissioning, he may offer CIRRs as an alternative providing that the maximum period from date of contract does not exceed 10 years.

[2] Except that for the Japanese yen, the SCIRR is the Arrangement CIRR plus 40 basis points.

[3] It is understood that for the time being the separate provision of uranium enrichment services shall not be subject to financing conditions more favourable than those applicable to the provision of nuclear fuel.

*
* *

Appendix

Prior consultations on terms of export credits for nuclear power plants

1. In the light of past practical experience with one major project and taking into account the progress which has been made in certain respects in the current negotiation, the participants recognize the advantages which can accrue if, pending agreement on a formal arrangement on export credits for nuclear power plants, a common attitude towards the credit terms can be achieved for particular export credit transactions of such plant. They therefore agreed as an interim measure to engage in prior consultation in all cases where a participant intends to give support to such a transaction.

2. To this end, the Participant initiating the consultation shall notify by means of instant communication at least 10 days before taking a final decision all other participants of the terms it intends to support specifying, *inter alia*, the following details:
   (a) cash payments;
   (b) repayment term (including starting point of credit, frequency of instalments for repaying principal amount of credit, and whether these instalments will be equal in amount);
   (c) currency and value rating of the contract (in accordance with paragraph 7 of Annex V);
   (d) interest rate;

(e) support for local costs (including the total amount of local costs expressed as a percentage of the total value of goods and services exported, the terms of repayment, and the nature of the support to be given);

(f) portion of project to be financed, with separate information for initial fuel load, when appropriate;

(g) any other relevant information, including references to related cases.

3. Each participant having received the initial notification by the consulting participant shall in the following 10 days not take a final decision on the terms it will support, but shall within five days exchange with all other participants in the consultation views on the appropriate credit terms for the transaction in question with the objective of achieving a common attitude on such terms.

4. If by these exchanges of views by means of instant communication a common attitude is not achieved within 10 days after the receipt of the initial notification, the final decision of each participant in the consultation will be delayed an additional 10 days during which period further efforts to achieve a common attitude will be made at face-to-face consultations.

ANNEX IV

SECTOR UNDERSTANDING ON EXPORT CREDITS FOR CIVIL AIRCRAFT

Chapter I

LARGE COMMERCIAL AIRCRAFT

1. Form and scope

This chapter complements the Arrangement on guidelines for officially supported export credits. It sets out the particular complementary guidelines that are applicable to officially supported export credits for financing sales or leases of large civil aircraft listed in the Appendix and supersedes the terms of the OECD 'Standstill' (TC/ECG/M/75.1, item 6 and Annex III, A) with respect to such aircraft.

2. Objective of this chapter

The objective of this chapter is to establish a balanced equilibrium that, on all markets:

- equalizes competitive financial conditions between participants;
- neutralizes finance among participants as a factor in the choice among competing aircraft; and
- avoids distortion of competition.

3. Credit terms and conditions

(a) Cash payments

The minimum cash payment is 15% of the aircraft's total price (the price of the airframe and any installed engines plus the spare engines parts described in paragraph 9). Participants shall not provide official support for such cash payments other than insurance and guarantees against the usual pre-credit risks.

(b) Maximum repayment term

The maximum repayment term of an officially supported credit is 12 years.

4. Minimum interest rates

(a) Notwithstanding the provisions of paragraph 5, the following minimum interest rates, inclusive of credit insurance premiums and guarantees, apply where participants

are providing official financing support by way of direct credit, refinancing or interest rate subsidy:

1. Financing in US dollars:

	Number of years in maximum repayment term
Up to 10 years	Over 10 to 12 years
TB 10 + 120 basis points	TB 10 + 175 basis points

Where TB 10 means 10-years treasury bond yields at constant maturity, averaged over the previous two calendar weeks.

2. Financing in the currencies of the currency cocktail (German mark, French franc, pound sterling, ecu).[1]

   A currency cocktail package, based on 10-year government bond yields for the German mark, French franc and the pound sterling,[2] plus a margin applies. This margin, calculated as a weighted average of the margins applicable to each currency, is equal to the margin applicable in the case of financing in US dollars.

   In the case of financing in ecus, the minimum rate applicable is the long-term ecu bond yield[3] less 20 basis points plus a margin equal to the margin applicable in the case of financing in US dollars.

(b) Interest rate adjustments

An adjustment is made to the minimum rates of interest set out in (a) if the two-weekly average of the 10-year government bond yields at constant maturity at the end of each two-week period differs by 10 basis points or more from the average of the 10-year government bond yields at constant maturity at the end of the last two calendar weeks of June 1985. When such a change occurs, the level of the minimum rates of interest set out above are adjusted by the same number of basis points and the recalculated minimum rates are rounded off to the nearest 5 basis points. Subsequently, minimum rates of interest are adjusted on a two-weekly basis according to the aforementioned method if there is a change of 10 basis points or more in the interest rate underlying the preceding change in minimum rates of interest. Similar provisions apply to the ecu in the case of changes in the ecu bond yield.

(c) Special adjustments

1. If a participant believes that at least two significant sales in any six-month period:

   (i) for which participants are direct competitors; and

(ii) on which offers have been made with official financial support (see paragraphs 5(a) and (b))

have been concluded on a pure cover basis, other than Private Export Funding Corporations (PEFCO) at a fixed interest rate below the applicable minimum interest rates specified in this chapter; the participants shall consult immediately in order to determine the interest rates on the basis of which the sales have been concluded and, if necessary, to find a permanent solution that ensures that the objectives of paragraph 2 are fully met.

2. If during these consultations:

(i) it cannot be determined whether the interest rates for the sales in question were at, above, or equivalent to the applicable minimum interest rates specified in this chapter; and

(ii) if a solution cannot be found within 30 days from the start of the consultations

then the minimum interest rates specified in paragraph 4(a)(1) are reduced by 15 basis points, unless the participants agree that the sales concerned are not significant. In no case is the interest rate for the 10-year option reduced below TB 10 plus 105 basis points. Such adjustments are made without prejudice to continuing consultations to find a solution, including the possibility of a recoupment in the event that additional cases do not occur.

3. If, in any six-month period, two or more sales for which participants are direct competitors are concluded on a floating-rate pure cover basis, consultations to ensure that the objectives of paragraph 2 are fully met shall be held at the request of any participant.

(d) Differential between 10- and 12-year financing operations[4]

1. If, subject to the conditions outlined below, at the end of the period between 1 July 1985 and 1 July 1986, 66% or more of all sales of aircraft, financed either by means of official support or by PEFCO, have been concluded on a 10-year term, then the minimum interest rate on the 10-year financing option shall be increased by 15 basis points.

If, during the following year, 66% or more of all sales of aircraft, financed either by means of official support or by PEFCO, have been concluded on a 10-year term, then the participants shall review the differential between 10- and 12-year financing options with a view to finding a permanent solution to the problem of equating the differential between the two options. If, on the other hand, 66% or more of the above sales have been concluded under the 10- to 12-year financing option, then the minimum interest rate on the 10-year financing option shall be decreased by 10 basis points.

2. If, subject to the conditions outlined below, at the end of the period between 1 July 1985 and 1 July 1986, 66% or more of all sales have been concluded on a 10- to 12-year term, then the minimum interest rate on the 10-year financing option shall be decreased by 15 basis points.

   If, during the following year, 66% or more of all sales of aircraft have been concluded under the 10- to 12-year term, then the participants shall review the differential between 10- and 12-year financing options with a view to finding a permanent solution to the problem of equating the differential between the two options. If, on the other hand, 66% or more of the above sales have been concluded under the 10-year option, then the 10-year minimum interest rate shall be increased by 10 basis points.

(e) Date of determination of interest rate offer

A participant may offer the borrower a choice of one of the two following methods for selecting the date on which the minimum interest rate (as defined in paragraphs 4(a) *et seq.*) on official interest rate financing (see paragraph 5(a)) and on PEFCO financing (see paragraph 5(b)) is determined. The selection by the borrower is irrevocable. The minimum rate is:

(i) the minimum rate prevailing on the date of the offer by the lender; or

(ii) the minimum rate prevailing on whichever one of a series of dates may be selected by the borrower. The date selected shall in no event be later than the date of delivery of the aircraft.

5. Amount of financing

(a) Official fixed interest rate financing

1. The maximum percentage of the aircraft total price (as that term is defined in paragraph 3(a)) that may be financed at the fixed minimum rates specified in paragraph 4(a) by means of official financing support is 62.5% when repayment of the loan is spread over the entire life of the financing and 42.5% when repayment of the loan is spread over the later maturities. Participants are free to use either repayment approach, subject to the ceiling applicable to that pattern. A participant offering such a tranche shall notify the other participants of the amount, the interest rate, the date on which the interest rate is set, the validity period for the interest rate and the pattern of repayment.

2. The participants will review the two ceilings at the time of each review pursuant to paragraph 16 to examine whether one ceiling provides more advantages than the other with a view to adjusting the more advantageous so that a balance is more evenly struck.

(b) PEFCO financing

1. Fixed-rate funds may be officially financed in a manner comparable to that provided by the Private Export Funding Corporations (PEFCO). Weekly information on PEFCO's borrowing costs and applicable lending rates, exclusive of official guarantee fees on fixed-rate finance for immediate disbursement and for disbursement over a series of dates, for contract offers and for bid offers, shall be communicated to the other participants on a regular basis. A participant offering such a tranche shall notify the other participants of the amount, interest rates, date on which interest rate is set, validity period for the interest rate and pattern of repayments. Any participant matching such financing offered by another participant shall match it in all of its terms and conditions other than the validity period of offers of commitments (see paragraph 6).

2. The rates as notified shall be applicable by all participants as long as the 24-months disbursement interest rate does not exceed 225 basis points above TB 10 (see paragraph 4). In the event the 24-month rate exceeds 225 basis points, participants are free to apply the rate of 225 basis points for 24-months' disbursement and all the corresponding rates and shall consult immediately with a view to finding a permanent solution.

(c) 'Pure cover' tranche

Official support by means of guarantees only (pure cover) is permitted subject to the ceiling specified in (d). However, a participant offering such a tranche shall notify the other participants of the amount, term, pattern of repayments, and, where possible, interest rates.

(d) Total official support

The total amount of funds benefiting from official support pursuant to paragraphs 5(a), (b) and (c) shall not exceed 85% of the total price as defined in paragraph 3(a).

6. Validity period of commitments

The duration of fixed interests rate offers of commitment on the tranches of financing defined in paragraphs 5(a) and (b) shall not exceed three months.

7. Fees

Commitment and management fees are not included in the interest rate.

8. Security

Participants retain the right to decide upon security acceptable to themselves autonomously and will communicate fully to other participants on this point, as requested or when deemed appropriate.

9. Spare engines and spare parts

The financing of these items is provided as a function of the size of the fleet of each specific aircraft type, including aircraft being acquired, aircraft already of firm order or aircraft already owned, on the following basis:

- for the first five aircraft of the type in the fleet: 15% of the aircraft price (airframe and installed engines);
- for the sixth and subsequent aircraft of that type in the fleet: 10% of the aircraft price (airframe and installed engines).

Participants reserve the right to change their practice and match the practices of competing participants in matters of detail relating to the timing of the first repayment with respect to spare engines and spare parts.

10. Tied aid credits

Participants shall not provide tied or partially untied aid financing, or provide any other kind of financing on credit conditions that are more favourable than those set out in this chapter.

11. Prior commitments

Participants reserve the right to honour all financing commitments made prior to 1 July 1985 and the dates of all subsequent changes in interest rates. They reserve the right to match offers made by other participants.

12. Model changes

It is understood that when a loan contract has been concluded on one type of aircraft, the terms contained therein cannot be transferred to another type bearing a different model designation.

13. Leases

It is also understood that a participant may match a 12-year officially supported lease transaction with a 12-year repayment term and 85% credit financing support, subject to the other terms and conditions of this chapter.

14. Competition reference point

In the event of officially supported competition, aircraft that are in the list of large civil aircraft in the Appendix and that compete with other aircraft may benefit from the same export credit terms and conditions.

15. Procedures

The procedures outlined in the Arrangement on guidelines of officially supported export credits apply to this chapter. In addition, should any participant believe that another

participant is offering an officially supported export credit that is not in conformity with the guidelines without giving advance notice, consultations shall be held within 10 days upon request.

16. Review

The information procedures and conditions outlined in this chapter are subject in principle to an annual review. However, the participants shall review the provisions of this chapter whenever requested, notably in relation to the possible development of certain financing and interest rate trends (see paragraphs 4(c) and (d)).

Chapter II

ALL AIRCRAFT EXCEPT LARGE COMMERCIAL AIRCRAFT

17. Form and scope

This chapter complements the Arrangement on guidelines for officially supported export credits. It sets out the particular complementing guidelines that are applicable to officially supported export credits financing contracts for the international sale or lease of new (not used) aircraft and, if ordered concurrently with the aircraft or if ordered for manufacturing or assembly into such aircraft, engines, subassemblies and spare parts of aircraft not covered by Chapter I. It does not apply to hovercraft.

18. Participation

The rules on participation of the Arrangement shall apply.

19. Best endeavours

The provisions of this chapter represent the most generous terms that participants are allowed to offer when giving official support. Participants shall, however, continue to respect customary market terms for different types of aircraft and shall do everything in their power to prevent these terms from being eroded.[5]

20. Categories of aircraft

The following categories have been agreed upon in view of the competitive situation:

A. turbine-powered aircraft – including helicopters – (e.g. turbo-jet, turbo-prop, and turbo-fan aircraft), with generally between 30 and 70 seats. In case a new large turbine-powered aircraft with over 70 seats is being developed, immediate consultations shall be held upon request with a view to agreement on the classification of such an aircraft in this category or in Chapter I of this Understanding in view of the competitive situation;
B. other turbine-powered aircraft, including helicopters;
C. other aircraft, including helicopters;

An illustrative list of aircraft in categories A and B is given in the Appendix.

21. Credit terms and conditions

Participants undertake not to support credit terms more favourable than those set out in this paragraph.

Category A:

Ten years at SDR-based rate for recipient countries classified in category III or respective CIRRs.

Category B:

Seven years at SDR-based rate for recipient countries classified in category III or respective CIRRs.

Category C:

Five years at SDR-based rate for recipient countries classified in category III or respective CIRRs.

22. Sales or leases to third countries (relay countries)

In cases where the aircraft are to be on-sold or on-leased to an end-buyer or end-used in a third country, the interest rate shall be that applicable to the country of final destination.

23. Matching provisions

In the event of officially supported competition, aircraft competing with those from another category or chapter shall for a specific sale be able to benefit from matching of the same export credit terms and conditions. Before making the matching offer, the matching authority shall make reasonable efforts to determine the export credit terms and conditions the competing aircraft benefits from. The matching authority will be considered to have made such reasonable efforts if it has informed by means of instant communication the authority assumed to offer the terms it intends to match of its intention to do so but has not been informed within three working days that the terms it intends to match will not be used to support the transaction in question.

24. Insurance premiums and guarantee fees

Participants shall not waive in part or in total insurance premiums or guarantee fees.

25. Tied aid credits prohibition

Participants shall not provide tied aid financing, partially untied aid financing, or any other kind of financing or credit conditions that are more favourable than those set out in this chapter.

26. Consultation and notification procedures

The procedures of the Arrangement shall apply to officially supported export credits not in conformity with the terms of this chapter. In addition, should any participant believe that another participant may be offering an officially supported export credit not in conformity with this chapter without giving advance notice, consultations shall be held within 10 days upon request.

27. Review

The provisions of this chapter are subject to review annually, normally during the spring meeting of the participants to the Arrangement. In the review, the participants will examine possible modifications of the provisions, notably in order to bring them closer to market conditions.[6] In addition, if market conditions or customary financing practices change considerably, any participant is entitled to ask for a special review of the provisions.

Notes and references

[1] The currency cocktail financing for the A 300 and A 310 consists of the following percentages of the following currencies:

- German mark or ecu: 40%;
- French franc or ecu: 40%;
- pound sterling, or
  US dollar or ecu: 20%.

For the A 320, the currency cocktail consists of the following percentages of the following countries:

- German mark or ecu: 33.7% (provisional);
- French franc or ecu: 40.0% (provisional);
- pound sterling, or
  US dollar or ecu: 26.3% (provisional).

[2] At constant maturity, averaged over the previous two calendar weeks.

[3] As published by the Luxembourg Stock Exchange – long-term bond series, averaged over the previous two calendar weeks.

[4] For the operational purposes of this paragraph, it is understood that:

- the test sample will include only those cases in which two financing options have been offered by at least one participant;
- the activation of an interest rate adjustment may take place only if 66% of sales of aircraft according to one option have been concluded under two or more separate transactions;

- the term 'sales of aircraft' signifies that each separate aircraft sold is included in the sample.

5 Best endeavours shall be made, *inter alia*, with respect to the willingness to respond favourably to the invitation by another participant to consult on possibilities of achieving conditions as close as the market as possible, for example in matching.

6 Pending the review on official support for export of used aircraft and conditions for maintenance, spare parts and service contracts, these goods and services are covered by the Arrangement on guidelines for officially supported export credits. The tied aid credits prohibition in paragraph 25 of this chapter applies.

*
* *

Appendix

Illustrative list

All other similar aircraft that may be introduced in the future shall be covered by this Sector Understanding and shall be added to the appropriate list in due course. These lists are not exhaustive and serve only to indicate the type of aircraft to be included in the different categories where doubts could arise.

LARGE CIVIL AIRCRAFT

Manufacturer	*Designation*
Airbus	A 300
Airbus	A 310
Airbus	A 320
Airbus	A 321
Airbus	A 330
Airbus	A 340
Boeing	B 737
Boeing	B 747
Boeing	B 757
Boeing	B 767
British Aerospace	BAe 146
Fokker	F 100
Lockheed	L-100
McDonnell Douglas	MD-80 series
McDonnell Douglas	MD-11

CATEGORY A AIRCRAFT

Turbine-powered aircraft – including helicopters – (e.g. turbo-jet, turbo-prop, and turbo-fan aircraft), with generally between 30 and 70 seats. In case a new large turbine-powered aircraft with over 70 seats is being developed, immediate consultations shall be held upon request with a view to agreement on the classification of such an aircraft in this category or in Chapter I of this Understanding in view of the competitive situation.

Manufacturer	*Designation*
Aeritalia	G 222
Aeritalia/Aérospatiale	ATR 42
Aeritalia/Aérospatiale	ATR 72
Aérospatiale/MBB	C160 Transall
Boeing Canada	Dash 8
Boeing Vertol	234 Chinook
Broman (US)	BR 2000
British Aerospace	BAe ATP
British Aerospace	BAe Jetstream 41
Canadair	CL 215T
Canadair	RJ
Casa	CN 235
Dornier	DO 328
EH Industries	EH-101
Embraer	EMB 120 Brasilia
Fokker	F 50
Gulfstream America	Gulfstream 1-4
Saab	SF 340
Saab	2000
Short	SD 3-30
Short	SD 3-60
Short	Sherpa
etc.	

CATEGORY B AIRCRAFT

Other turbine-powered aircraft, including helicopters

Manufacturer	*Designation*
Aérospatiale	AS 322
Beech	1900
Beech	Super King Air 300
Beech	Starship 1
Bell Helicopter	206B
Bell Helicopter	206L

Bell Helicopter	212
Bell Helicopter	412
Boeing	F 406
British Aerospace	BAe Jetstream 31
British Aerospace	BAe 125
British Aerospace	BAe 1000
British Aerospace	BAe Jetstream Super 31
Canadair	Challenger 601
Canadair	CL 215 (water bomber)
Casa	C 212-200
Casa	C 212-300
Cessna	Citation
Cessna	441 Conquest III
Claudius Dornier	CD2
Dassault Breguet	Falcon
Dornier	Do 228-200
Embraer/FAMA	CBA 123
Fairchild	Merlin/300
Fairchild	Metro 25
Fairchild	Metro III V
Gates Learjet	20, 30 and 55 series
Gulfstream America	Gulfstream III and IV
IAI	Arava 101 B
Mitsubishi	Mu2 Marquise
Piaggio	P 180
Pilatus Britten-Norman	BN2T Islander
Piper	PA-42-100 (Cheyenne 400)
Piper	PA-42-720 (Cheyenne III A)
Reims	Cessna-Caravan II
SIAI-Marchetti	SF 600 Canguro
Westland	W 30
etc.	

ANNEX V

STANDARD FORM FOR NOTIFICATIONS REQUIRED UNDER PARAGRAPHS 15 AND 16

Points to be covered in each and every notification:

1. Name of authority/agency responsible under the Arrangement for making notifications.

2. Reference number (country indications, serial number, year).

3. We are notifying

   - under paragraph (choose one) of the Arrangement:
     - 15(a) derogation,
     - 15(b)(1)(i) 'long term' credit to a category I country,
     - 15(b)(1)(ii) 'abnormal' payment practices,
     - 15(b)(1)(iii) 'long term' credit for a conventional power plant,
     - 15(b)(1)(iv) 'derogating' credit for ship,
     - 15(c) aid financing, concessionality level/grant element less than 50/80%,
     - 15(d) tied or partially untied aid financing, concessionality level 50/80% or more,
     - 16(a)(1)(i) identical matching of a derogation,
     - 16(a)(1)(ii) matching by other support of a derogation,
     - 16(a)(2)(i) identical matching of a transaction notified under paragraph 15(b)(1) (specify (i) to (iv)),
     - 16(b)(2)(ii) matching by other support of a transaction notified under paragraph 15(b)(1) (specify (i) to (iv)),
     - 16(a)(3) matching a transaction notified under paragraph 15(c) (specify 'identical' or 'by other support'),
     - 16(a)(4) matching of a transaction notified under paragraph 15(d),
     - 16(b)(2) matching terms offered by a non-participant,
     - 16(c)(3)(i) identical matching of a prior commitment,
     - 16(c)(3)(ii) matching by other means of a prior commitment,
   - under the Understanding on export credits for nuclear power plants,
   - under the Sector Arrangements for civil aircraft.

4. Country of buyer/borrower.

5. Name, location and status (public/private) of buyer/borrower.

6. Nature of project/goods to be exported; location of project; closing date of tender if relevant, expiry date of credit line.

7. (a) Contract value.

   (b) Value of the credit or credit line.

   (c) Value of exporter's national share.

   (d) Minimum contract value of credit line.

   These values shall be stated as follows:

   - the exact value in the denominated currency for a line of credit,

   - the value of an individual project or contract should be disclosed in terms of value ratings in accordance with the following scale in special drawing rights (SDRs):

Category I:	up to	1 000 000		
Category II:	from	1 000 000	to	2 000 000
Category III:	from	2 000 000	to	3 000 000
Category IV:	from	3 000 000	to	5 000 000
Category V:	from	5 000 000	to	7 000 000
Category VI:	from	7 000 000	to	10 000 000
Category VII:	from	10 000 000	to	20 000 000
Category VIII:	from	20 000 000	to	40 000 000
Category IX:	from	40 000 000	to	80 000 000
Category X:	from	80 000 000	to	120 000 000
Category XI:	from	120 000 000	to	160 000 000
Category XII:	from	160 000 000	to	200 000 000
Category XIII:	from	200 000 000	to	240 000 000
Category XIV:	from	240 000 000	to	280 000 000
Category XV:	exceeding 280 000 000*			

   * Indicate actual level within multiples of 40 000 000 SDR.

   When using this scale please indicate currency of the contract.

8. Credit terms which reporting organization intends to support (or has supported):

   (a) cash payments;

   (b) repayment term (including starting point of credit, frequency of instalments for repaying principal amount of credit, and whether these instalments will be equal in amount);

   (c) interest rate;

   (d) support for local costs (including the total amount of local costs expressed as a percentage of the total value of goods and services exported, the terms of repayment, and the nature of the support to be given).

9. Any other relevant information, including references to related cases and where relevant:

   (a) justification for: matching (specify reference number of notification matched or other references) or granting long-term credits for category I countries or conventional power plants, etc.;

   (b) the overall concessionality level of the tied and partially untied aid financing calculated in accordance with paragraph 24(n) and the discount rate used to calculate that concessionality level;

   (c) treatment of cash payments in the calculation of the concessionality level;

   (d) development aid or premixed credit or associated finance;

   (e) restrictions on use of credit lines.

ANNEX VI

FRAMEWORK FOR INFORMATION EXCHANGE (FIE)

1. Scope

The framework for information exchange (FIE) concerns credit terms and conditions for any export credit or credit guarantee transactions that are covered by paragraph 1(a) of the Arrangement, as well as any aid transaction that is covered by the notification procedures of paragraph 15.

2. Information exchange

(a) A participant:

- may address to another participant an enquiry on the attitude it takes in respect of a third country, of an institution in a third country or of a particular method of doing business;
- who has received an application for official support, may address an enquiry to another participant giving the most favourable credit terms that the enquiring participant would be willing to support; or
- who has received allegations that another participant has offered official support that derogates from the guidelines of the Arrangement, may address an enquiry to another participant, stating the details of any such allegation.

If an enquiry is to more than one participant, it shall contain a list of addresses. A copy of all enquiries shall be sent to the Secretariat.

(b) The participant to whom an enquiry is addressed shall respond within seven calendar days with as much information as is available at that time. The reply shall include, if possible, the best indication that the participant can give of the decision likely to be taken. If necessary, the full reply shall follow as soon as possible. Copies shall be sent to the other addressee of the enquiry and to the Secretariat.

(c) If an answer to an enquiry subsequently becomes invalid because an application has been made, changed or withdrawn, because other terms are being considered, or for any other reason, a follow-up reply shall be made at once and copied to all other addresses of the enquiry and to the Secretariat.

(d) All communications shall be made between the designated contract points in each country by means of instant communication (e.g. electronic mail, telex, telefax) and shall be confidential.

3. Common line proposals

(a) The information exchange or face-to-face consultations (see the Protocol to the Arrangement) may lead to a common line. A proposal for a common line shall be

sent to all participants, all DAC contact points and the Secretariat. The proposal shall be dated and shall be in the following format:

(1) reference number, as for Arrangement notifications, but followed by 'Common line';

(2) name of the importing country and buyer;

(3) name or description of the project as precise as possible to clearly identify the project;

(4) terms and conditions foreseen by the instigating country;

(5) common line proposal;

(6) nationality and name of known competing bidders;

(7) commercial and financial bid closing date and tender number to the extent it is known; and

(8) other relevant information, including reasons for proposing the common line, availability of studies of the project or special circumstances.

(b) A common line proposal may contain terms and conditions that are more or less favourable than terms and conditions allowed under the Arrangement.

4. Common line procedure

(a) The participants should react on a common line proposal as quickly as possible but in any case within 20 calendar days. A reaction can be a request for additional information, acceptance, rejection, a proposal for modification of the common line or an alternative proposal for a common line. A participant who replies that it has no position because it has not been approached by an exporter or by the authorities in the recipient country in case of aid credit for the project, is deemed to have accepted the common line proposal. When such a participant is approached after the common line has gone into effect, it may apply the procedures of paragraph 5 if it wishes to extend softer terms than those stipulated in the common line.

(b) The Secretariat shall, after a period of 20 calendar days, inform all participants of the status of the common line proposal. If no participant has rejected the common line proposal, but not all participants have accepted it, the proposal shall be retained for a second period of eight calendar days.

(c) If the instigating participant and a participant who has proposed a modification or alternative cannot agree on a common line within the second period, this period can be extended by their mutual consent. The Secretariat shall inform all participants of such an extension.

(d) After the second period, any participant who has not explicitly rejected the common line proposal shall be deemed to have accepted the common line. Nevertheless, any participant, including the instigating participant, may make his acceptance of the common line conditional on the explicit acceptance of one or more participants.

(e) The Secretariat shall inform all participants that the common line has either gone into effect or has been rejected. The common line will take effect three calendar days after this announcement. The Secretariat shall on the on-line system make available a permanently updated record of all common lines that are accepted or undecided.

5. Validity of a common line

(a) 1. The rules of an agreed common line supersede the rules of the Arrangement only for the project specified in the common line.

2. The participants who have agreed to the common line should inform the Secretariat when the common line is no longer of interest.

3. The Secretariat shall initiate a review of the common line after each period of two years from the date on which the common line has come into force by reminding the participants. The common line shall remain in force if any participant so indicates within 14 calendar days.

(b) The intention to submit a bid that is more favourable than agreed in the common line must be notified to all participants and to the Secretariat at least 60 calendar days before any commitment. The notification must include an explanation of the reason for the commitment as well as a justification of how the commitment does not result in a purchasing decision (possibly including the outcome of an ICB procedure) which is influenced by the availability of aid. If any participant, interested in this specific transaction so requests, the Secretariat shall organize a face-to-face consultation. Participants shall refrain from making any commitments until 28 calendar days after the face-to-face consultation unless an alternative common line is established, or 60 days after notification. Any participant can reserve the right of matching a finance offer which is more favourable than agreed in the common line in accordance with paragraph 16 of the Arrangement.

ANNEX VII

CHECKLIST OF DEVELOPMENTAL QUALITY OF AID-FINANCED PROJECTS

To ensure developmental quality of projects in developing countries financed totally or in part by official development assistance (ODA), a number of criteria have been developed in recent years by the Development Assistance Committee (DAC) of the OECD. They are essentially contained in the:

(a) 'DAC principles for project appraisal', 1988;

(b) 'DAC guiding principles for associated financing and tied and partially untied official development assistance', 1987;

(c) 'Good procurement practices for official development assistance', 1986.

I – CONSISTENCY OF THE PROJECT WITH THE RECIPIENT COUNTRY'S OVERALL INVESTMENT PRIORITIES (PROJECT SELECTION)

1. Is the project part of investment and public expenditure programmes already approved by the central financial and planning authorities of the recipient country?

   (Specify policy document mentioning the project, for example public investment programme of the recipient country).

2. Is the project being co-financed with an international development finance institution?

3. Does evidence exist that the project had been considered and rejected by an international development finance institution or another DAC member on grounds of low developmental priority?

4. In case of a private-sector project, has it been approved by the government of the recipient country?

5. Is the project covered by an intergovernmental agreement providing for a broader range of aid activities by the donor in the recipient country?

II – PROJECT PREPARATION AND APPRAISAL

6. Has the project been prepared, designed and appraised against a set of standards and criteria broadly consistent with the 'DAC principles for project appraisal' (PPA)? Relevant principles concern project appraisal under:

   (a) Economic aspects (paragraphs 30 to 38 of the PPA).

   (b) Technical aspects (paragraph 22 of the PPA).

   (c) Financial aspects (paragraphs 23 to 29 of the PPA).

In case of the revenue-producing project, particularly if it is producing for a competitive market, has the concessionary element of the aid financing been passed on to the end-user of the funds? (Paragraph 25 of the PPA.)

(d) Institutional assessment (paragraphs 40 to 44 of the PPA).

(e) Social and distributional analysis (paragraphs 47 to 57 of the PPA).

(f) Environmental assessment (paragraphs 55 to 57 of the PPA).

III – PROCUREMENT PROCEDURES

7. What procurement mode will be used among the following? (For definitions, see principles listed in 'Good procurement practices for ODA').

   (a) International competitive bidding (Procurement Principle III and its Annex 2: 'Minimum conditions for effective international competitive bidding').

   (b) National competitive bidding (Procurement Principle IV).

   (c) Informal competition or direct negotiations (Procurement Principle V, A or B).

8. Is it envisaged to check price and quality of suppliers? (Paragraph 63 of the PPA.)

ANNEX VIII

DETERMINATION OF COMMERCIAL INTEREST REFERENCE RATES

1. The participants have accepted the following aims for evaluating specific commercial interest reference rates (CIRRs):

   (i) the CIRR should be representative of final commercial lending rates of interest in the domestic market of the currency concerned;

   (ii) the CIRR should closely correspond to a rate for a first class domestic borrower;

   (iii) the CIRR should be based, where appropriate, on the funding cost of fixed interest rate finance over a period of not less than five years;

   (iv) the CIRR should not lead to a distortion of domestic competitive conditions;

   (v) the CIRR should closely correspond to a rate available to first-class foreign borrowers.

2. In view of these aims, the participants have decided that CIRRs shall be set at a fixed margin above their respective base rates.

   (a) For each currency, the base rates may be either:

      (i) three-year government bond yield for repayment terms up to and including five years, five-year government bond yields for over five up to and including eight-and-a-half years, and seven-year government bond yields for over eight-and-a-half years; or

      (ii) five-year government bond yields for all maturities;

      except where the participants have agreed otherwise.

   (b) The fixed margin is 100 basis points, except where the participants have agreed otherwise.

ANNEX IX

FUTURE WORK

(i) DDR

The Participants shall review the DDR formula by the end of 1993. This could lead to changes in the formula for all currencies, which further reflects appropriate long term market rates, taking into account the characteristics of aid credits.

(ii) Target for global untying

From the perspective that global untying of aid is one of the best ways to reduce trade distortions, the Participants shall cooperate with the DAC to develop targets for untying by the end of 1992. In the context of this further work, a more precise definition of the circumstances in which aid can be considered to be untied or partially untied needs to be developed.

(iii) Sectors

The Participants note that negotiations will take place in the GATT context on subsidies for agriculture and for steel plant and equipment. The need for further or complementary guidelines in the Agreement on guidelines for officially supported export credits in these areas will be considered when the outcome of the negotiations in the GATT context is known.

(iv) Premiums

In accordance with their international obligations, the participants reaffirm the general principle that the level of premia charged for export credit insurance should not be manifestly inadequate to cover long-term costs and losses, and will review this section upon completion of the Uruguay Round. In the meantime, these concepts need to be further clarified and a report shall be made by the ECG to this end.

(v) SDR-based rate

The Participants shall review the SDR-based rate formula by the end of 1993. This could lead to the elimination of the SDR-based rate and a new agreement on a DDR reached at the same time.

XI – Rules applicable to international trade in civil aircraft

1. GATT Agreement on trade in civil aircraft of 12 April 1979 [1]

[...]

Article 1

Product coverage

1.1. This Agreement applies to the following products:

(a) all civil aircraft,

(b) all civil aircraft engines and their parts and components,

(c) all other parts, components, and subassemblies of civil aircraft,

(d) all ground flight simulators and their parts and components,

whether used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification or conversion of civil aircraft.

1.2. For the purposes of this Agreement 'civil aircraft' means (a) all aircraft other than military aircraft and (b) all other products set out in Article 1.1. above.

[...]

Article 6

Government support, export credits, and aircraft marketing

6.1. Signatories note that the provisions of the Agreement on interpretation and application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Agreement on subsidies and countervailing measures) apply to trade in civil aircraft. They affirm that in their participation in, or support of, civil aircraft programmes they shall seek to avoid adverse effects on trade in civil aircraft in the sense of Articles 8.3. and 8.4. of the Agreement on subsidies and countervailing measures. They also shall take into account the special factors which apply in the aircraft sector, in particular the widespread governmental support in this area, their international economic interests, and the desire of producers of all signatories to participate in the expansion of the world civil aircraft market.

6.2. Signatories agree that pricing of civil aircraft should be based on a reasonable expectation of recoupment of all costs, including non-recurring programme costs, identifiable and pro-rated

[1] Including the Protocol (1986) amending the Annex to the Agreement, published by GATT, Geneva, 1990.

costs of military research and development on aircraft, components, and systems that are subsequently applied to the production for such civil aircraft, average production costs, and financial costs.

[...]

Article 8

Surveillance, review, consultation, and dispute settlement

8.1. There shall be established a Committee on Trade in Civil Aircraft (hereinafter referred to as 'the Committee') composed of representatives of all signatories. The Committee shall elect its own chairman. It shall meet as necessary, but not less than once a year, for the purpose of affording signatories the opportunity to consult on any matters relating to the operation of this Agreement, including developments in the civil aircraft industry, to determine whether amendments are required to ensure continuance of free and undistorted trade, to examine any matter for which it has not been possible to find a satisfactory solution through bilateral consultations, and to carry out such responsibilities as are assigned to it under this Agreement, or by the signatories.

8.2. The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the Contracting Parties to the GATT of developments during the period covered by such review.

8.3. Not later than the end of the third year from the entry into force of this Agreement and periodically thereafter, signatories shall undertake further negotiations, with a view to broadening and improving this Agreement on the basis of mutual reciprocity.

8.4. The Committee may establish such subsidiary bodies as may be appropriate to keep under regular review the application of this Agreement to ensure a continuing balance of mutual advantages. In particular, it shall establish an appropriate subsidiary body in order to ensure a continuing balance of mutual advantages, reciprocity and equivalent results with regard to the implementation of the provisions of Article 2 above related to product coverage, the end-use systems, customs duties and other charges.

8.5. Each signatory shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding representations made by another signatory with respect to any matter affecting the operation of this Agreement.

8.6. Signatories recognize the desirability of consultations with other signatories in the Committee in order to seek a mutually acceptable solution prior to the initiation of an investigation to determine the existence, degree and effect of any alleged subsidy. In those exceptional circumstances in which no consultations occur before such domestic procedures are initiated, signatories shall notify the Committee immediately of initiation of such procedures and enter into simultaneous consultations to seek a mutually agreed solution that would obviate the need for countervailing measures.

8.7. Should a signatory consider that its trade interests in civil aircraft manufacture, repair, maintenance, rebuilding, modification or conversion have been or are likely to be adversely affected by any action by another signatory, it may request review of the matter by the Committee. Upon such a request, the Committee shall convene within 30 days and shall review the matter as quickly as possible with a view to resolving the issues involved as promptly as possible and in particular prior to final resolution of these issues elsewhere. In this connection, the Committee may issue such rulings or recommendations as may be appropriate. Such review shall be without prejudice to the rights of signatories under the GATT or under instruments multilaterally negotiated under the auspices of the GATT, as they affect trade in civil aircraft. For the purposes of aiding consideration of the issues involved, under the GATT and such instruments, the Committee may provide such technical assistance as may be appropriate.

8.8. Signatories agree that, with respect to any dispute related to a matter covered by this Agreement, but not covered by other instruments multilaterally negotiated under the auspices of the GATT, the provisions of Articles XXII and XXIII of the General Agreement and the provisions of the Understanding related to notification, consultation, dispute settlement and surveillance shall be applied, *mutatis mutandis*, by the signatories and the Committee for the purposes of seeking settlement of such dispute. These procedures shall also be applied for the settlement of any dispute related to a matter covered by this Agreement and by another instrument multilaterally negotiated under the auspices of the GATT, should the parties to the dispute so agree.

[...]

2. Agreement between the European Economic Community and the Government of the United States of America concerning the application of the GATT Agreement on trade in civil aircraft and on trade in large civil aircraft

Decision of the Council of 13 July 1992

(92/496/EEC) [1]

[...]

Article 1

Government-directed procurement, mandatory subcontracts and inducements

With respect to issues concerning Article 4 of the GATT Agreement on trade in civil aircraft ('Aircraft Agreement'), the Parties agree to act in conformity with the interpretative note to Article 4 of the Aircraft Agreement contained in Annex I to this Agreement.

Article 2

Prior government commitments

Government support to current large civil aircraft programmes, committed prior to the date of entry into force of this Agreement, is not subject to the provisions of this Agreement except as otherwise provided below. The terms and conditions on which such support is granted shall not be modified in such a manner as to render it more favourable to the recipients; however, *de minimis* modifications shall not be deemed inconsistent with this provision.

Article 3

Production support

As of entry into force of this Agreement, Parties shall not grant direct government support other than what has already been firmly committed for the production of large civil aircraft. This prohibition shall apply both to existing and to future programmes.

[1] OJ L 301, 17.10.1992, p. 31.

Article 4

Development support

4.1. Governments shall provide support for the development of a new large civil aircraft programme only where a critical project appraisal, based on conservative assumptions, has established that there is a reasonable expectation of recoupment, within 17 years from the date of first disbursement of such support, of all costs as defined in Article 6(2) of the Aircraft Agreement, including repayment of government supports on the terms and conditions specified below.

4.2. As of entry into force of this Agreement, direct government support committed by a Party for the development of a new large civil aircraft programme or derivative shall not exceed:

(a) 25% of that programme's total development cost as estimated at the time of commitment (or of actual development costs, whichever is lower); royalty payments on this tranche shall be set at the time of commitment of the development support so as to repay this support at an interest rate no less than the cost of borrowing to the government within no more than 17 years from first disbursement; plus

(b) 8% of that programme's total development cost as estimated at the time of commitment (or of actual development costs, whichever is lower); royalty payments on this tranche shall be set at the time of commitment of the development support so as to repay this support at an interest rate no less than the cost of borrowing to the government plus 1% within no more than 17 years from first disbursement.

These calculations shall be made on the basis of the forecast of aircraft deliveries in the critical project appraisal.

4.3. Royalty payments per aircraft shall be calculated at the time of commitment of the development support to be repaid on the following basis:

(a) 20% of aggregate payments calculated in accordance with Article 4.2 is payable on the basis of the delivery of a number of aircraft corresponding to 40% of forecast deliveries;

(b) 70% of aggregate payments calculated in accordance with Article 4.2 is payable on the basis of the delivery of a number of aircraft corresponding to 85% of forecast deliveries.

Article 5

Indirect government support

5.1. Parties shall take such action as is necessary to ensure that indirect government support neither confers unfair advantage upon manufacturers of large civil aircraft benefiting from such support nor leads to distortions in international trade in large civil aircraft.

5.2. As of entry into force of the Agreement, identifiable benefits to the development of production of any of the products covered by this Agreement, net of recoupment, derived from indirect support shall not exceed in any one year:

(a) 3% of the annual commercial turnover of the civil aircraft industry in the Party concerned for the products covered by this Agreement; or

(b) 4% of the annual commercial turnover of any one firm in the Party concerned for the products covered by this Agreement.

5.3. Benefits from indirect support shall be deemed to arise when there is an identifiable reduction in costs of large civil aircraft resulting from government-funded research and development in the aeronautical area performed after the entry into force of this Agreement.

Where it can be demonstrated that the results of research and development have been made available on a non-discriminatory basis to large civil aircraft manufacturers of the Parties, benefits deriving from such technologies shall be excluded from the calculation in paragraph 5.2. However, identifiable benefits may result when large civil aircraft manufacturers are responsible for, or have early access to, the conduct or results of such research.

If a Party has reason to believe that other indirect supports provided by a government are resulting in identifiable reductions in the costs of large civil aircraft, the Parties shall consult with a view towards quantifying such reductions and including them in the calculation described above.

Benefits from indirect support resulting from the technology obtained through government-funded research and development or through other government programmes shall normally be calculated in terms of the reduction in the cost of research and development and in the reduction in the cost of the production equipment or production process technology.

Article 6

General purpose loans

Parties shall assume no liability for specific loans that aircraft manufacturers make or make available, through direct loans, guarantees, or otherwise, to airlines, other than through official export credit financing consistent with the Large Aircraft Sector Understanding of the OECD Understanding on official export financing.

Article 7

Equity infusions

Equity infusions are excluded from the scope of this Agreement. Equity infusions will not, however, be provided in such a manner as to undermine the disciplines of the Agreement.

Article 8

Transparency

8.1. To the extent necessary to ensure effective implementation of this Agreement, Parties shall exchange on a regular, systematic basis, all public information of a kind governments make available to their respective national elected assemblies relating to matters covered by this Agreement and its Annexes.

Such public information will include at minimum the total amount of government support for new development projects and its share of total development costs, aggregate data on disbursements and repayments relating to direct government supports for commercial aircraft programmes, the annual commercial turnovers of the civil aircraft industry as specified in Article 8.5(b) and the aggregate amounts of identifiable indirect benefits received by large civil aircraft manufacturers.

8.2. Furthermore, with regard to prior government commitments for large civil aircraft programmes described in Article 2, a complete list of such commitments by the Parties to this Agreement already disbursed or committed shall be separately provided, including information on the type of repayment obligation and the planned period of repayment. Annual disbursement and repayments relating to these programmes on an aggregate basis shall also be notified to the other Party for each government providing these supports. In addition, a Party shall notify the other Party to this Agreement of any changes which render the terms and conditions of such support commitments more favourable to the recipient, including: changes in the repayment period, failure to repay the support, or reduction of the scheduled repayments.

8.3. Furthermore, with regard to future large civil aircraft programmes, Parties shall provide, at the time of government commitment, the following specific information in relation to development support for each of the governments providing such support:

- the total amount of government support;
- the share of government support as a percentage of estimated total development cost;
- the anticipated return to the government;
- the planned period of repayment of government support; and
- the forecast number of planes on which the calculations made in accordance with Article 4.2 are based.

8.4. In the course of the consultations provided for under Article 11 of this Agreement, Parties shall exchange information on government commitments and support for each of the governments providing such support including both not limited to:

- any changes which render the terms and conditions more favourable to the recipient, including changes in the repayment period, failure to repay the support, or reduction of the scheduled repayments; and

- annual disbursements and repayments on a per programme basis for new programmes launched in accordance with Article 4. Such information will be provided at the first regular consultation taking place at least 12 months after the end of the year in which the disbursements and repayments are made.

8.5. In the course of consultations under Article 11:

(a) Parties will on an annual basis provide information on new government-funded research and development undertaken or initiated during the previous year and on ongoing research and development projects in the aeronautical area, including per programme details on those projects in which large civil aircraft manufacturers participate. This shall include information on the area of activity and the amount of government funding for such projects;

(b) Parties will provide information on identifiable benefits derived from indirect supports for each large civil aircraft programme.

This will include recoupment per programme received from large civil aircraft manufacturers. The following specific information will be provided on an annual basis for each of the governments providing such support:

1. the annual commercial turnover of the civil aircraft industry in the Party concerned in relation to products covered by the Agreement;

2. the annual commercial turnover in relation to products covered by the Agreement of each firm in the Party concerned which manufactures products covered by the Agreement; and

3. the total amount of indirect benefits as defined in Article 5.2 for the civil aircraft industry in relation to the products covered by the Agreement and for each firm involved in the manufacture of such products.

8.6. If a Party considers that additional information directly relevant to the implementation of the provisions of this Agreement is necessary, such information will be provided upon duly motivated request.

8.7. Parties shall, upon duly motivated request, provide at the time of commitment of new development support non-proprietary information on the critical project appraisal in so far as this relates to the provisions of Article 4.1.

8.8. Any information not in the public domain, which a Party may provide, shall, at the request of the Party providing the information, be considered as proprietary. A recipient government shall take all measures necessary to ensure that information thus designated not be disclosed to anyone outside that government even after expiry or termination of the present Agreement. In addition, proprietary information shall not be used in possible trade disputes except for the purposes of confidential internal government discussion and decisions in relation to the implementation of the Agreement.

8.9. Parties shall, unless otherwise indicated, exchange the information specified above on an annual basis. Any disagreement concerning information to be provided pursuant to this Article shall be resolved through consultations under Article 11.

8.10. Parties shall provide information on new infusions of equity or changes in equity positions by governments into firms engaged in civil aircraft production, including the amount and type of equity provided.

8.11. Parties will encourage firms engaged in the manufacture of large civil aircraft to increase the public disclosure of disaggregated financial results of their civil aircraft operations through the separation of reporting on military and civilian aircraft operations and the adoption of lines of business financial reporting. These disaggregated financial results would at a minimum be expected to include information on sources and uses of funds, including specific information on revenue, operating income, net assets, capital investment and government equity infusions.

8.12. Nothing in this Agreement shall be construed to require any Contracting Party to furnish any information the disclosure of which it considers contrary to its essential security interests.

Article 9

Exceptional circumstances

9.1. Where, as a result of an unforeseen, exceptional situation, the survival of a significant proportion of the civil aircraft manufacturing activities in one of the Parties[1] and the continued financial viability of the company or the division of a company responsible for such civil aircraft manufacture are put in jeopardy, that Party may derogate temporarily from the disciplines laid down in this Agreement. In this context, the disaggregated financial results of civil aircraft operations will be reported publicly by that company or division.[2] This derogation may not be invoked, however, in respect to the disciplines applying to the launch of new civil aircraft programmes as specified in Article 4.

9.2. The Party concerned shall provide notice of its intentions to the other Party and an opportunity for prior consultations unless it is prevented from doing so for legal reasons and shall in any event notify the other Party immediately of its reasons for invoking this Article and fully disclose the specific measures which it has taken, including the amount and nature of the measures, and their expected duration.

[1] For the purposes of this paragraph, 'Parties' shall be deemed to include any of the individual Member States of the Community.

[2] These disaggregated financial results would at a minimum include information on sources and uses of funds including specific information on revenue, operating income, net assets, capital investment and government equity infusions.

Article 10

Avoidance of trade conflicts and litigation

10.1. Parties shall seek to avoid any trade conflict on matters covered by the present Agreement. [1]

10.2. They will not self-initiate action under their national trade laws with respect to government supports granted in conformity with this Agreement for as long as this Agreement is in force. However, nothing in this paragraph shall prevent a Party from abrogating this Agreement on grounds of non-compliance by the other Party.

10.3. In order to avoid trade conflict they will strongly encourage private parties to request the use of the provisions of Article 11 to resolve any disputes on matters covered by this Agreement. If, however, private petitioners request that action be taken under national laws on matters covered by this Agreement, the petitioners' government will immediately inform the other Party and offer to enter into consultations in accordance with Article 11. The Party against whom such action is brought shall have the right either to suspend the application of some or all of the provisions of the present Agreement or to terminate the Agreement 15 days after the conclusion of consultations.

10.4. In the conduct of any investigations of trade allegations concerning products covered by this Agreement that have been initiated under national trade laws as the result of private petitions. Parties shall, consistent with their law, take account of representations concerning compliance with the terms of this Agreement.

Article 11

Consultations

11.1. Parties shall consult regularly and, in any case, at least twice a year, to ensure correct functioning of the Agreement.

11.2. A Party may request consultations on any development related to the functioning of the present Agreement. Such consultations shall be held not later than 30 days following the date on which the request is received.

11.3. Parties agree to seek to resolve any disputes within three months of the date of the initial request for consultations. Consultations will not be deemed to be concluded for the purposes of Articles 8 and 9 of this Agreement before this three-month period has expired.

[1] Action with respect to 'matters covered by the present Agreement' refers to trade actions relating to direct and indirect government support as defined by this Agreement. It does not include actions relating to dumping, intellectual property protection, or antitrust or competition laws.

Article 12

GATT Agreement on trade in civil aircraft

12.1. The Parties shall propose jointly to other signatories of the Aircraft Agreement that disciplines along the lines of those laid down in the present Agreement and the interpretative note given in Annex I be incorporated in the aforementioned GATT Agreement. The Parties shall also propose that the improved dispute settlement provisions agreed in the Uruguay Round be used to resolve any dispute arising out of the implementation of the new Aircraft Agreement.

12.2. The Parties shall make their utmost efforts to ensure that these or similar disciplines are incorporated into the Aircraft Agreement or adopted by key signatories at the earliest possible date, and also to expand the coverage of the disciplines provided by this Agreement to all the products covered in the Aircraft Agreement.

12.3. If multilateralization has not been achieved in one year, the Parties shall review the question of the continued application of this bilateral Agreement.

[...]

ANNEX I

INTERPRETATION OF ARTICLE 4 OF THE GATT AGREEMENT ON TRADE IN CIVIL AIRCRAFT BY SIGNATORIES OF THE AGREEMENT

Article 4 of the GATT Agreement on trade in civil aircraft (hereinafter referred to as 'the Agreement') deals with three specific issues:

- government-directed procurement (paragraph 2),
- mandatory subcontracts (paragraph 3),
- inducements (paragraph 4).

[...]

Article 4.4

(Inducements)

This paragraph states that signatories agree to avoid attaching inducements of any kind to the sale or purchase of civil aircraft from any particular source which would create discrimination against suppliers from any signatory.

This means that signatories shall refrain from the use of negative or positive linkages between the sale or purchase of civil aircraft and other government decisions or policies which might influence such sale or purchase whenever there is a competition between suppliers of signatories. The following is an agreed illustrative, non-exhaustive list of such prohibited inducements:

- rights and restrictions relating to the airline industry, such as landing or route rights;
- general economic programmes and policies, such as import policies, measures aiming at changes in bilateral trade imbalances, policies on alien workers or debt rescheduling;
- development assistance programmes and policies, such as grant aid, loans and infrastructure financing; it is understood that the use of such assistance for the purchase of civil aircraft does not fall under this category to the extent that the granting of these funds is not conditional on such purchase taking place;
- defence and national security policies and programmes.

Without prejudice to Article 4.3, this also means that signatories shall not intervene in any way, nor exert any direct or indirect pressure on other governments or any entity involved in procurement decisions, including the establishment of any link of a negative or positive character between decisions concerning the procurement of civil aircraft and any other issue or action in any other area which might affect the interest of the importing country.

[...]

ANNEX II

For the purposes of the present Agreement, the following definitions shall apply:

1. 'large civil aircraft': with respect to such aircraft produced in the United States by existing manufacturers of large civil aircraft and in the European Community by the Airbus consortium, or their successor entities, all aircraft, as defined in Article 1 of the GATT Agreement on trade in civil aircraft, except engines as defined in Article 1.1(b) thereof, that are designated for passenger or cargo transportation and have 100 or more passenger seats or its equivalent in cargo configuration;

2. 'derivative' means an aircraft model the major design elements of which are derived from a prior aircraft model;

3. 'total development cost', as referred to in Article 4.2: the following cost items, incurred prior to the date of certification, are those which may be taken into account in assessing the 'total development cost' referred to in Article 4.2:
   - preliminary design,
   - engineering design,
   - wind-tunnel, structural, system and laboratory tests,
   - engineering simulators,
   - equipment development work, except for work directly financed by equipment and engine manufacturers,
   - flight tests, including associated ground support, and analysis necessary to obtain certification,
   - documentation required for certification,
   - the cost of manufacture of prototypes and test aircraft, including spares and such modifications as may be necessary to obtain certification, less the estimated fair market value of flight aircraft after refurbishment,
   - jigs and tools, except machine tools, for use on specific programmes;

4. 'production': all manufacturing, marketing and sales activities other than those described under point 3 with the exception of official export credit financing consistent with the Large Aircraft Sector Understanding of the OECD Understanding on official export financing;

5. 'indirect government support': financial support provided by a government or by any public body within the territory of a Party for aeronautical applications, including research and development, demonstration projects and development of military aircraft, which provide an identifiable benefit to the development or production of one or more specific large civil aircraft programmes;

6. 'direct government support': means any financial support provided by a government or by any public body within the territory of a Party which is provided:
    1. for specific large civil aircraft programmes or derivatives; or
    2. to specific companies to the extent that large civil aircraft programmes or derivatives directly benefit;
7. 'royalty payment' means repayment of a certain predetermined amount of development support per aircraft delivered.

Annex: Towards an international framework of competition rules

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL [1]

This Communication is about the international aspects of competition law. It examines whether public international law, and especially the WTO, should be complemented by a specific framework to support competition law enforcement. [2]

The concepts and proposals set out in this paper build on the report of the group of experts established by Commissioner van Miert in June 1994. That report, entitled *Competition policy in the new trade order: Strengthening international cooperation and rules*, was published in July 1995.

The experts' report covered both bilateral and multilateral cooperation in the field of competition. Their parallel development was considered to be complementary and mutually supportive. Thus, although the emphasis of this Communication is on multilateral aspects, the further development of bilateral cooperation agreements is equally important and would have a favourable impact on work in a multilateral setting.

I. Introduction

(a) A global perspective on competition rules: Why international rules are needed

Two developments have characterized international economic activity in recent decades: liberalization and globalization. Eight negotiating rounds since GATT was established in 1947 have brought import tariffs down to historically low levels: from around 35% to below 4%.[3] This has led to a massive growth in the volume of trade in goods and services, doubling every seven to eight years and growing from around USD 200 billion in the early 1960s to exceed USD 5 000 billion in 1994. Foreign direct investment has grown at an even more spectacular rate – by a factor of 30 in less than 25 years. National economies are more open to foreign competition today than ever before.

At the microeconomic level firms have adopted global strategies. Liberalization and technological progress have driven them to adopt new production methods: exploiting the comparative advantage of countries, improving their mobility, shifting factors of production, moving into

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[1] COM (96)284 final, 18.6.1996. See also the document 'Competition policy in the new trade order: Strengthening international cooperation and rules' (cat No CM-91-95-124-EN-C).

[2] The scope of this Communication is limited to anti-competitive practices of enterprises. There are many governmental practices that have an effect on competition, such as subsidies, which are grouped together with private practices in the EC Treaty's chapter on competition rules. These are by and large already covered by rules under the World Trade Organization (WTO).

[3] This is the trade-weighted average of industrial tariffs that will apply in developed countries once the reduction commitments of the Uruguay Round have been fully implemented. Some 40% of European imports will even be duty free. Developing countries generally committed themselves in the round to bind their duties in a horizontal way for the first time, with highest levels mostly around 20 to 35%. Remaining quantitative restraints on imports, in specific sectors such as agriculture or textiles, but also with regard to generic practices such as voluntary export restraints, are to be phased out by all WTO members.

new markets etc. Firms often need to be present on different markets at the same time to stay competitive. As a result countries have become interdependent and the markets of many goods and services have become regional or even global.

The number and size of transnational firms has increased. There are more commercial practices that have an international dimension than ever before. These can lead to an increase in cross-border anti-competitive practices: cartels with international effects, agreements whose effect is to exclude (foreign) competitors in an unfair way, international abuses of a dominant position, or international mergers with anti-competitive effects. Such practices can limit competition and undermine the benefits of liberalization.

These developments call into question the domestic nature of competition rules and the absence of binding rules at the international level. Many countries or regions have implemented comprehensive competition policies, but lack appropriate instruments to apply domestic competition rules to anti-competitive practices with an international dimension, as well as to obtain relevant information outside their jurisdiction. A framework is then necessary to enhance the effective enforcement of competition rules.

In the Community anti-competitive practices are effectively dealt with in an even-handed and non-discriminatory way across Member States. Competition policy is a cornerstone of the Community legal order. But there are no competition rules at the global level, and in many foreign markets the means for redress against anti-competitive practices that undermine the efforts of our companies trying to compete are inadequate.

There are then four main reasons why the adoption of international rules on competition should be considered:

(i) as part of the Community's strategy on market access: anti-competitive practices are keeping our firms out of third country markets but they cannot, in the absence of proper enforcement measures in those third markets, be tackled effectively without international rules. European firms also face a competitive disadvantage if they have to compete on world markets with foreign producers operating from home markets that are subject to less vigorous competition policies. Multilateral rules would promote more equal conditions of competition world-wide;

(ii) to avoid conflicts of law and jurisdiction between countries and to promote a gradual convergence of competition laws. There is a real need to minimize the jurisdictional conflicts and resulting trade conflicts that can arise, not only from extraterritorial application of certain competition laws, but also from the application of competition law to anti-competitive practices conceived abroad but implemented within one's jurisdiction. Convergence and conflict avoidance would also increase the legal security of firms operating in different jurisdictions, as well as reduce their costs of compliance with competition laws;

(iii) to increase the effectiveness and coherence of the Community's own competition policy enforcement. As it is in many countries, competition policy is a key factor in supporting

the competitiveness of European industry, in protecting a sound functioning of our market economies and in maximizing consumer welfare. It needs instruments of cooperation to take account of the effects of globalization;

(iv) enhanced commitment to competition policy enforcement would strengthen the trading system along the lines of our legal systems and market economies, of which competition law is a basic feature.

These concepts are further developed below.

(b) The competition perspective

Within the Community the elimination of trade barriers and the application of competition law have gone hand in hand. This approach is unique in the world. The competition policy of the Community has, in its development over 35 years, grown to full maturity and is rigorous and neutral in its application.[1] Consequently, the Community has become a highly integrated market, with the competition provisions of the Treaty protecting the integrity of the common market. In a larger perspective, however, the Community's competition policy and instruments have remained essentially domestic, inward-looking and limited to conduct implemented within the common market and affecting trade between our Member States.

Absence of an instrument to deal with trans-border cases

Many countries or regions which have implemented comprehensive competition policies nonetheless lack the necessary instruments to apply domestic competition rules to anti-competitive practices with an international dimension. For example, information central to the investigation may be located outside their jurisdiction and thus be beyond their reach. In the absence of the necessary proof of anti-competitive conduct, competition authorities are unable to take remedial action.

Avoidance of conflict of law and remedies

The 1980s and 1990s have seen a significant increase in international mergers, strategic alliances, joint ventures, licensing agreements, etc. These arrangements may face examination by different authorities at the same time with a potential for a conflict in the law or remedy applied to the same case. In an extreme example, divergences in the laws applicable to the same set of facts may result in conflicting conclusions as to the legality of the behaviour under review. However, even where there is a common view as to the anti-competitive nature of the conduct, the remedies imposed in each jurisdiction may be incompatible.

[1] In parallel, those Member States who did not have competition authorities prior to the establishment of the Community, have enacted legislation and set up enforcement structures at national level.

Greater convergence of laws and cooperation between competition authorities would reduce the likelihood of such conflicts and promote greater legal certainty for business.

Avoiding unnecessary duplication of work and costs

The review of commercial practices involves considerable work and costs, both for competition authorities and for the businesses whose conduct is subject to review. If the same commercial practice falls within several jurisdictions, the costs increase accordingly. Greater cooperation and the elimination of unnecessary duplication of effort can reduce costs to competition authorities and business alike.

Export cartels

Certain practices are difficult to tackle under present rules by any agency. For example, export cartels have, for trade reasons (the wish of countries to improve their terms of trade), not been subject to competition law in exporting countries.[1] For legal and practical reasons too, competition law has not been applied. In the absence of an effect on the exporting country's markets, the competition authority has no jurisdiction over export cartels. For the importing country, export cartels have an effect on the market and so jurisdiction can be established, but the evidence needed to prove the existence of the cartels is located outside the importing country's jurisdiction.

In all these cases the instruments at the disposal of the Community and its Member States are inadequate.

More generally, in today's liberalized world the Community cannot be without an external dimension to its competition policy. The Community interest is to seek the same commitment to competition enforcement from our partners in their markets as we apply to operators, irrespective of their origin, on ours.

(c) The trade perspective

Balance of access opportunities

Anti-competitive practices affect the balance of access opportunities negotiated between WTO members. They belong to the next barriers to trade in a liberalized world. The application of competition law contributes to creating accessible markets and to assuring the overall openness and stability of the trading system. Community efforts in this area need to be matched by our partners. Competition policy is now clearly trade-related, and the application of competition law principles on export markets will help level the playing field and promote equal conditions of competition for our firms competing on international markets.

[1] Export cartels are a specific problem in so far as their negative effects are only felt in the market of the importing country, while the relevant information is situated in the exporting country. The latter of course has neither an interest, nor the jurisdiction to take action.

While governments today are subject to very strict international disciplines in respect of the laws they make or the measures they apply, as soon as these have an effect on trade, no rules exist at the international level to control anti-competitive commercial practices. Such practices can replace formal governmental barriers that have been reduced or eliminated. Arguably, the incentive for firms to engage in anti-competitive behaviour impeding market access (such as cartels combined with boycotts, exclusionary abuse of a dominant position, exclusionary vertical restraints) increases with the reduction of tariffs and other barriers. Also, as industrial structures in emerging economies increase in sophistication, so will the devices used by firms to protect the market from foreign competition. Finally, governments whose freedom of action to support domestic industries through administrative measures has been curtailed by international rules may be tempted to maintain lax standards of competition regulation or enforcement, or to grant exceptions, to protect specific industrial sectors.

Although competition rules do exist on many of our export markets, anti-competitive practices are often impossible to tackle without active enforcement by the domestic competition authority. In the absence of international rules our firms have to rely exclusively on the commitment and tenacity of third country agencies to have their concerns addressed. [1]

Recent developments confirm that real or perceived anti-competitive practices can generate trade friction and that the trading system has been unable to resolve disputes effectively in the absence of agreed rules of conduct. [2]

Trade instruments

The inadequate application of competition principles on different markets can have other trade effects. Cartelization or similar restrictive behaviour in a foreign country can enable firms to make supra-competitive profits at home and then sell products on export markets below cost price. This may trigger the use of legitimate trade instruments such as anti-dumping duties by the importing country. But the use of trade instruments will not address the activity on the exporting country's market and may also have negative side effects. From an economic perspective it is therefore less efficient than tackling the conduct on the exporting firm's home market.

Even where there is no evidence of dumping, the protection afforded to companies through an inadequate application of competition rules on their home markets may place them in an advantageous position when competing on foreign markets.

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[1] Note, however, that in the US the enforcement system is geared towards private action in civil courts: private parties are actively encouraged to bring cases by the possibility of winning treble damages. The competition provisions in the EC Treaty and national legislations can also be invoked by private parties before national courts. Domestic courts in third countries are often not, however, as easily accessible.

[2] Note, however, that in May 1995 Kodak filed a petition with the US Government (USTR) under Section 301 of the US Trade Act, alleging that there are anti-competitive barriers restricting open access to the Japanese market for consumer photographic film and paper. On 13 June 1996, acting USTR Barshefsky made a determination of 'unreasonable practices' and initiated dispute settlement in the WTO, on the grounds of 'nullification and impairment' of expected GATT benefits and violation of GATS commitments. Consultations will also be conducted under the 1960 GATT decision on restrictive business practices.

(d) Jurisdictional issues: avoiding unilateral measures

Some competition authorities pursue policies to address market access problems, caused by anti-competitive practices on foreign markets, by extending the territorial scope of their national competition rules. This raises concerns of jurisdiction[1] and sovereignty, and can lead to conflicts between countries. Moreover, there are limits to the effectiveness of such a policy given the legal and practical obstacles to seeking information outside one's jurisdiction.

Enhanced international cooperation would limit competition authorities' need to resort to extraterritorial action. There are compelling advantages to solving problems through cooperation, especially if such cooperation improves the likelihood that the anti-competitive behaviour can be eliminated.

(e) Historical background and recent developments

There have been many initiatives to establish rules on anti-competitive conduct in the past. The Havana Charter was based on the concept of comprehensive rules covering both public and private practices and devoted a whole chapter to restrictive business practices.[2] The Charter was not ratified, however, and was succeeded by the more modest GATT, which examined the trade-competition interface a number of times in the 1950s and 1960s, but with no clear result.[3] In the 1970s, a full competition code was finally negotiated in the framework of Unctad at the request of developing countries.[4] Its provisions are not binding.

The OECD has carried out significant work in the international competition area for many years. It has adopted a Recommendation that includes a non-binding but functioning notification instrument between agencies, which has been revised a number of times.[5]

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[1] See the 1995 US international antitrust enforcement guidelines. US attempts to impose its law beyond its jurisdiction led Canada, France, Germany, the UK, the Netherlands and Switzerland to adopt blocking legislation. Section 301 of the 1974 Trade Act also allows trade action to be taken to counter the toleration by foreign governments of anti-competitive practices.

[2] See its Chapter V. The 1947 Charter foresaw the establishment of an international trade organization to oversee world trade. The organization was mandated to act against anti-competitive practices: it would have had an investigative capacity and be entitled to issue recommendations on remedial measures. The Charter, which also included rules on investment, was not adopted and a number of its provisions were brought together in the less ambitious GATT Treaty that was, in turn, superseded by the WTO on 1 January 1995.

[3] See GATT BISD 7S/29, 9S/28,170.

[4] The set of multilaterally agreed equitable principles and rules for the control of restrictive business practices was adopted by the UN General Assembly in December 1980 (UN Doc. A/35/48 (1980)).

[5] Amended in 1995. This Recommendation includes a voluntary dispute settlement procedure, which has never been used (C (95) 130/final).

The WTO contains limited tailor-made rules on competition in each of its three `pillar' Agreements.[1] The General Agreement on Tariffs and Trade (GATT) has an annexed Agreement on trade-related investment measures (TRIMs) which provides for a review, to be conducted within five years of its entry into force, to consider whether the Agreement should be complemented with provisions on competition policy.[2] The Agreement on the trade-related aspects of intellectual property rights (TRIPs) contains provisions on the control of anti-competitive practices or conditions in contractual licenses, relating to the transfer of technology or of other proprietary information. It also recognizes the right of countries to regulate such practices through their domestic laws, and it provides for consultations and exchange of information between governments where there is reason to believe that licensing practices or conditions constitute an abuse and have an adverse effect on competition in the relevant market. Likewise, the General Agreement on trade in services (GATS) contains provisions on consultation and exchange of information, similar to those in the TRIPs Agreement, and requires countries to ensure that monopoly services providers do not abuse their position in activities outside the scope of their monopoly privilege.

However, the scope of these provisions remains very limited for the effective control of anti-competitive practices at the international level. More importantly, the lack of more comprehensive multilateral principles and standards for the application and enforcement of competition policies may undermine past and present international trade liberalization efforts.

Parallel to the above developments an increasing number of countries have negotiated bilateral agreements on cooperation between their competition authorities. Such Agreements have been negotiated in the Union both at Community and national level. At Community level, for example, a cooperation agreement has been concluded with the US. Amongst other things it provides for notification of enforcement activities by one party that may affect the important interests of the other; information exchange in certain circumstances; consultation and cooperation and avoidance of conflicts over enforcement activities. The so-called positive comity instrument stands out,[3] because it permits a party whose important interests are affected by anti-competitive practices within the other party's territory to ask the latter to examine them and take appropriate measures. In general, the substance of these treaties has also evolved and their contents are more developed today than before.

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[1] The WTO has three 'pillar' Agreements, covering trade in goods (GATT), trade in services (GATS) and the trade-related aspects of intellectual property rights (TRIPs). The Agreement establishing the WTO itself as well as the integrated Dispute Settlement Understanding overarch the three separate Agreements. The WTO also includes a number of Plurilateral Agreements, which are binding between the signatories only.

The GATT Agreement on trade in goods contains a provision to ensure commercial conduct of enterprises that have been granted special or exclusive rights (Article XVII GATT – which does not function very well). It has been argued that anti-competitive conduct could be tackled through a so-called 'non-violation' complaint.

[2] Multilateral rules on investment are currently being negotiated in the OECD and the WTO may start work in this field soon. Competition rules may contribute to ensuring that (foreign) investments are only made under sound and competitive conditions.

[3] See Article V.

Notwithstanding the wide consensus on the promotion of deeper bilateral cooperation among competition authorities, bilateral cooperation agreements, similar to OECD efforts, remain limited in scope and in effect. In scope, because although increasing, only the EU and a limited number of countries which are very actively involved in enforcing competition policies, have entered such agreements; and, in effect, because these agreements do not contain substantive rules or principles.

Another question is whether, next to the above, the proliferation of sector-specific trade agreements that include competition provisions which each have their own specific characteristics, can be kept coherent. This becomes more significant as the interrelationship between trade in goods, services and foreign investment increases, and as respective geographic markets overlap. At best, firms will press governments to ensure that their policies are streamlined and consistent. At worst, they will seek to exploit the provisions of such agreements for narrow corporate advantage through forum-shopping.

A more coordinated policy grouping together a number of countries and straddling all sectors of the economy then needs to be considered.

II. Which forum?

There are four alternative fora to house an international framework: the OECD, Unctad, the negotiation of a separate, stand-alone agreement, or the WTO.

The OECD has been involved in the area of international competition rules for a long time and is serviced by an independent secretariat. It has the organizational capacity to cater for the negotiation of an agreement on international competition rules. However, the OECD has three disadvantages: it does not have a track record of dealing with binding commitments and dispute settlement, it does not provide the disciplines on competition-related trade measures (which are dealt with in the WTO), and, importantly, it has a limited membership.

Unctad developed a full competition code in the 1970s which has been regularly revised. However, many of the same objections that apply to the OECD also apply to Unctad, for example the absence of a tradition of dealing with binding commitments and the lack of an overlap with competition-related trade disciplines (which are dealt with in WTO).

It may be difficult to gather the necessary political momentum in different countries for an independent, stand-alone agreement, and its functioning would be likely to have higher overhead costs.

The WTO is the prime candidate for a framework of competition rules: it has a near universal membership. [1] The WTO can provide a balanced response sensitive to the varying interests and concerns of both developed and developing countries.

[1] Over 25 former State-trading economy countries, amongst which China and Russia, are currently negotiating their accession to the WTO.

The WTO is the recognized institution for trade-related international economic rules. Many of its present rules are closely related to competition issues (especially those on subsidies, State enterprises and intellectual property). Some of its agreements already have a number of specific provisions to address anti-competitive practices (see I (e)).

The institutional infrastructure of the WTO includes a system of transparency and surveillance through notification requirements and monitoring provisions. These are common to many WTO/GATT agreements. The WTO also provides a forum for continuous negotiation and consultation, where its members could bring their trade-related competition concerns. Furthermore, the organization has a reinforced and legalized dispute settlement system between governments. This can back-up agreed rules and provide means for conflict resolution.

The WTO also caters for the possibility of negotiating an agreement with specific disciplines between a limited number of signatories (thereby creating a so-called Plurilateral Agreement under Annex IV to the WTO Agreement).

III. An international framework of rules on competition – issues for consideration

A premise of this Communication is that the creation of an International Competition Authority, with its own powers of investigation and enforcement, is not a feasible option for the medium term. Countries would at this stage be unwilling to accept the constraints on national sovereignty and policies that such a structure would impose. The proposals set out below and in the annex therefore reflect a more modest approach, built on commitments binding governments and providing intergovernmental procedures. This is also the model on which the international trading system has been built since the Second World War.

Work on a framework of international competition rules is most likely to make headway if a progressive approach is adopted. The objective would be to strengthen competition policy coordination in steps (building-blocks approach). This could be achieved through the creation of a working group in WTO, whereby initial work might be limited to those areas where consensus can be mustered at an early stage, and more ambitious objectives would be tackled later. The main steps can be identified as follows:

(a) Adoption of domestic competition structures

A first step could be taken by WTO members committing themselves individually to assuring the existence of domestic competition structures. The core elements of such a structure would be:

- having basic competition rules in domestic laws to address anti-competitive practices, covering restrictive agreements of companies, abuse of a dominant position, and mergers;
- having or creating domestic enforcement structures to guarantee an effective implementation of those rules, including proper investigatory instruments and appropriate sanctions;

- ensuring access for private parties to the domestic enforcement authorities, including national courts, on equitable, transparent and non-discriminatory terms.

(b) Adoption of common rules

In parallel WTO Members could seek to identify a core of common principles, and work towards their adoption at international level. This would:

- promote equal conditions of competition world-wide;
- facilitate closer cooperation between competition authorities and pave the way for the coordination of international enforcement activity;
- promote a gradual convergence of competition laws.

Common principles or rules can be developed progressively and step by step. It may be opportune, in a first stage, to concentrate on horizontal restraints (price or output fixing or market sharing cartels, bid-rigging, group boycotts, export cartels). Work on other practices (abuse of a dominant position, certain vertical restraints such as exclusive distribution or supply agreements) could start in parallel, but may take more time.

(c) Establishment of an instrument of cooperation between competition authorities

Transparency is an essential element of a framework of competition. Provisions could be developed on notification, information exchange and cooperation between competition authorities. These could include provisions regarding cooperation procedures, for example when agencies are launching parallel investigations into the same practice. Negative and positive comity instruments could also be developed further. [1]

(d) Dispute settlement

Apart from its natural role as a permanent forum for negotiation adapting or strengthening agreed rules and obligations, the WTO also provides a compliance mechanism to help settle disputes between governments when a country claims that agreed WTO rules have been breached. Private parties do not have access to the WTO's dispute settlement system. The WTO mechanisms could be applied if a country for example fails to set up a domestic competition structure or if it fails to react in a specific case to a request for enforcement action lodged by another WTO member. The relevant rules could be adapted, if necessary, to the specificities of competition law and policy, and could be applied in a progressive way.

The above concepts are further developed in the annex.

[1] These could be inspired by OECD provisions as well as those in bilateral agreements. The principle of negative comity implies that a party will take into account the important interests of another party before action is taken. Through the positive comity instrument (see also pp. 7), a party may request another to act on the basis of its own powers, to investigate activities which adversely affect the important interests of the first party.

IV. Related issues

(a) Who should participate?

An international agreement on competition rules would bring benefits to all nations of the trading community. All countries could participate in an agreement to incorporate competition law provisions in their domestic laws.

At the same time the application of the cooperation and enforcement provisions would require, of participating countries, that they have a sophisticated administration capable of handling sensitive information and of assessing commercial practices in a dynamic context. Many developing countries do not yet have this administrative machinery.

It is therefore realistic to expect that, if adopted, cooperation provisions of a competition agreement would, in a first stage, apply only between a limited number of signatories with mature antitrust agencies. Provisions could group together developed and advanced developing countries to start with, and gradually come to include more countries. Any country able to shoulder the obligations of the agreement could be eligible to participate.

A different intensity of cooperation, for example in the field of information exchange, could apply between different countries.

(b) The interest of developing countries

Private anti-competitive practices have long been a concern for developing countries. As the turnover of many multinationals has come to surpass the GDP of middle-size developing countries, developing countries have seen a growing need for a minimum of discipline on private conduct in their markets. It was in response to this that Unctad developed its competition code in 1980. It would certainly be consistent with this stance for developing countries to support a further strengthening of international rules if these came to cover practices, such as export cartels, that today escape effective control. [1]

Even if developing countries might not, in a first stage, participate in the provisions on cooperation between competition authorities (see III (a)), they would be beneficiaries of enhanced control over anti-competitive practices with an international dimension. They would also, like other WTO members, have access to the dispute settlement provisions if agreed basic rules and enforcement structures had not been properly implemented by other countries. Moreover, they would benefit from the acceptance by developed or newly industrialized countries of MFN obligations in the competition field, even if their own obligations were lighter (e.g. in respect of transitional periods). Finally, all WTO members, including developing

[1] Note, however, that a competition framework cannot be a panacea for the difficulties faced by developing countries as a result of their limited domestic instruments and capacities of investigation. This reinforces the need for developing countries to be able to benefit from technical assistance.

countries, would benefit from possible dispute settlement judgements which might create new market access opportunities.

In so far as competition rules can ensure that investments are made under sound and fair conditions, effective competition structures can support liberal investment regimes.

The establishment of appropriate competition structures is a complex task and requires substantial resources and training. A framework on competition should include provisions on technical assistance for those countries requesting it.

(c) The relation to trade defence instruments

The relation between the elaboration of a competition framework and the functioning of existing trade instruments is a key issue in the trade-competition debate. It is true that the incorporation of competition provisions into trade law and/or more comprehensive and effective enforcement of competition policies through increased international cooperation would lessen the need to have recourse to instruments of commercial defence. However, competition instruments cannot be seen as substitutes for trade instruments. The latter only lose their raison d'être in the context of fully integrated markets. A framework of competition rules would, therefore, complement present trade law and create a new instrument to tackle anti-competitive behaviour in markets which are not integrated. Thus the development of new instruments would complement, not supplant, present instruments.

The above is illustrated by practice within the EC itself. Anti-dumping action is excluded on intra-Community trade, as this is a fully integrated market.[1] This integration has meant, for Member States, the elimination of all tariffs, the elimination of measures of equivalent effect to tariffs (which is a wider concept than GATT's national treatment obligation) and the adoption of the four freedoms (goods, services – including establishment, capital – including investment, and labour). The single market programme and relative currency stability have been added to this. Competition law has been applied effectively, amongst others with an explicit objective to integrate the markets of Member States, by an authority with autonomous powers of investigation and enforcement. All of these elements are absent in present day world trade. Finally the framework explored under point II falls well short of EC competition structures, and would have to prove its worth.

[1] The EEA Agreement between the EC and EFTA countries follows the same approach: anti-dumping is excluded in those areas where the *acquis communautaire* has been taken over. In trade between the Community and the countries of Central and Eastern Europe, however, anti-dumping action can still be taken, as well as between the US, Canada and Mexico in the NAFTA context. The same applies between the EU and Turkey: anti-dumping action remains a possibility despite the customs union agreement.

(d) The relation to the Community legal order and Member States

A basic assumption of this Communication is that a framework of competition rules, negotiated in WTO, would be compatible with EC competition law, in particular the provisions of the EC Treaty. The WTO instrument would, as is traditional in GATT/WTO, apply to governments and not be self-executing or have direct effect. It would also be much more general than the relevant provisions under EC law, and the emphasis would in the first stages be on procedural obligations. For these reasons alone it is highly unlikely that there should be any friction between a WTO panel report on the rules agreed in the WTO, and a European Court of Justice case law on Articles 85 and 86 and related legislation. [1]

Moreover, firms are already, including those within the Community, subject to different competition regimes, and an objective of an international framework is to promote equivalent and rational application of competition principles on different markets.

A second issue concerns the question of participation in an international framework. As competition is not an exclusive Community competence, international cases might involve either the Community (if trade between Member States were affected) or a single Member State (if it alone were affected). A framework of rules would have to take account of both cases, while preserving the unity of Community action in the trade field.

V. Conclusions

The Commission requests the Council to take note of this Communication.

Noting that by pursuing stronger multilateral efforts the benefits of greater convergence and improved competition standards and enforcement would be realized worldwide;

Considering that an international framework of competition rules can promote a level playing field and could therefore reduce the costs, distortions and conflicts in international trade arising from differing domestic competition regimes;

Recognizing that alongside continued bilateral cooperation with principal partners, stronger multilateral cooperation in the field of competition is desirable and feasible at this time, and would contribute significantly to a more efficient, stable, and integrated global economy, from which both the Community and its Member States, as well as all WTO members, would benefit;

Recognizing that the possible development of an international framework of competition rules is in the interest of all trading nations, irrespective of their level of development;

[1] A case where a WTO instrument and a corresponding EC regulation are even closer than in the competition field is anti-dumping. In this case the latter is even an implementation of the former, yet friction between panel reports based on the WTO instrument, and European Court of Justice judgments based on the EC regulation, has so far been avoided.

Considering that the Community has a sound experience in applying uniform competition principles across different countries;

The Commission recommends the Council to conclude along the following lines:

(i) the Community should prepare a position for the WTO ministerial meeting in Singapore in December 1996; this should propose to WTO members that the organization establish a Working Party to conduct exploratory work, from 1997 onwards, on the development of an international framework of competition rules;

(ii) such a framework could include, in particular, a commitment by all countries to adopt domestic competition rules and enforcement structures and, for a limited number of countries, an instrument to allow information to be exchanged between competition authorities, an instrument to request action on foreign markets, and an intergovernmental dispute settlement mechanism;

(iii) that the European business community should be consulted and appropriately associated as progress in this area is made;

(iv) that the Community should take the lead on this issue and initiate efforts to build international consensus and encourage other WTO members to support multilateral work in this field;

(v) to request the OECD and Unctad to pursue their work on trade and competition taking account of developments in WTO.

ANNEX

This annex outlines the main concepts set out under Part III of the Communication. Many of the concepts have been extracted from OECD documents and other sources, and are included on an exploratory basis.

(a) Adoption of domestic competition structures

The process towards an international framework of competition rules could be carried out in a progressive way. A first step could be to ensure that each country provides for competition rules in its national legislation, covering restrictive agreements, abuse of dominant position and mergers. This would include the provision of a set of equitable procedures ensuring an effective application of the rules, including investigatory instruments and appropriate penalties, as well as access to the judicial system, transparency and non-discrimination.

Although an increasing number of countries have a sophisticated competition law for the effective control of restrictive business practices, some (developing) countries have yet to introduce such rules. An added advantage of agreement by all countries to enact competition laws is that domestic courts would become an integral part of enforcement procedures, as they are in most industrialized countries already.[1] Firms could not then be obliged to respect agreements which were forbidden: these would be unenforceable before national courts.

Another important issue is sectoral comprehensiveness. A recent OECD study has revealed that even in OECD countries substantial gaps exist in the coverage of competition laws; most countries exclude sectors of the economy from their competition law application.[2] A first step in addressing this could be taken by a listing of these sectors and a commitment to stand-still and gradual reduction by all countries.[3]

Competition rules should likewise apply to all economic operators. Public enterprises and companies with special or exclusive rights should be covered, except for that part of their activities where their public task overrides the interests of competition law application.

(b) Agreement on common rules

There is general recognition of the negative effects on competition of horizontal restrictive practices: cartels, market sharing, boycott of foreign firms, price fixing, bid rigging, collective exclusive dealing. It should be possible to formulate international provisions at an early stage to combat these practices. Relevant provisions should also cover export cartels. These are exempted from the applicability of competition law in exporting countries. Although such

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[1] A similar approach was adopted in the Uruguay Round negotiations on the respect of intellectual property rights (TRIPs).

[2] Overview on *Coverage of competition laws and policies* by Professor B. Hawk.

[3] See OECD work in this respect.

cartels are covered by the legislation of most importing countries,[1] they are hard to tackle due to a lack of information in the importing country. An international agreement to outlaw export cartels would put an end to these 'beggar thy neighbour' policies.

Vertical restrictions, such as exclusive distribution or supply agreements, should also be considered, but a longer period may be required to reach consensus, and countries may wish to maintain a greater degree of latitude in their assessment of the effects on competition of vertical restraints.[2]

A common approach to vertical restrictions could be found by concentrating on restrictions which create barriers to market access. The working group could examine to what extent competition authorities could take into account the international dimension and weigh the effects on domestic competition of market access restrictions, when a complaint is lodged through the provisions of the international framework (see below).

Such a review by a competition authority would reflect the facts that no adequate assessment of competition cases can be made without careful examination of the international context: competition policies cannot be identical in different countries, and that each market needs to be assessed in its own context, in consideration of the economic conditions and structures influencing the openness, and thus the competitive situation, of that market. In their review of practices, competition authorities would, as many already do, give weight to factors such as: the effect of trade barriers (tariffs and non-tariff barriers), regulatory barriers (i.e. divergent standards, restrictions on distribution or supporting services), foreign investment barriers, the import and foreign investment ratio, and the corporate groupings structure. Competition authorities would continue to base their decisions on the efficiency goals that are fundamental to competition policy. But the principle, that the international dimension needs be taken into account in international cases, would be incorporated into common rules with respect to all anti-competitive practices.[3] As a market would be assessed to be more closed, greater weight would be given to the importance of foreign competition to balance entry barriers.

This approach might also be useful in working towards agreement on abuse of dominant position. It is generally agreed that exclusionary practices, hindering of access to essential facilities, practices with possible foreclosure effects such as fidelity rebates or tying arrangements, and production limitation can all amount to abuse of dominant position. As European competition policy enforcement has shown, these practices are capable of affecting

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[1] For example wood pulp – judgment of the European Court of Justice of 27 September 1988, 1988 ECR 5193.

[2] Partly due to differences in underlying objectives and principles, the Community and some trading partners have different approaches: the Community is relatively strict on vertical restrictions that interfere with market integration – export bans and some territorial restrictions; the US takes a more tolerant view. An exception is resale price maintenance which is prohibited in most jurisdictions.

[3] This approach is similar to the one taken in the Havana Charter (Article 46), where an absence of government action to prevent a limitation of access to markets could constitute a violation of its provisions. The jurisprudence of the European Court of Justice follows similar lines, i.e. that a practice should be assessed in its economic and legal context, and to the weight traditionally given to the objective of ensuring market access, although only between Member States. For example Henninger (Delimitis) – judgment of the European Court of Justice of 28 February 1991.

trade and creating access barriers. Other practices would require further consideration: excessive pricing, predatory pricing, some vertical arrangements.

There has been a great increase in the number of international mergers. It would be premature to suggest international substantive rules in this area. At the same time, firms nowadays have to notify the same merger to several different competition authorities. Procedural harmonization would avoid unnecessary duplication of efforts of firms and agencies and, in encouraging cooperation, would limit the potential for contradictory decisions.[1] A first step could be taken by harmonizing notification filing forms and deadlines.[2]

(c) Establishment of instruments of cooperation between competition authorities

Meaningful information exchange is a key element of cooperation between competition authorities. At the same time business information is subject to strict legal protection in all jurisdictions and it is difficult to imagine confidential documents being exchanged between competition authorities as a routine matter.[3]

Information exchange would have to be developed cautiously. In a general sense the will of agencies to cooperate will certainly be the greatest when they are investigating the same case and intend to apply similar enforcement criteria. Exchange becomes more difficult when different solutions are being envisaged. At the extreme there may be a situation where one agency seeks clear enforcement measures while a counterpart has no intention of taking action. Although the last example is the most difficult, it is then that the need for exact information may be the most acute.

An important first step towards the development of rules on information exchange could be to catalogue the types of information that are considered confidential in different countries, and what forms of legal protection apply.

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[1] The 1990 Merger Regulation has extrajurisdictional effects: it includes competence for the Commission to examine mergers of firms headquartered outside the EC if they have a turnover of ECU 5 billion or more and where two of the undertakings concerned have a turnover within the EC of at least ECU 250 million. As more agencies scrutinize mergers it is possible that one agency may forbid it, while another imposes conditions such as divestiture of certain parts or alternatively may see no objection at all.

[2] The OECD 1993 Whish/Wood 'Merger Process Convergence Report' has made a number of proposals to harmonize international procedures in the field of merger notifications.

[3] It should be recalled that extensive international information exchange possibilities do exist in certain sectors, for example, between authorities controlling securities trade. And different levels of information exchange have already been agreed in the competition field: the EEA Agreement, for example, provides for a sharing of information between the Commission and the EFTA Surveillance Authority. Although the EC/US Cooperation Agreement does not provide for the exchange of confidential information, US Congress in 1994 did pass new legislation to enable the antitrust agencies to pursue reciprocal arrangements for the purpose of exchanging confidential information, even in cases where sanctions that may be taken are different from those under US law.

An international framework could, in the beginning, provide for the exchange of non-confidential business information between a group of core participating countries. A further step might be taken if this mechanism is felt to function well, by considering whether certain authorities are ready to exchange information of a more detailed nature bilaterally on the basis of consent. Clearly, such an exchange of confidential information would have to be made subject to a set of criteria and guarantees. It is conceivable that agencies would wish to make exchange subject to the fulfilment of certain conditions (e.g. guarantees on confidentiality or limits to the use of the supplied information): in particular the receiving authority would have to commit itself to refraining from taking extraterritorial action on the basis of that information. In any case, full exchange obligations are likely to be a longer term objective.

Clearly the European business community should be consulted and closely associated as options and conditions regarding the exchange of confidential information are explored.

In anti-dumping investigations officials actually have extra-jurisdictional information-gathering possibilities – they are usually given direct access to the files of the firms they investigate in third countries. A similar element could be considered in competition cooperation by enabling officials to assist their colleagues in third countries when investigations are being pursued. The cooperation procedures that apply in internal Community cases between DGIV and Member State authorities is one example of such procedures.

Another key element of cooperation between authorities is the positive comity instrument, which has already been included in recent bilateral competition agreements. [1] Options need to be explored to develop this concept further and to incorporate provisions that will generate enforcement by third country agencies, while respecting each others' autonomy. In particular it could be considered whether and under what conditions competition authorities could, within reasonable limits, be obliged to investigate on behalf of one another, and to have to indicate to a requesting counterpart within an agreed time limit whether enforcement action is envisaged. [2] A decision not to act would have to be reasoned and supported by relevant factual material.

(d) Dispute settlement

The gains of international cooperation have been set out earlier. It is clear, however, that the advantages would be the greatest if countries can be committed to abide by agreed rules. That would generate a commitment to enforcement. A framework should therefore have a binding character.

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[1] See also the footnote on page 426.

[2] This has implications for the allocation of resources of antitrust agencies. It may be necessary, in a first stage, to put a maximum on the amount of complaints one agency could lodge to another within a framework per year, or to have a threshold (e.g. turnover in the product concerned) below which the mechanism would not apply.

A central question concerning the development of a dispute settlement system, which would apply between governments, relates to the standard of review that an international panel could apply. At a first stage, review by a panel might concentrate on procedural aspects: whether a country has enacted a domestic competition structure as agreed; if a country is subject to information exchange obligations, whether these have been complied with; and, if a country has commitments in this area, whether the transparency motivation and timetable requirements of the positive comity instrument have been met in a specific case. The dispute settlement system could be extended to include review of whether the statement of the reasons for the national decision was adequate, whether the facts have been accurately stated, whether there has been any 'manifest error of appraisal' of the facts or whether there has been a 'misuse of powers'.

An important issue would be the deadlines applied to resolution of international disputes. This is because firms confronted by anti-competitive practices in many cases have the option of asking for application of a protective trade measure. These can be activated at short notice. Clearly a framework to tackle anti-competitive practices through competition instruments will have to function with short deadlines if it is to offer a credible alternative.

Another key issue relates to remedies when a country is condemned by an independent panel. Countries could be authorized, in the absence of corrective action by a foreign agency and under specified conditions, to take extra-jurisdictional action through use of their own domestic competition laws. In cases where this is not viable, (for example if there are no subsidiaries of the targeted firm or firms in one's jurisdiction), measures usually foreseen in the trade context, such as the withdrawal of tariff concessions,[1] are likely to be more acceptable than competition sanctions, e.g. international fines, as a next step.[2]

In so far as an agreement on competition might include binding elements, it is possible that a derogation clause of some kind may be considered necessary. This would cater for cases where the essential interest of a party is felt to outweigh the enforcement interest of a trading partner requesting action, for example if the latter has invoked the positive

[1] The WTO system is geared towards conflict resolution and the withdrawal of trade concessions is only used as a measure of last recourse. In WTO the resolution of conflicts has a sliding scale starting with (1) agreement of the parties at any point during proceedings through consultations; (2) after determination by a panel of a violation of WTO rules, a request to bring the incriminating measure or practice into conformity with the WTO; (3) if this is not possible, the offering of compensation (by means of new or enlarged market access opportunities, for example through tariff reductions or other liberalizing commitments), and finally, if neither (1), (2), or (3) are possible; (4) the authorization to suspend an equivalent amount of concessions.

[2] From a competition angle the withdrawal of trade concessions may seem to contradict the objective of increasing competition, as its effect would be to lessen access opportunities to a market. In GATT/WTO practice, however, the ability to withdraw trade concessions has actually had a liberalizing effect, and has pressed countries to bring their practices into line with GATT law. Countermeasures have only been authorized once.

comity instrument. Such an exceptional situation could arise if an authority allows restructuring agreements with restrictive effects. Such issues have been resolved in trade law cases by allowing GATT/WTO members, in exceptional cases, to derogate temporarily from their obligations and take safeguard action to protect their domestic industries. A similar approach in competition cases, provided measures taken are time-limited, justified, non-discriminatory and transparent, might need to be considered.

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