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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 10 December 1979

concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979
trade negotiations

(80/271/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the recommendation from the Commission,

Whereas the multilateral trade negotiations under the GATT opened pursuant to the Ministerial Declaration adopted in Tokyo on 14 September 1973 resulted in the following Multilateral Agreements:

- Geneva (1979) Protocol to the General Agreement on tariffs and trade and the Protocol supplementary to the Geneva (1979) Protocol to the General Agreement on tariffs and trade,
- Arrangement regarding bovine meat,
- International Dairy Arrangement,
- Agreement on technical barriers to trade,
- Agreement on government procurement,
- Agreement on trade in civil aircraft,

— Agreement on interpretation and application of Articles VI, XVI and XXIII of the General Agreement on tariffs and trade,

— Agreement on implementation of Article VI of the General Agreement on tariffs and trade and the Addenda annexed thereto,

— Agreement on import licensing procedures,

— Agreement on implementation of Article VII of the General Agreement on tariffs and trade and the Protocol annexed thereto;

Whereas all the reciprocal concessions and undertakings negotiated by the Community and the countries participating in the negotiations, as embodied in the above Multilateral Agreements, constitute an acceptable result,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Geneva (1979) Protocol supplementary to the General Agreement on tariffs and trade and the Protocol to the Geneva (1979) Protocol to the GATT are hereby approved on behalf of the European Economic Community.

2. The following Agreements are hereby approved on behalf of the European Economic Community:

- Arrangement regarding bovine meat,
- International Dairy Arrangement,
- Agreement on technical barriers to trade,
- Agreement on government procurement,
- Agreement on trade in civil aircraft,
- Agreement on interpretation and application of Articles VI, XVI and XXIII of the General Agreement on tariffs and trade,
- Agreement on implementation of Article VI of the General Agreement on tariffs and trade and the Addenda annexed thereto,
- Agreement on import licensing procedures,

— Agreement on implementation of Article VII of the General Agreement on tariffs and trade and the Protocol annexed thereto.

3. The texts of the Agreements referred to in this Article are annexed to this Decision.

Article 2

The President of the Council is hereby authorized to designate the person empowered to take such steps as are required by the Agreements referred to in Article 1 in order to bind the European Economic Community.

Done at Brussels, 10 December 1979.

For the Council

The President

T. HUSSEY

GENEVA (1979) PROTOCOL TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

THE CONTRACTING PARTIES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND THE EUROPEAN ECONOMIC COMMUNITY which participated in the multilateral trade negotiations 1973 to 1979 (hereinafter referred to as 'participants'),

HAVING carried out negotiations pursuant to Article XXVIII *bis*, Article XXXIII and other relevant provisions of the General Agreement on tariffs and trade (hereinafter referred to as 'the General Agreement'),

HAVE, through their representatives, AGREED AS FOLLOWS:

1. The schedule of tariff concessions annexed to this Protocol relating to a participant shall become a schedule to the General Agreement relating to that participant on the day on which this Protocol enters into force for it pursuant to paragraph 5.
2. (a) The reductions agreed upon by each participant shall, except as may be otherwise specified in a participant's schedule, be implemented in equal annual rate reductions beginning 1 January 1980 and the total reduction become effective not later than 1 January 1987. A participant which begins rate reductions on 1 July 1980 or on a date between 1 January and 1 July 1980 shall, unless otherwise specified in that participant's schedule, make effective two-eighths of the total reduction to the final rate on that date followed by six equal instalments beginning 1 January 1982. The reduced rate should in each stage be rounded off to the first decimal. The provisions of this paragraph shall not prevent participants from implementing reductions in fewer stages or at earlier dates than indicated above.

(b) The implementation of the annexed schedules in accordance with paragraph 2 (a) above shall, upon request, be subject to multilateral examination by the participants having accepted this Protocol. This would be without prejudice to the rights and obligations of Contracting Parties under the General Agreement.
3. After the schedule of tariff concessions annexed to this Protocol relating to a participant has become a schedule to the General Agreement pursuant to the provisions of paragraph 1, such participant shall be free at any time to withhold or to withdraw in whole or in part the concession in such schedule with respect to any product for which the principal supplier is any other participant or any government having negotiated for accession during the multilateral trade negotiations, but the schedule of which, as established in the multilateral trade negotiations, has not yet become a schedule to the General Agreement. Such action can, however, only be taken after written notice of any such withholding or withdrawal of a concession has been given to the Contracting Parties and after consultations have been held, upon request, with any participant or any acceding government, the relevant schedule of tariff concessions relating to which has become a schedule to the General Agreement and which has a substantial interest in the product involved. Any concessions so withheld or withdrawn shall be applied on and after the day on which the schedule of the participant or the acceding government which has the principal supplying interest becomes a schedule to the General Agreement.
4. (a) In each case in which Article II (1) (b) and (c) of the General Agreement refers to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in a schedule of tariff concessions annexed to this Protocol shall be the date of this Protocol, but without prejudice to any obligations in effect on that date.

(b) For the purpose of the reference in Article II (6) (a) of the General Agreement to the date of that Agreement, the applicable date in respect of a schedule of tariff concessions annexed to this Protocol shall be the date of this Protocol.
5. (a) This Protocol shall be open for acceptance by participants, by signature or otherwise, until 30 June 1980.

(b) This Protocol shall enter into force on 1 January 1980 for those participants which have accepted it before that date, and for participants accepting after that date, it shall enter into force on the dates of acceptance.

6. This Protocol shall be deposited with the Director-General to the Contracting Parties who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof, pursuant to paragraph 5, to each Contracting Party to the General

Agreement and to the European Economic Community.

7. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this thirtieth day of June one thousand nine hundred and seventy-nine, in a single copy, in the English and French languages, both texts being authentic. The schedules annexed hereto are authentic in the English, French and Spanish language as specified in each schedule.

Note relating to the Geneva (1979) Protocol

1. The list of tariff concessions deposited by the Community in Geneva on 13 July 1979 will be published in a subsequent issue of the *Official Journal of the European Communities*.
 2. The lists of concessions of other countries, also annexed to the Protocol, may be found in a document published by the GATT Secretariat and entitled 'Geneva (1979) Protocol annexed to the General Agreement on tariffs and trade' (Volumes I to IV), and may be consulted at the GATT Secretariat in Geneva.
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**PROTOCOL SUPPLEMENTARY TO THE GENEVA (1979) PROTOCOL TO THE
GENERAL AGREEMENT ON TARIFFS AND TRADE**

THE CONTRACTING PARTIES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND THE EUROPEAN ECONOMIC COMMUNITY which participated in the multilateral trade negotiations 1973 to 1979 (hereinafter referred to as 'participants'),

CONSIDERING that a part of the tariff negotiations carried out in the multilateral trade negotiations have been completed subsequent to the establishment of the Geneva (1979) Protocol to the General Agreement on tariffs and trade (hereinafter referred to as 'the Geneva (1979) Protocol');

HAVING agreed to put into effect the results of these negotiations which involve concessions or contributions additional to those included in the schedules annexed to the Geneva (1979) Protocol or which concern concessions or contributions made by participants not having a schedule annexed to that Protocol;

RECOGNIZING that the results of these negotiations also involve some concessions offered in negotiations leading to the establishment of schedules annexed to the Geneva (1979) Protocol;

HAVING agreed to annex to the General Agreement on tariffs and trade the schedules of concessions which it was not possible to include in the Geneva (1979) Protocol;

HAVE through their representatives AGREED AS FOLLOWS:

1. The schedule of tariff concessions annexed to this Protocol ⁽¹⁾ relating to a participant shall become a schedule to the General Agreement on tariffs and trade (hereinafter referred to as 'the General Agreement') relating to that participant on the day on which this Protocol enters into force for it pursuant to paragraph 5.
 - (b) The implementation of the annexed schedules in accordance with paragraph 2 (a) above shall, upon request, be subject to multilateral examination by the participants having accepted this Protocol. This would be without prejudice to the rights and obligations of Contracting Parties under the General Agreement.
2. (a) The reductions agreed upon by each participant shall, except as may be otherwise specified in a participant's schedule, be implemented in equal annual rate reductions beginning 1 January 1980 and the total reduction become effective not later than 1 January 1987. A participant which begins rate reductions on 1 July 1980 or a date between 1 January and 1 July 1980 shall, unless otherwise specified in that participant's schedule, make effective two-eighths of the total reduction to the final rate on that date followed by six equal instalments beginning 1 January 1982. The reduced rate should in each stage be rounded off to the first decimal. The provisions of this paragraph shall not prevent participants from implementing reductions in fewer stages or at earlier dates than indicated above.
3. After the schedule of tariff concessions annexed to this Protocol relating to a participant has become a schedule to the General Agreement pursuant to the provisions of paragraph 1, such participant shall be free at any time to withhold or to withdraw in whole or in part the concession in such schedule with respect to any product for which the principal supplier is any other participant or any government having negotiated for accession during the multilateral trade negotiations, but the schedule of which, as established in the multilateral trade negotiations, has not yet become a schedule to the General Agreement. Such action can, however, only be taken after written notice of any such withholding or withdrawal of a concession has been given to the Contracting Parties and after consultations have been held, upon request, with any participant or any acceding government, the relevant schedule of tariff concessions relating to which has become a schedule to the General Agreement and which has a substantial interest in the product involved. Any concessions so withheld or withdrawn shall be applied as soon as possible and not later than the 30th day following the day on which the schedule of the participant or the

⁽¹⁾ The EEC list, annexed to this Supplementary Protocol, will be published in a subsequent issue of the *Official Journal of the European Communities*.
The lists of other countries, annexed to the Supplementary Protocol, may be consulted at the GATT Secretariat in Geneva.

acceding government which has the principal supplying interest becomes a schedule to the General Agreement.

4. (a) In each case in which Article II (1) (b) and (c) of the General Agreement refers to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in a schedule of tariff concessions annexed to this Protocol shall be the date of this Protocol, but without prejudice to any obligations in effect on that date.
- (b) For the purpose of the reference in Article II (6) (a) of the General Agreement to the date of that Agreement, the applicable date in respect of a schedule of tariff concessions annexed to this Protocol shall be the date of this Protocol.
5. (a) This Protocol shall be open for acceptance by participants, by signature or otherwise, until 30 June 1980.
- (b) This Protocol shall enter into force on 1 January 1980 for those participants which have accepted it on or before that date, and for participants accepting after that date, it shall enter into force on the dates of acceptance.
6. This Protocol shall be deposited with the Director-General to the Contracting Parties who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof, pursuant to paragraph 5, to each Contracting Party to the General Agreement and to the European Economic Community.
7. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twenty-second day of November, one thousand nine hundred and seventy-nine in a single copy, in the English and French languages, both texts being authentic. The schedules annexed hereto are authentic in the English, French and Spanish language as specified in each Schedule.

ARRANGEMENT REGARDING BOVINE MEAT

PREAMBLE

CONVINCED that increased international cooperation should be carried out in such a way as to contribute to the achievement of greater liberalization, stability and expansion in international trade in meat and live animals;

TAKING into account the need to avoid serious disturbances in international trade in bovine meat and live animals;

RECOGNIZING the importance of production and trade in bovine meat and live animals for the economies of many countries, especially for certain developed and developing countries;

MINDFUL of their obligations to the principles and objectives of the General Agreement on tariffs and trade (hereinafter referred to as 'General Agreement' or 'GATT') ⁽¹⁾;

DETERMINED, in carrying out the aims of this Arrangement to implement the principles and objectives agreed upon in the Tokyo Declaration of Ministers, dated 14 September 1973 concerning the multilateral trade negotiations, in particular as concerns special and more favourable treatment for developing countries;

THE PARTICIPANTS IN THE PRESENT ARRANGEMENT HAVE, through their representatives, AGREED AS FOLLOWS:

PART ONE

GENERAL PROVISIONS

Article I

Objectives

The objectives of this Arrangement shall be:

1. to promote the expansion, ever-greater liberalization and stability of the international meat and livestock market by facilitating the progressive dismantling of obstacles and restrictions to world trade in bovine meat and live animals, including those which compartmentalize this trade, and by improving the international framework of world trade to the benefit of both consumer and producer, importer and exporter;
2. to encourage greater international cooperation in all aspects affecting the trade in bovine meat and live animals with a view in particular to greater rationalization and more efficient distribution of resources in the international meat economy;

3. to secure additional benefits for the international trade of developing countries in bovine meat and live animals through an improvement in the possibilities for these countries to participate in the expansion of world trade in these products by means of *inter alia*:

- (a) promoting long-term stability of prices in the context of an expanding world market for bovine meat and live animals; and
- (b) promoting the maintenance and improvement of the earnings of developing countries that are exporters of bovine meat and live animals;

the above with a view thus to deriving additional earnings, by means of securing long-term stability of markets for bovine meat and live animals;

4. to further expand trade on a competitive basis taking into account the traditional position of efficient producers.

Article II

Product coverage

This Arrangement applies to bovine meat. For the purpose of this Arrangement, the term 'bovine meat' is considered to include:

⁽¹⁾ This provision applies only among GATT Contracting Parties.

	CCCN	
(a) Live bovine animals	01.02	
(b) Meat and edible offals of bovine animals, fresh, chilled or frozen	ex 02.01	
(c) Meat and edible offals of bovine animals, salted, in brine, dried or smoked	ex 02.06	
(d) Other prepared or preserved meat or offal of bovine animals	ex 16.02	

and any other product that may be added by the International Meat Council, as established under the terms of Article V of this Arrangement, in order to accomplish the objectives and provisions of this Arrangement.

Article III

Information and market monitoring

1. All participants agree to provide, regularly and promptly to the Council, the information which will permit the Council to monitor and assess the overall situation of the world market for meat and the situation of the world market for each specific meat.
2. Participating developing countries shall furnish the information available to them. In order that these countries may improve their data collection mechanisms, developed participants, and any developing participants able to do so, shall consider sympathetically any request to them for technical assistance.
3. The information that the participants undertake to provide pursuant to paragraph 1 of this Article, according to the modalities that the Council shall establish, shall include data on past performance and current situation and an assessment of the outlook regarding production (including the evolution of the composition of herds), consumption, prices, stocks of and trade in the products referred to in Article II, and any other information deemed necessary by the Council, in particular on competing products. Participants shall also provide information on their domestic policies and trade measures including bilateral and plurilateral commitments in the bovine sector, and shall notify as early as possible any changes in such policies and measures that are likely to affect international trade in live bovine animals and meat. The provisions of this paragraph shall not require any participant 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, public or private.

4. The secretariat of the Arrangement shall monitor variations in market data, in particular herd sizes, stocks, slaughterings and domestic and international prices, so as to permit early detection of the symptoms of any serious imbalance in the supply and demand situation. The secretariat shall keep the Council apprized of significant developments on world markets, as well as prospects for production, consumption, exports and imports.

Note:

It is understood that under the provisions of this Article, the Council instructs the secretariat to draw up, and keep up to date, an inventory of all measures affecting trade in bovine meat and live animals, including commitments resulting from bilateral, plurilateral and multilateral negotiations.

Article IV

Functions of the International Meat Council and cooperation between the participants to this Arrangement

1. The Council shall meet in order to:
 - (a) evaluate the world supply and demand situation and outlook on the basis of an interpretative analysis of the present situation and of probable developments drawn up by the secretariat of the Arrangement, on the basis of documentation provided in conformity with Article III of the present Arrangement, including that relating to the operation of domestic and trade policies and of any other information available to the secretariat;
 - (b) proceed to a comprehensive examination of the functioning of the present Arrangement;
 - (c) provide an opportunity for regular consultation on all matters affecting international trade in bovine meat.
2. If after evaluation of the world supply and demand situation referred to in paragraph 1 (a) of this Article; or after examination of all relevant information pursuant to Article III (3), the Council finds evidence of a serious imbalance or a threat thereof in the international meat market, the Council will proceed by consensus, taking into particular account the situation in developing countries, to identify, for consideration by governments, possible solutions to remedy the situation consistent with the principles and rules of GATT.
3. Depending on whether the Council considers that the situation defined in paragraph 2 of this Article is temporary or more durable, the measures referred to in paragraph 2 of this Article could include short-, medium-, or long-term measures taken by importers as well as exporters to contribute to improve the overall

situation of the world market consistent with the objectives and aims of the Arrangement, in particular the expansion, ever-greater liberalization, and stability of the international meat and livestock markets.

4. When considering the suggested measures pursuant to paragraphs 2 and 3 of this Article, due consideration shall be given to special and more favourable treatment to developing countries, where this is feasible and appropriate.

5. The participants undertake to contribute to the fullest possible extent to the implementation of the objectives of this Arrangement set forth in Article I. To this end, and consistent with the principles and rules of the General Agreement, participants shall, on a regular basis, enter into the discussions provided in Article IV (1) (c) with a view to exploring the possibilities of achieving the objectives of the present Arrangement, in particular the further dismantling of obstacles to world trade in bovine meat and live animals. Such discussions should prepare the way for subsequent consideration of possible solutions of trade problems consistent with the rules and principles of the GATT, which could be jointly accepted by all the parties concerned, in a balanced context of mutual advantages.

6. Any participant may raise before the Council any matter ⁽¹⁾ affecting this Arrangement *inter alia* for the same purposes provided for in paragraph 2 of this Article. The Council shall, at the request of a participant, meet within a period of not more than 15 days to consider any matter affecting the present Arrangement.

PART TWO

ADMINISTRATION OF THE ARRANGEMENT

Article V

1. International Meat Council

An International Meat Council shall be established within the framework of the GATT. The Council shall comprise representatives of all participants to the Arrangement and shall carry out all the functions which

⁽¹⁾ Note: It is confirmed that the term 'matter' in this paragraph includes any matter which is covered by Multilateral Agreements negotiated within the framework of the multilateral trade negotiations, in particular those bearing on export and import measures. It is further confirmed that the provisions of Article IV (6), and this footnote are without prejudice to the rights and obligations of the parties to such agreements.

are necessary to implement the provisions of the Arrangement. The Council shall be serviced by the GATT secretariat. The Council shall establish its own rules of procedure, in particular the modalities for consultations provided for in Article IV.

2. Regular and special meetings

The Council shall normally meet at least twice each year. However, the chairman may call a special meeting of the Council either on his own initiative, or at the request of a participant to this Arrangement.

3. Decisions

The Council shall reach its decisions by consensus. The Council shall be deemed to have decided on a matter submitted for its consideration if no member of the Council formally objects to the acceptance of a proposal.

4. Cooperation with other organizations

The Council shall make whatever arrangements are appropriate for consultation or cooperation with intergovernmental and non-governmental organizations.

5. Admission of observers

- (a) The Council may invite any non-participating country to be represented at any of its meetings as an observer.
- (b) The Council may also invite any of the organizations referred to in paragraph 4 of this Article to attend any of its meetings as an observer.

PART THREE

FINAL PROVISIONS

Article VI

1. Acceptance ⁽²⁾

- (a) This Arrangement is open for acceptance, by signature or otherwise, by governments members of

⁽²⁾ The terms 'acceptance' or 'accepted' as used in this Article include the completion of any domestic procedures necessary to implement the provisions of this Arrangement.

the United Nations, or of one of its specialized agencies and by the European Economic Community.

- (b) Any government ⁽¹⁾ accepting this Arrangement may at the time of acceptance make a reservation with regard to its acceptance of any of the provisions in the present Arrangement. This reservation is subject to the approval of the participants.
- (c) This Arrangement shall be deposited with the Director-General to the Contracting Parties to the GATT who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof to each participant. The texts of this Arrangement in the English, French and Spanish languages shall all be equally authentic.
- (d) The entry into force of this Arrangement shall entail the abolition of the International Meat Consultative Group.

2. Provisional application

Any government may deposit with the Director-General to the Contracting Parties to the GATT a declaration of provisional application of this Arrangement. Any government depositing such a declaration shall provisionally apply this Arrangement and be provisionally regarded as participating in this Arrangement.

3. Entry into force

This Arrangement shall enter into force, for those participants having accepted it, on 1 January 1980.

For participants accepting this Arrangement after that date, it shall be effective from the date of their acceptance.

4. Validity

This Arrangement shall remain in force for three years. The duration of this Arrangement shall be extended for further periods of three years at a time, unless the Council, at least 80 days prior to each date of expiry, decides otherwise.

5. Amendment

Except where provision for modification is made elsewhere in this Arrangement the Council may recommend an amendment to the provisions of this Arrangement. The proposed amendment shall enter into force upon acceptance by the governments of all participants.

6. Relationship between the Arrangement and the GATT

Nothing in this Arrangement shall affect the rights and obligations of participants under the GATT ⁽²⁾.

7. Withdrawal

Any participant may withdraw from this Arrangement. Such withdrawal shall take effect upon the expiration of 60 days from the date on which written notice of withdrawal is received by the Director-General to the Contracting Parties to the GATT.

⁽¹⁾ For the purpose of this Arrangement, the term 'government' is deemed to include the competent authorities of the European Economic Community.

⁽²⁾ This provision applies only among GATT Contracting Parties.

INTERNATIONAL DAIRY ARRANGEMENT

PREAMBLE

RECOGNIZING the importance of milk and dairy products to the economy of many countries ⁽¹⁾ in terms of production, trade and consumption;

RECOGNIZING the need, in the mutual interests of producers and consumers, and of exporters and importers, to avoid surpluses and shortages, and to maintain prices at an equitable level;

NOTING the diversity and interdependence of dairy products;

NOTING the situation in the dairy products market, which is characterized by very wide fluctuations and the proliferation of export and import measures;

CONSIDERING that improved cooperation in the dairy products sector contributes to the attainment of the objectives of expansion and liberalization of world trade, and the implementation of the principles and objectives concerning developing countries agreed upon in the Tokyo Declaration of Ministers dated 14 September 1973 concerning the multilateral trade negotiations;

DETERMINED to respect the principles and objectives of the General Agreement on tariffs and trade ⁽²⁾ (hereinafter referred to as 'General Agreement' or 'GATT') and, in carrying out the aims of this Arrangement, effectively to implement the principles and objectives agreed upon in the said Tokyo Declaration;

The participants to the present Arrangement have, through their representatives, agreed as follows:

⁽¹⁾ In this Arrangement and in the Protocols annexed thereto, the term 'country' is deemed to include the European Economic Community.
⁽²⁾ This preambular provision applies only among participants that are Contracting Parties to the GATT.

PART ONE		Article II	
GENERAL PROVISIONS		Product coverage	
Article I		1. This Arrangement applies to the dairy products sector. For the purpose of this Arrangement, the term 'dairy products' is deemed to include the following products, as defined in the Customs Cooperation Council Nomenclature:	
Objectives			
The objectives of this Arrangement shall be, in accordance with the principles and objectives agreed upon in the Tokyo Declaration of Ministers dated 14 September 1973 concerning the multilateral trade negotiations,			
— to achieve the expansion and ever-greater liberalization of world trade in dairy products under market conditions as stable as possible, on the basis of mutual benefit to exporting and importing countries;			
— to further the economic and social development of developing countries.			
		(b) Milk and cream, preserved, concentrated or sweetened	04.02
		(c) Butter	04.03
		(d) Cheese and curd	04.04
		(e) Casein	ex 35.01

2. The International Dairy Products Council established in terms of Article VII (1) (a) of this Arrangement (hereinafter referred to as the Council) may decide that the Arrangement is to apply to other products in which dairy products referred to in paragraph 1 of this Article have been incorporated if it deems their inclusion necessary for the implementation of the objectives and provisions of this Arrangement.

Article III

Information

1. The participants agree to provide regularly and promptly to the Council the information required to permit it to monitor and assess the overall situation of the world market for dairy products and the world market situation for each individual dairy product.

2. Participating developing countries shall furnish the information available to them. In order that these participants may improve their data collection mechanisms, developed participants, and any developing participants able to do so, shall consider sympathetically any request to them for technical assistance.

3. The information that the participants undertake to provide pursuant to paragraph 1 of this Article, according to the modalities that the Council shall establish, shall include data on past performance, current situation and outlook regarding production, consumption, prices, stocks and trade, including transactions other than normal commercial transactions, in respect of the products referred to in Article II of this Arrangement, and any other information deemed necessary by the Council. Participants shall also provide information on their domestic policies and trade measures, and on their bilateral, plurilateral or multilateral commitments, in the dairy sector and shall make known, as early as possible, any changes in such policies and measures that are likely to affect international trade in dairy products. The provisions of this paragraph shall not require any participant 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, public or private.

Note:

It is understood that under the provisions of this Article, the Council instructs the secretariat to draw up, and keep up to date, an inventory of all measures affecting trade in dairy products, including commitments resulting from bilateral, plurilateral and multilateral negotiations.

Article IV

Functions of the International Dairy Products Council and cooperation between the participants to this Arrangement

1. The Council shall meet in order to:

(a) make an evaluation of the situation in and outlook for the world market for dairy products, on the basis of a status report prepared by the secretariat with the documentation furnished by participants in accordance with Article III of this Arrangement, information arising from the operation of the Protocols covered by Article VI of this Arrangement, and any other information available to it;

(b) review the functioning of this Arrangement.

2. If, after an evaluation of the world market situation and outlook referred to in paragraph 1 (a) of this Article, the Council finds that a serious market disequilibrium, or threat of such a disequilibrium, which affects or may affect international trade, is developing for dairy products in general or for one or more products, the Council will proceed to identify, taking particular account of the situation of developing countries, possible solutions for consideration by governments.

3. Depending on whether the Council considers that the situation defined in paragraph 2 of this Article is temporary or more durable, the measures referred to in paragraph 2 of this Article could include short-, medium- or long-term measures to contribute to improve the overall situation of the world market.

4. When considering measures that could be taken pursuant to paragraphs 2 and 3 of this Article, due account shall be taken of the special and more favourable treatment, to be provided for developing countries, where this is feasible and appropriate.

5. Any participant may raise before the Council any matter ⁽¹⁾ affecting this Arrangement, *inter alia*, for the same purposes provided for in paragraph 2 of this Article. Each participant shall promptly afford adequate opportunity for consultation regarding such matter ⁽¹⁾ affecting this Arrangement.

6. If the matter affects the application of the specific provisions of the Protocols annexed to this

⁽¹⁾ It is confirmed that the term 'matter' in this paragraph includes any matter which is covered by multilateral agreements negotiated within the framework of the multilateral trade negotiations, in particular those bearing on export and import measures. It is further confirmed that the provisions of Article IV (5) and this footnote are without prejudice to the rights and obligations of the parties to such agreements.

Arrangement, any participant which considers that its trade interests are being seriously threatened and which is unable to reach a mutually satisfactory solution with the other participant or participants concerned, may request the chairman of the Committee for the relevant Protocol established under Article VII (2) (a) of this Arrangement, to convene a special meeting of the Committee on an urgent basis so as to determine as rapidly as possible, and within four working days if requested, any measures which may be required to meet the situation. If a satisfactory solution cannot be reached, the Council shall, at the request of the chairman of the Committee for the relevant Protocol, meet within a period of not more than 15 days to consider the matter with a view to facilitating a satisfactory solution.

Article V

Food aid and transactions other than normal commercial transactions

1. The participants agree:

- (a) In cooperation with FAO and other interested organizations, to foster recognition of the value of dairy products in improving nutritional levels and of ways and means through which they may be made available for the benefit of developing countries.
- (b) In accordance with the objectives of this Arrangement, to furnish, within the limits of their possibilities, dairy products to developing countries by way of food aid. Participants should notify the Council in advance each year, as far as practicable, of the scale, quantities and destinations of their proposed contributions of such food aid. Participants should also give, if possible, prior notification to the Council of any proposed amendments to the notified programme. It would be understood that contributions could be made bilaterally or through joint projects or through multilateral programmes, particularly the World Food Programme.
- (c) Recognizing the desirability of harmonizing their efforts in this field, as well as the need to avoid harmful interference with normal patterns of production, consumption and international trade, to exchange views in the Council on their arrangements for the supply and requirements of dairy products as food aid or on concessional terms.

2. Donated exports to developing countries, exports destined for relief purposes or welfare purposes in developing countries, and other transactions which are not normal commercial transactions shall be effected in

accordance with the FAO 'Principles of surplus disposal and consultative obligations'. Consequently, the Council shall cooperate closely with the Consultative Subcommittee on Surplus Disposal.

3. The Council shall, in accordance with conditions and modalities that it will establish, upon request, discuss, and consult on, all transactions other than normal commercial transactions and other than those covered by the Agreement on interpretation and application of Articles VI, XVI and XXIII of the General Agreement on tariffs and trade.

PART TWO

SPECIFIC PROVISIONS

Article VI

Protocols

1. Without prejudice to the provisions of Articles I to V of this Arrangement, the products listed below shall be subject to the provisions of the Protocols annexed to this Arrangement:

Annex I: *Protocol regarding certain milk powders*
Milk powder and cream powder,
excluding whey powder

Annex II: *Protocol regarding milk fat*
Milk fat

Annex III: *Protocol regarding certain cheeses*
Certain cheeses

PART THREE

ADMINISTRATION OF THE ARRANGEMENT

Article VII

1. International Dairy Products Council

- (a) An International Dairy Products Council shall be established within the framework of the GATT. The Council shall comprise representatives of all participants to the Arrangement and shall carry out all the functions which are necessary to implement the provisions of the Arrangement. The Council shall be serviced by the GATT secretariat. The Council shall establish its own rules of procedure.

(b) *Regular and special meetings*

The Council shall normally meet at least twice each year. However, the chairman may call a special meeting of the Council either on his own initiative, at the request of the Committees established under paragraph 2 (a) of this Article, or at the request of a participant to this Arrangement.

(c) *Decisions*

The Council shall reach its decisions by consensus. The Council shall be deemed to have decided on a matter submitted for its consideration if no member of the Council formally objects to the acceptance of a proposal.

(d) *Cooperation with other organizations*

The Council shall make whatever arrangements are appropriate for consultation or cooperation with intergovernmental and non-governmental organizations.

(e) *Admission of observers*

- (i) The Council may invite any non-participating country to be represented at any meeting as an observer.
- (ii) The Council may also invite any of the organizations referred to in paragraph 1 (d) of this Article to attend any meeting as an observer.

2. *Committees*

- (a) The Council shall establish a Committee to carry out all the functions which are necessary to implement the provisions of the Protocol regarding certain milk powders, a Committee to carry out all the functions which are necessary to implement the provisions of the Protocol regarding milk fat and a Committee to carry out all the functions which are necessary to implement the provisions of the Protocol regarding certain cheeses. Each of these Committees shall comprise representatives of all participants to the relevant Protocol. The Committees shall be serviced by the GATT secretariat. They shall report to the Council on the exercise of their functions.

(b) *Examination of the market situation*

The Council shall make the necessary arrangements, determining the modalities for the information to be furnished under Article III of this Arrangement, so that

- the Committee of the Protocol regarding certain milk powders may keep under constant review the situation in and the evolution of the international market for the products covered by this Protocol, and the conditions under which the provisions of this Protocol are applied by participants, taking into account the evolution of prices in international trade in each of the other dairy products having implications for the trade in products covered by this Protocol,
- the Committee of the Protocol regarding milk fat may keep under constant review the situation in and the evolution of the international market for the products covered by this Protocol, and the conditions under which the provisions of this Protocol are applied by participants, taking into account the evolution of prices in international trade in each of the other dairy products having implications for the trade in products covered by this Protocol,
- the Committee of the Protocol regarding certain cheeses may keep under constant review the situation in and the evolution of the international market for the products covered by this Protocol, and the conditions under which the provisions of this Protocol are applied by participants, taking into account the evolution of prices in international trade in each of the other dairy products having implications for the trade in products covered by this Protocol.

(c) *Regular and special meetings*

Each Committee shall normally meet at least once each quarter. However, the chairman of each Committee may call a special meeting of the Committee on his own initiative or at the request of any participant.

(d) *Decisions*

Each Committee shall reach its decisions by consensus. A Committee shall be deemed to have decided on a matter submitted for its consideration if no member of the Committee formally objects to the acceptance of a proposal.

PART FOUR

FINAL PROVISIONS

*Article VIII*1. Acceptance ⁽¹⁾

- (a) This Arrangement is open for acceptance, by signature or otherwise, by governments members of the United Nations, or of one of its specialized agencies and by the European Economic Community.
- (b) Any government ⁽²⁾ accepting this Arrangement may at the time of acceptance make a reservation with regard to its acceptance of any of the Protocols annexed to the Arrangement. This reservation is subject to the approval of the participants.
- (c) This Arrangement shall be deposited with the Director-General to the Contracting Parties to the GATT who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof to each participant. The texts of this Arrangement in the English, French and Spanish languages shall all be equally authentic.
- (d) Acceptance of this Arrangement shall carry denunciation of the Arrangement concerning certain dairy products, done at Geneva on 12 January 1970 which entered into force on 14 May 1970, for participants having accepted that Arrangement and denunciation of the Protocol relating to milk fat, done at Geneva on 2 April 1973 which entered into force on 14 May 1973, for participants having accepted that Protocol. Such denunciation shall take effect on the date of entry into force of this Arrangement.

2. Provisional application

Any government may deposit with the Director-General to the Contracting Parties to the GATT a declaration of provisional application of this Arrangement. Any government depositing such a declaration shall provisionally apply this Arrangement and be

⁽¹⁾ The terms 'acceptance' or 'accepted' as used in this Article include the completion of any domestic procedures necessary to implement the provisions of this Arrangement.

⁽²⁾ For the purpose of this Arrangement, the term 'government' is deemed to include the competent authorities of the European Economic Community.

provisionally regarded as participating in this Arrangement.

3. Entry into force

- (a) This Arrangement shall enter into force, for those participants having accepted it, on 1 January 1980. For participants accepting this Arrangement after that date, it shall be effective from the date of their acceptance.
- (b) The validity of contracts entered into before the date of entry into force of this Arrangement is not affected by this Arrangement.

4. Validity

This Arrangement shall remain in force for three years. The duration of this Arrangement shall be extended for further periods of three years at a time, unless the Council, at least 80 days prior to each date of expiry, decides otherwise.

5. Amendment

Except where provision for modification is made elsewhere in this Arrangement the Council may recommend an amendment to the provisions of this Arrangement. The proposed amendment shall enter into force upon acceptance by the governments of all participants.

6. Relationship between the Arrangement and the Annexes

The following shall be deemed to be an integral part of this Arrangement, subject to the provisions of paragraph 1 (b) of this Article:

- the Protocols mentioned in Article VI of this Arrangement and contained in its Annexes I, II and III,
- the lists of reference points mentioned in Article 2 of the Protocol regarding certain milk powders, Article 2 of the Protocol regarding milk fat, and Article 2 of the Protocol regarding certain cheeses, contained in Annexes Ia, IIa and IIIa respectively,
- the schedules of price differentials according to milk fat content mentioned in Article 3 (4), note 3 of the Protocol regarding certain milk powders and

Article 3 (4), note 1, of the Protocol regarding milk fat, contained in Annexes Ib and IIb respectively,

- the register of processes and control measures referred to in Article 3 (5) of the Protocol regarding certain milk powders, contained in Annex Ic.

7. Relationship between the Arrangement and the GATT

Nothing in this Arrangement shall affect the rights and obligations of participants under the General Agreement on Tariffs and Trade ⁽¹⁾.

8. Withdrawal

- (a) Any participant may withdraw from this Arrangement. Such withdrawal shall take effect upon the expiration of 60 days from the day on which written notice of withdrawal is received by the Director-General to the Contracting Parties to the GATT.
- (b) Subject to such conditions as may be agreed upon by the participants, any participant may withdraw from any of the Protocols annexed to this Arrangement. Such withdrawal shall take effect upon the expiration of 60 days from the day on which written notice of withdrawal is received by the Director-General to the Contracting Parties to the GATT.

⁽¹⁾ This provision applies only among participants that are Contracting Parties to the GATT.

ANNEX I

PROTOCOL REGARDING CERTAIN MILK POWDERS

PART ONE

Article 1

Product coverage

This Protocol applies to milk powder and cream powder falling under CCCN heading No 04.02, excluding whey powder.

By derogation from this provision, reference points are designated for the countries listed in Annex Ia. The Committee established in pursuance of Article VII (2) (a) of the Arrangement (hereinafter referred to as 'the Committee') may amend the contents of that Annex.

Prompt payment against documents.

PART TWO

Article 2

Pilot products

1. For the purpose of this Protocol, minimum export prices shall be established for the pilot products of the following descriptions:

- (a) Designation: *Skimmed-milk powder*
 Milk fat content: Less than or equal to 1.5 % by weight
 Water content: Less than or equal to 5 % by weight
- (b) Designation: *Whole milk powder*
 Milk fat content: 26 % by weight
 Water content: Less than or equal to 5 % by weight
- (c) Designation: *Buttermilk powder* ⁽¹⁾
 Milk fat content: Less than or equal to 11 % by weight
 Water content: Less than or equal to 5 % by weight
- Packaging: In packages normally used in the trade, of a net content by weight of not less than 25 kg, or 50 lbs, as appropriate
- Terms of sale: Fob ocean-going vessels from the exporting country or free-at-frontier exporting country.

Article 3

Minimum prices

Level and observance of minimum prices

1. Participants undertake to take the steps necessary to ensure that the export prices of the products defined in Article 2 of this Protocol shall not be less than the minimum prices applicable under the present Protocol. If the products are exported in the form of goods in which they have been incorporated, participants shall take the steps necessary to avoid the circumvention of the price provisions of this Protocol.

2. (a) The minimum price levels set out in the present Article take account, in particular, of the current market situation, dairy prices in producing participants, the need to ensure an appropriate relationship between the minimum prices established in the Protocols to the present Arrangement, the need to ensure equitable prices to consumers, and the desirability of maintaining a minimum return to the most efficient producers in order to ensure stability of supply over the longer term.

(b) The minimum prices provided for in paragraph 1 of the present Article applicable at the date of entry into force of this Protocol are fixed at:

(i) US\$ 425 per tonne for the skimmed-milk powder defined in Article 2 of this Protocol;

(ii) US\$ 725 per tonne for the whole milk powder defined in Article 2 of this Protocol;

⁽¹⁾ Derived from the manufacture of butter and anhydrous milk fat.

(iii) US\$ 425 per tonne for the buttermilk powder defined in Article 2 of this Protocol.

3. (a) The levels of the minimum prices specified in the present Article can be modified by the Committee, taking into account, on the one hand, the results of the operation of the Protocol and, on the other hand, the evolution of the situation of the international market.

(b) The levels of the minimum prices specified in the present Article shall be subject to review at least once a year by the Committee. The Committee shall meet in September of each year for this purpose. In undertaking this review the Committee shall take account in particular, to the extent relevant and necessary, of costs faced by producers, other relevant economic factors of the world market, the need to maintain a long-term minimum return to the most economic producers, the need to maintain stability of supply and to ensure acceptable prices to consumers, and the current market situation and shall have regard to the desirability of improving the relationship between the levels of the minimum prices set out in paragraph 2 (b) of the present Article and the dairy support levels in the major producing participants.

Adjustment of minimum prices

4. If the products actually exported differ from the pilot products in respect of the fat content, packaging or terms of sale, the minimum prices shall be adjusted so as to protect the minimum prices established in this Protocol for the products specified in Article 2 of this Protocol according to the following provisions:

— Milk fat content:

If the milk fat content of the milk powders described in Article 1 of the present Protocol excluding buttermilk powder⁽¹⁾ differs from the milk fat content of the pilot products as defined in Article 2 (1) (a) and (b) of the present Protocol, then for each full percentage point of milk fat as from 2 %, there shall be an upward adjustment of the minimum prices in proportion to the difference between the minimum prices established for the pilot products defined in Article 2 (1) (a) and (b) of the present Protocol⁽²⁾.

⁽¹⁾ As defined in Article 2 (1) (c) of this Protocol.

⁽²⁾ See Annex Ib, 'Schedule of price differentials according to milk fat content'.

— Packaging:

If the products are offered otherwise than in packages normally used in the trade, of a net content by weight of not less than 25 kg or 50 lbs, as appropriate, the minimum prices shall be adjusted so as to reflect the difference in the cost of packaging from the type of package specified above.

— Terms of sale:

If sold on terms other than fob from the exporting country or free-at-frontier exporting country⁽³⁾, the minimum prices shall be calculated on the basis of the minimum fob prices specified in paragraph 2 (b) of this Article, plus the real and justified costs of the services provided; if the terms of the sale include credit, this shall be charged for at the prevailing commercial rates in the country concerned.

Exports and imports of skimmed-milk powder and buttermilk powder for purposes of animal feed

5. By derogation from the provisions of paragraphs 1 to 4 of this Article participants may, under the conditions defined below, export or import, as the case may be, skimmed-milk powder and buttermilk powder for purposes of animal feed at prices below the minimum prices provided for in this Protocol for these products. Participants may make use of this possibility only to the extent that they subject the products exported or imported to the processes and control measures which will be applied in the country of export or destination so as to ensure that the skimmed-milk powder and buttermilk powder thus exported or imported are used exclusively for animal feed. These processes and control measures shall have been approved by the Committee and recorded in a register established by it⁽⁴⁾. Participants wishing to make use of the provisions of this paragraph shall give advance notification of their intention to do so to the Committee which shall meet, at the request of a participant, to examine the market situation. The participants shall furnish the necessary information concerning their transactions in respect of skimmed-milk powder and

⁽³⁾ See Article 2.

⁽⁴⁾ See Annex Ic, 'Register of Processes and Control Measures'. It is understood that exporters would be permitted to ship skimmed-milk powder and buttermilk powder for animal feed purposes in an unaltered state to importers which have had their processes and control measures inserted in the Register. In this case, exporters would inform the Committee of their intention to ship unaltered skimmed-milk powder and/or buttermilk powder for animal feed purposes to those importers which have their processes and control measures registered.

buttermilk powder for purposes of animal feed, so that the Committee may follow developments in this sector and periodically make forecasts concerning the evolution of this trade.

Special conditions of sales

6. Participants undertake within the limit of their institutional possibilities to ensure that practices such as those referred to in Article 4 of this Protocol do not have the effect of directly or indirectly bringing the export prices of the products subject to the minimum price provisions below the agreed minimum prices.

Field of application

7. For each participant, this Protocol is applicable to exports of the products specified in Article 1 of this Protocol manufactured or repacked inside its own customs territory.

Transactions other than normal commercial transactions

8. The provisions of paragraphs 1 to 7 of this Article shall not be regarded as applying to donated exports to developing countries or to exports destined for relief purposes or food-related development purposes or welfare purposes in developing countries.

Article 4

Provision of information

In cases where prices in international trade of the products covered by Article 1 of this Protocol are approaching the minimum prices mentioned in Article 3 (2) (b) of this Protocol, and without prejudice to the provisions of Article III of the Arrangement, participants shall notify to the Committee all the relevant elements for evaluating their own market situation and, in particular, credit or loan practices, twinning with other products, barter or three-sided transactions, refunds or rebates, exclusivity contracts, packaging costs and details of the packaging, so that the Committee can make a verification.

Article 5

Obligations of exporting participants

Exporting participants agree to use their best endeavours, in accordance with their institutional possibilities, to supply on a priority basis the normal commercial requirements of developing importing

participants, especially those used for food-related development purposes and welfare purposes.

Article 6

Cooperation of importing participants

1. Participants which import products covered by Article 1 of this Protocol undertake in particular:

- (a) to cooperate in implementing the minimum prices objective of this Protocol and to ensure, as far as possible, that the products covered by Article 1 of this Protocol are not imported at less than the appropriate customs valuation equivalent to the prescribed minimum prices;
- (b) without prejudice to the provisions of Article III of the Arrangement and Article 4 of this Protocol, to supply information concerning imports of products covered by Article 1 of this Protocol from non-participants;
- (c) to consider sympathetically proposals for appropriate remedial action if imports at prices inconsistent with the minimum prices threaten the operation of this Protocol.

2. Paragraph 1 of this Article shall not apply to imports of skimmed-milk powder and buttermilk powder for purposes of animal feed, provided that such imports are subject to the measures and procedures provided for in Article 3 (5) of this Protocol.

PART THREE

Article 7

Derogations

Upon request by a participant, the Committee shall have the authority to grant derogations from the provisions of Article 3 (1) to (5) of this Protocol in order to remedy difficulties which observance of minimum prices could cause certain participants. The Committee shall pronounce on such a request within three months from the date of the request.

Article 8

Emergency action

Any participant, which considers that its interests are seriously endangered by a country not bound by this Protocol, can request the chairman of the Committee to

convene an emergency meeting of the Committee within two working days to determine and decide whether measures would be required to meet the situation. If such a meeting cannot be arranged within the two working days and the commercial interests of the participant concerned are likely to be materially prejudiced, that participant may take unilateral action

to safeguard its position, on the condition that any other participants likely to be affected are immediately notified. The chairman of the Committee shall also be formally advised immediately of the full circumstances of the case and shall be requested to call a special meeting of the Committee at the earliest possible moment.

ANNEX Ia

List of reference points

In accordance with the provisions of Article 2 of this Protocol, the following reference points are designated for the countries listed below:

<i>Austria:</i>	Antwerp, Hamburg, Rotterdam
<i>Finland:</i>	Antwerp, Hamburg, Rotterdam
<i>Norway:</i>	Antwerp, Hamburg, Rotterdam
<i>Sweden:</i>	Antwerp, Hamburg, Rotterdam
<i>Poland:</i>	Antwerp, Hamburg, Rotterdam

ANNEX Ib

Schedule of price differentials according to milk fat content

Milk fat content %	Minimum price US\$/tonne
Less than 2	425
Equal to or more than 2, less than 3	437
Equal to or more than 3, less than 4	449
Equal to or more than 4, less than 5	461
Equal to or more than 5, less than 6	473
Equal to or more than 6, less than 7	485
Equal to or more than 7, less than 8	497
Equal to or more than 8, less than 9	509
Equal to or more than 9, less than 10	521
Equal to or more than 10, less than 11	533
Equal to or more than 11, less than 12	545
Equal to or more than 12, less than 13	557
Equal to or more than 13, less than 14	569
Equal to or more than 14, less than 15	581
Equal to or more than 15, less than 16	593
Equal to or more than 16, less than 17	605
Equal to or more than 17, less than 18	617
Equal to or more than 18, less than 19	629
Equal to or more than 19, less than 20	641
Equal to or more than 20, less than 21	653

Milk fat content %	Minimum price US\$/tonne
Equal to or more than 21, less than 22	665
Equal to or more than 22, less than 23	677
Equal to or more than 23, less than 24	689
Equal to or more than 24, less than 25	701
Equal to or more than 25, less than 26	713
Equal to or more than 26, less than 27	725
Equal to or more than 27, less than 28	737
Equal to or more than .. less than ..	...

*ANNEX Ic***Register of processes and control measures**

In accordance with the provisions of Article 3 (5) of this Protocol, the following processes and control measures ⁽¹⁾ are approved for the participants listed below:

Australia
Austria
Canada
European Economic Community
Finland
Japan
New Zealand
Norway
Spain
Switzerland

⁽¹⁾ The processes and control measures are not included here. They may be consulted in the certified text of the International Dairy Arrangement which is available in the General Secretariat of the Council of the European Communities.

ANNEX II

PROTOCOL REGARDING MILK FAT

PART ONE

Article 3

Article 1

Minimum prices

Product coverage

Level and observance of minimum prices

1. This Protocol applies to milk fat falling under CCCN heading No 04.03, having a milk fat content equal to or greater than 50 % by weight.

1. Participants undertake to take the steps necessary to ensure that the export prices of the products defined in Article 2 of this Protocol shall not be less than the minimum prices applicable under the present Protocol. If the products are exported in the form of goods in which they have been incorporated, participants shall take the steps necessary to avoid the circumvention of the price provisions of this Protocol.

PART TWO

Article 2

Pilot products

For the purpose of this Protocol, minimum export prices shall be established for the pilot products of the following descriptions:

(a) Designation: *Anhydrous milk fat*
Milk fat content: 99.5 % by weight;

(b) Designation: *Butter*
Milk fat content: 80 % by weight;

Packaging: In packages normally used in the trade, of a net content by weight of not less than 25 kg or 50 lbs as appropriate.

Terms of sale: Fob from the exporting country or free-at-frontier exporting country.

By derogation from this provision reference points are designated for the countries listed in Annex IIa. The Committee established in pursuance of Article VII (2) (a) of the Arrangement (hereinafter referred to as the Committee) may amend the contents of that Annex.

Prompt payment against documents.

2. (a) The minimum price levels set out in the present Article take account, in particular, of the current market situation, dairy prices in producing participants, the need to ensure an appropriate relationship between the minimum prices established in the Protocols to the present Arrangement, the need to ensure equitable prices to consumers, and the desirability of maintaining a minimum return to the most efficient producers in order to ensure stability of supply over the longer term.

(b) The minimum prices provided for in paragraph 1 of the present Article applicable at the date of entry into force of this Protocol are fixed at:

(i) US\$ 1 100 per tonne for the anhydrous milk fat defined in Article 2 of this Protocol.

(ii) US\$ 925 per tonne for the butter defined in Article 2 of this Protocol.

3. (a) The levels of the minimum prices specified in the present Article can be modified by the Committee, taking into account, on the one hand, the results of the operation of the Protocol and, on the other hand, the evolution of the situation of the international market.

(b) The levels of the minimum prices specified in the present Article shall be subject to review at least once a year by the Committee. The Committee shall meet in September of each year for this purpose. In undertaking this review the Committee shall take account in particular, to

the extent relevant and necessary, of costs faced by producers, other relevant economic factors of the world market, the need to maintain a long-term minimum return to the most economic producers, the need to maintain stability of supply and to ensure acceptable prices to consumers, and the current market situation and shall have regard to the desirability of improving the relationship between the levels of the minimum prices set out in paragraph 2 (b) of the present Article and the dairy support levels in the major producing participants.

Adjustment of minimum prices

4. If the products actually exported differ from the pilot products in respect of the fat content, packaging or terms of sale, the minimum prices shall be adjusted so as to protect the minimum prices established in this Protocol for the products specified in Article 2 of this Protocol according to the following provisions:

— Milk fat content:

If the milk fat content of the product defined in Article 1 of the present Protocol differs from the milk fat content of the pilot products as defined in Article 2 of the present Protocol then, if the milk fat content is equal to or greater than 82 % or less than 80 %, the minimum price of this product shall be, for each full percentage point by which the milk fat content is more than or less than 80 %, increased or reduced in proportion to the difference between the minimum prices established for the pilot products defined in Article 2 of the present Protocol ⁽¹⁾.

— Packaging:

If the products are offered otherwise than in packages normally used in the trade, of a net content by weight of not less than 25 kg or 50 lbs, as appropriate, the minimum prices shall be adjusted so as to reflect the difference in the cost of packaging from the type of package specified above.

— Terms of sale:

If sold on terms other than fob from the exporting country or free-at-frontier exporting country ⁽²⁾, the minimum prices shall be calculated on the basis of

the minimum fob prices specified in paragraph 2 (b) of this Article, plus the real and justified costs of the services provided; if the terms of the sale include credit, this shall be charged for at the prevailing commercial rates in the country concerned.

Special conditions of sales

5. Participants undertake within the limit of their institutional possibilities to ensure that practices such as those referred to in Article 4 of this Protocol do not have the effect of directly or indirectly bringing the export prices of the products subject to the minimum price provisions below the agreed minimum prices.

Field of application

6. For each participant, this Protocol is applicable to exports of the products specified in Article 1 of this Protocol manufactured or repacked inside its own customs territory.

Transactions other than normal commercial transactions

7. The provisions of paragraphs 1 to 6 of this Article shall not be regarded as applying to donated exports to developing countries or to exports destined for relief purposes or food-related development purposes or welfare purposes in developing countries.

Article 4

Provision of information

In cases where prices in international trade of the products covered by Article 1 of this Protocol are approaching the minimum prices mentioned in Article 3 (2) (b) of this Protocol, and without prejudice to the provisions of Article III of the Arrangement, participants shall notify to the Committee all the relevant elements for evaluating their own market situation and, in particular, credit or loan practices, twinning with other products, barter or three-sided transactions, refunds or rebates, exclusivity contracts, packaging costs and details of the packaging, so that the Committee can make a verification.

Article 5

Obligations of exporting participants

Exporting participants agree to use their best endeavours, in accordance with their institutional

⁽¹⁾ See Annex IIb, 'Schedule of price differentials according to milk fat content'.

⁽²⁾ See Article 2.

possibilities, to supply on a priority basis the normal commercial requirements of developing importing participants, especially those used for food-related development purposes and welfare purposes.

Article 6

Cooperation of importing participants

Participants which import products covered by Article 1 of this Protocol undertake in particular:

- (a) to cooperate in implementing the minimum prices objective of this Protocol and to ensure, as far as possible, that the products covered by Article 1 of this Protocol are not imported at less than the appropriate customs valuation equivalent to the prescribed minimum prices;
- (b) without prejudice to the provisions of Article III of the Arrangement and Article 4 of this Protocol, to supply information concerning imports of products covered by Article 1 of this Protocol from non-participants;
- (c) to consider sympathetically proposals for appropriate remedial action if imports at prices inconsistent with the minimum prices threaten the operation of this Protocol.

PART THREE

Article 7

Derogations

Upon request by a participant, the Committee shall have the authority to grant derogations from the provisions of Article 3 (1) to (4) of this Protocol in order to remedy difficulties which observance of minimum prices could cause certain participants. The Committee shall pronounce on such a request within three months from the date of the request.

Article 8

Emergency action

Any participant, which considers that its interests are seriously endangered by a country not bound by this Protocol, can request the chairman of the Committee to convene an emergency meeting of the Committee within two working days to determine and decide whether measures would be required to meet the situation. If such a meeting cannot be arranged within the two working days and the commercial interests of the participant concerned are likely to be materially prejudiced, that participant may take unilateral action to safeguard its position, on the condition that any other participants likely to be affected are immediately notified. The chairman of the Committee shall also be formally advised immediately of the full circumstances of the case and shall be requested to call a special meeting of the Committee at the earliest possible moment.

ANNEX IIa

List of reference points

In accordance with the provisions of Article 2 of this Protocol, the following reference points are designated for the countries listed below:

<i>Austria:</i>	Antwerp, Hamburg, Rotterdam
<i>Finland:</i>	Antwerp, Hamburg, Rotterdam Basle: for butter exports to Switzerland
<i>Norway:</i>	Antwerp, Hamburg, Rotterdam
<i>Sweden:</i>	Antwerp, Hamburg, Rotterdam Basle: for butter exports to Switzerland

ANNEX IIb

Schedule of price differentials according to milk fat content

Milk fat content %	Minimum price US\$/tonne
Equal to or more than .. less than ..	..
Equal to or more than .. less than ..	..
Equal to or more than 79, less than 80	916.25
Equal to or more than 80, less than 82	925
Equal to or more than 82, less than 83	942.50
Equal to or more than 83, less than 84	951.25
Equal to or more than 84, less than 85	960
Equal to or more than 85, less than 86	968.75
Equal to or more than 86, less than 87	977.50
Equal to or more than 87, less than 88	986.25
Equal to or more than 88, less than 89	995
Equal to or more than 89, less than 90	1 003.75
Equal to or more than 90, less than 91	1 012.50
Equal to or more than 91, less than 92	1 021.25
Equal to or more than 92, less than 93	1 030
Equal to or more than 93, less than 94	1 038.75
Equal to or more than 94, less than 95	1 047.50
Equal to or more than 95, less than 96	1 056.25
Equal to or more than 96, less than 97	1 065
Equal to or more than 97, less than 98	1 073.75
Equal to or more than 98, less than 99	1 082.50
Equal to or more than 99, less than 99.5	1 091.25
Equal to or more than 99.5	1 100

ANNEX III

PROTOCOL REGARDING CERTAIN CHEESES

PART ONE

*Article 1***Product coverage**

This Protocol applies to cheeses falling under CCCN heading No 04.04, having a fat content in dry matter, by weight, equal to or more than 45 % and a dry matter content, by weight, equal to or more than 50 %.

PART TWO

*Article 2***Pilot product**

1. For the purpose of this Protocol, a minimum export price shall be established for the pilot product of the following description:

- Designation: Cheese.
- Packaging: In packages normally used in the trade of a net content by weight of not less than 20 kg or 40 lbs, as appropriate.
- Terms of sale: Fob from the exporting country or free-at-frontier exporting country.

By derogation from this provision, reference points are designated for the countries listed in Annex IIIa. The Committee established in pursuance of Article VII (2) (a) of the Arrangement (hereinafter referred to as the Committee) may amend the contents of that Annex.

Prompt payment against documents.

*Article 3***Minimum price***Level and observance of minimum price*

1. Participants undertake to take the steps necessary to ensure that the export prices of the products defined in

Articles 1 and 2 of this Protocol shall not be less than the minimum price applicable under the present Protocol. If the products are exported in the form of goods in which they have been incorporated, participants shall take the steps necessary to avoid the circumvention of the price provisions of this Protocol.

2. (a) The minimum price level set out in the present Article takes account, in particular, of the current market situation, dairy prices in producing participants, the need to ensure an appropriate relationship between the minimum prices established in the Protocols to the present Arrangement, the need to ensure equitable prices to consumers, and the desirability of maintaining a minimum return to the most efficient producers in order to ensure stability of supply over the longer term.

(b) The minimum price provided for in paragraph 1 of the present Article applicable at the date of entry into force of this Protocol is fixed at US\$ 800 per tonne.

3. (a) The level of the minimum price specified in the present Article can be modified by the Committee, taking into account, on the one hand the results of the operation of the Protocol and, on the other hand, the evolution of the situation of the international market.

(b) The level of the minimum price specified in the present Article shall be subject to review at least once a year by the Committee. The Committee shall meet in September of each year for this purpose. In undertaking this review the Committee shall take account in particular, to the extent relevant and necessary, of costs faced by producers, other relevant economic factors of the world market, the need to maintain stability of supply and to ensure acceptable prices to consumers, and the current market situation and shall have regard to the desirability of improving the relationship between the level of the minimum price set out in paragraph 2 (b) of the present Article and the dairy support levels in the major producing participants.

Adjustment of minimum price

4. If the products actually exported differ from the pilot product in respect of the packaging or terms of sale, the minimum price shall be adjusted so as to protect the minimum price established in this Protocol, according to the following provisions:

— Packaging:

If the products are offered otherwise than in packages as specified in Article 2, the minimum price shall be adjusted so as to reflect the difference in the cost of packaging from the type of package specified above.

— Terms of sale:

If sold on terms other than fob from the exporting country or free-at-frontier exporting country ⁽¹⁾, the minimum price shall be calculated on the basis of the minimum fob price specified in paragraph 2 (b) of this Article, plus the real and justified costs of the services provided; if the terms of the sale include credit, this shall be charged for at the prevailing commercial rates in the country concerned.

Special conditions of sale

5. Participants undertake within the limit of their institutional possibilities to ensure that practices such as those referred to in Article 4 of this Protocol do not have the effect of directly or indirectly bringing the export prices of the products subject to the minimum price provisions below the agreed minimum price.

Field of application

6. For each participant, this Protocol is applicable to exports of the products specified in Article 1 of this Protocol manufactured or repacked inside its own customs territory.

Transactions other than normal commercial transactions

7. The provisions of paragraphs 1 to 6 of this Article shall not be regarded as applying to donated exports to developing countries or to exports destined for relief purposes or food-related development purposes or welfare purposes in developing countries.

⁽¹⁾ See Article 2.

*Article 4***Provisions of information**

In cases where prices in international trade of the products covered by Article 1 of this Protocol are approaching the minimum price mentioned in Article 3 (2) (b) of this Protocol and without prejudice to the provisions of Article III of the Arrangement, participants shall notify to the Committee all the relevant elements for evaluating their own market situation and, in particular, credit or loan practices, twinning with other products, barter or three-sided transactions, refunds or rebates, exclusivity contracts, packaging costs and details of the packaging, so that the Committee can make a verification.

*Article 5***Obligations of exporting participants**

Exporting participants agree to use their best endeavours, in accordance with their institutional possibilities, to supply on a priority basis the normal commercial requirements of developing importing participants, especially those used for food-related development purposes and welfare purposes.

*Article 6***Cooperation of importing participants**

Participants which import products covered by Article 1 of this Protocol undertake in particular:

- (a) to cooperate in implementing the minimum price objective of this Protocol and to ensure, as far as possible, that the products covered by Article 1 of this Protocol are not imported at less than the appropriate customs valuation equivalent to the prescribed minimum price;
- (b) without prejudice to the provisions of Article III of the Arrangement and Article 4 of this Protocol, to supply information concerning imports of products covered by Article 1 of this Protocol from non-participants;
- (c) to consider sympathetically proposals for appropriate remedial action if imports at prices inconsistent with the minimum price threaten the operation of this Protocol.

PART THREE

specifying in respect of each transaction, the quantities, prices and destinations involved.

*Article 7**Article 8***Derogations****Emergency action**

1. Upon request by a participant, the Committee shall have the authority to grant derogations from the provisions of Article 3 (1) to (4) of this Protocol in order to remedy difficulties which observance of minimum prices could cause certain participants. The Committee shall pronounce on such a request within 30 days from the date of the request.

2. The provisions of Article 3 (1) to (4) shall not apply to exports, in exceptional circumstances, of small quantities of natural unprocessed cheese which would be below normal export quality as a result of deterioration or production faults. Participants exporting such cheese shall notify the GATT secretariat in advance of their intention to do so. Participants shall also notify the Committee quarterly of all sales of cheese effected under the provisions of this paragraph,

Any participant, which considers that its interests are seriously endangered by a country not bound by this Protocol, can request the chairman of the Committee to convene an emergency meeting of the Committee within two working days to determine and decide whether measures would be required to meet the situation. If such a meeting cannot be arranged within the two working days and the commercial interests of the participant concerned are likely to be materially prejudiced, that participant may take unilateral action to safeguard its position, on the condition that any other participants likely to be affected are immediately notified. The chairman of the Committee shall also be formerly advised immediately of the full circumstances of the case and shall be requested to call a special meeting of the Committee at the earliest possible moment.

*ANNEX IIIa***List of reference points**

In accordance with the provisions of Article 2 of this Protocol, the following reference points are designated for the countries listed below:

<i>Austria:</i>	Antwerp, Hamburg, Rotterdam
<i>Finland:</i>	Antwerp, Hamburg, Rotterdam
<i>Norway:</i>	Antwerp, Hamburg, Rotterdam
<i>Sweden:</i>	Antwerp, Hamburg, Rotterdam
<i>Poland:</i>	Antwerp, Hamburg, Rotterdam

AGREEMENT ON TECHNICAL BARRIERS TO TRADE

PREAMBLE

HAVING REGARD to the multilateral trade negotiations, the Parties to the Agreement on Technical Barriers to trade (hereinafter referred to as 'Parties' and 'this Agreement');

DESIRING to further the objectives of the General Agreement on tariffs and trade (hereinafter referred to as 'General Agreement' or 'GATT');

RECOGNIZING the important contribution that international standards and certification systems can make in this regard by improving efficiency of production and facilitating the conduct of international trade;

DESIRING therefore to encourage the development of such international standards and certification systems;

DESIRING however to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and methods for certifying conformity with technical regulations and standards do not create unnecessary obstacles to international trade;

RECOGNIZING that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade;

RECOGNIZING that no country should be prevented from taking measures necessary for the protection of its essential security interest;

RECOGNIZING the contribution which international standardization can make to the transfer of technology from developed to developing countries;

RECOGNIZING that developing countries may encounter special difficulties in the formulation and application of technical regulations and standards and methods for certifying conformity with technical regulations and standards, and desiring to assist them in their endeavours in this regard;

HEREBY AGREE AS FOLLOWS:

Article 1

General provisions

1.1. General terms for standardization and certification shall normally have the meaning given to them by definitions adopted within the United Nations system and by international standardizing bodies taking into account their context and in the light of the object and purpose of this Agreement.

1.2. However, for the purposes of this Agreement the meaning of the terms given in Annex 1 applies.

1.3. All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.

1.4. Purchasing specifications prepared by governmental bodies for production or consumption require-

ments of governmental bodies are not subject to the provisions of this Agreement but are addressed in the Agreement on Government Procurement, according to its coverage.

1.5. All references in this Agreement to technical regulations, standards, methods for assuring conformity with technical regulations or standards and certification systems shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

TECHNICAL REGULATIONS AND STANDARDS

Article 2

Preparation, adoption and application of technical regulations and standards by central government bodies

With respect to their central government bodies:

2.1. Parties shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade. Furthermore, products imported from the territory of any Party shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country in relation to such technical regulations or standards. They shall likewise ensure that neither technical regulations nor standards themselves nor their application have the effect of creating unnecessary obstacles to international trade.

2.2. Where technical regulations or standards are required and relevant international standards exist or their completion is imminent, Parties shall use them, or the relevant parts of them, as a basis for the technical regulations or standards except where, as duly explained upon request, such international standards or relevant parts are inappropriate for the Parties concerned, for *inter alia* such reasons as national security requirements; the prevention of deceptive practices; protection for human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological problems.

2.3. With a view to harmonizing technical regulations or standards on as wide a basis as possible, Parties shall play a full part within the limits of their resources in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations or standards.

2.4. Wherever appropriate, Parties shall specify technical regulations and standards in terms of performance rather than design or descriptive characteristics.

2.5. Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation or standard is not substantially the same as the technical content of relevant international standards, and if the technical regulation or standard may have a significant effect on trade of other Parties, Parties shall:

2.5.1. publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that they propose to introduce a particular technical regulation or standard;

2.5.2. notify other Parties through the GATT secretariat of the products to be covered by technical regulations together with a brief indication of the objective and rationale of proposed technical regulations;

2.5.3. upon request, provide without discrimination, to other Parties in regard to technical regulations and to interested parties in other Parties in regard to standards, particulars or copies of the proposed technical regulation or standard and, whenever possible, identify the parts which in substance deviate from relevant international standards;

2.5.4. in regard to technical regulations allow, without discrimination, reasonable time for other Parties to make comments in writing, discuss these comments upon request, and take these written comments and results of these discussions into account;

2.5.5. in regard to standards, allow reasonable time for interested parties in other Parties to make comments in writing, discuss these comments upon request with other Parties and take these written comments and the results of these discussions into account.

2.6. Subject to the provisions in the heading of Article 2 (5), where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may omit such of the steps enumerated in Article 2 (5) as it finds necessary provided that the Party, upon adoption of a technical regulation or standard, shall:

2.6.1. notify immediately other Parties through the GATT secretariat of the particular technical regulation, the products covered, with a brief indication of the objective and the rationale of the technical regulation, including the nature of the urgent problems;

2.6.2. upon request provide, without discrimination other Parties with copies of the technical regulation and interested parties in other Parties with copies of the standard;

2.6.3. allow, without discrimination, other Parties with respect to technical regulations and interested parties in other Parties with respect to standards, to present their comments in writing, upon request discuss these comments with other Parties and take the written comments and the results of any such discussion into account;

2.6.4. take also into account any action by the Committee as a result of consultations carried out in accordance with the procedures established in Article 14.

2.7. Parties shall ensure that all technical regulations and standards which have been adopted are published promptly in such a manner as to enable interested parties to become acquainted with them.

2.8. Except in those urgent circumstances referred to in Article 2 (6), Parties shall allow a reasonable interval between the publication of a technical regulation and its entry into force in order to allow time for producers in exporting countries, and particularly in developing countries, to adapt their products or methods of production to the requirements of the importing country.

2.9. Parties shall take such reasonable measures as may be available to them to ensure that regional standardizing bodies of which they are members comply with the provisions of Article 2 (1) to (8). In addition Parties shall not take measures which have the effect of,

directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with those provisions.

2.10. Parties which are members of regional standardizing bodies shall, when adopting a regional standard as a technical regulation or standard fulfil the obligations of Article 2 (1) to (8) except to the extent that the regional standardizing bodies have fulfilled these obligations.

Article 3

Preparation, adoption and application of technical regulations and standards by local government bodies

3.1. Parties shall take such reasonable measures as may be available to them to ensure that local government bodies within their territories comply with the provisions of Article 2 with the exception of Article 2 (3), (5) subparagraph 2, (9) and (10), noting that provision of information regarding technical regulations referred to in Article 2 (5) subparagraph 3 and (6) subparagraph 2 and comment and discussion referred to in Article 2, (5) subparagraph 4 and (6) subparagraph 3 shall be through Parties. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such local government bodies to act in a manner inconsistent with any of the provisions of Article 2.

Article 4

Preparation, adoption and application of technical regulations and standards by non-governmental bodies

4.1. Parties shall take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories comply with the provisions of Article 2, with the exception of Article 2 (5) (2) and provided that comment and discussion referred to in Article 2 (5) subparagraph 4 and (6) subparagraph 3 may also be with interested parties in other Parties. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such non-governmental bodies to act in a manner inconsistent with any of the provisions of Article 2.

CONFORMITY WITH TECHNICAL REGULATIONS AND STANDARDS*Article 5***Determination of conformity with technical regulations or standards by central government bodies**

5.1. Parties shall ensure that, in cases where a positive assurance is required that products conform with technical regulations or standards, central government bodies apply the following provisions to products originating in the territories of other Parties:

5.1.1. imported products shall be accepted for testing under conditions no less favourable than those accorded to like domestic or imported products in a comparable situation;

5.1.2. the test methods and administrative procedures for imported products shall be no more complex and no less expeditious than the corresponding methods and procedures, in a comparable situation for like products of national origin or originating in any other country;

5.1.3. any fees imposed for testing imported products shall be equitable in relation to any fees chargeable for testing like products of national origin or originating in any other country;

5.1.4. the results of tests shall be made available to the exporter or importer or their agents, if requested, so that corrective action may be taken if necessary;

5.1.5. the siting of testing facilities and the selection of samples for testing shall not be such as to cause unnecessary inconvenience for importers, exporters or their agents;

5.1.6. the confidentiality of information about imported products arising from or supplied in connection with such tests shall be respected in the same way as for domestic products.

5.2. However, in order to facilitate the determination of conformity with technical regulations and standards where such positive assurance is required, Parties shall ensure, whenever possible, that their central government bodies accept test results, certificates or marks of conformity issued by relevant bodies in the territories of other Parties; or rely upon self-certification by producers in the territories of other Parties; even when the test methods differ from their own, provided they are satisfied that the methods employed in the territory

of the exporting Party provide a sufficient means of determining conformity with the relevant technical regulations or standards. It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding regarding self-certification, test methods and results, and certificates or marks of conformity employed in the territory of the exporting Party, in particular in the case of perishable products or of other products which are liable to deteriorate in transit.

5.3. Parties shall ensure that test methods and administrative procedures used by central government bodies are such as to permit, so far as practicable, the implementation of the provisions in Article 5 (2).

5.4. Nothing in this Article shall prevent Parties from carrying out reasonable spot checks within their territories.

*Article 6***Determination by local government bodies and non-governmental bodies of conformity with technical regulations or standards**

6.1. Parties shall take such reasonable measures as may be available to them to ensure that local government bodies and non-governmental bodies within their territories comply with the provisions of Article 5. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with any of the provisions of Article 5.

CERTIFICATION SYSTEMS*Article 7***Certification systems operated by central government bodies**

With respect to their central government bodies:

7.1. Parties shall ensure that certification systems are not formulated or applied with a view to creating obstacles to international trade. They shall likewise ensure that neither such certification systems themselves

nor their application have the effect of creating unnecessary obstacles to international trade.

7.2. Parties shall ensure that certification systems are formulated and applied so as to grant access for suppliers of like products originating in the territories of other Parties under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, including the determination that such suppliers are able and willing to fulfil the requirements of the system. Access for suppliers is obtaining certification from an importing Party under the rules of the system. Access for suppliers also includes receiving the mark of the system, if any, under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country.

7.3. Parties shall:

7.3.1. publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that they propose to introduce a certification system;

7.3.2. notify the GATT secretariat of the products to be covered by the proposed system together with a brief description of the objective of the proposed system;

7.3.3. upon request provide, without discrimination, to other Parties particulars or copies of the proposed rules of the system;

7.3.4. allow, without discrimination, reasonable time for other Parties to make comments in writing on the formulation and operation of the system, discuss the comments upon request and take them into account.

7.4. However, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may omit such of the steps enumerated in Article 7 (3) as it finds necessary provided that the Party, upon adoption of the certification system, shall:

7.4.1. notify immediately the other Parties through the GATT secretariat of the particular certification system and the products covered, with a brief indication of the objective and the rationale of the certification system including the nature of the urgent problems;

7.4.2. upon request provide, without discrimination, other Parties with copies of the rules of the system;

7.4.3. allow, without discrimination, other Parties to present their comments in writing, discuss these comments upon request and take the written comments and results of any such discussion into account.

7.5. Parties shall ensure that all adopted rules of certification systems are published.

Article 8

Certification systems operated by local government and non-governmental bodies

8.1. Parties shall take such reasonable measures as may be available to them to ensure that local government bodies and non-governmental bodies within their territories when operating certification systems comply with the provisions of Article 7, except paragraph 3 (2), noting that the provision of information referred to in Article 7 (3) subparagraph 3 and (4) subparagraph 2, the notification referred to in Article 7 (4) (1), and the comment and discussion referred to in Article 7 (4) (3), shall be through Parties. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with any of the provisions of Article 7.

8.2. Parties shall ensure that their central government bodies rely on certification systems operated by local government and non-governmental bodies only to the extent that these bodies and systems comply with the relevant provisions of Article 7.

Article 9

International and regional certification systems

9.1. Where a positive assurance, other than by the supplier, of conformity with a technical regulation or standard is required, Parties shall, wherever practicable, formulate international certification systems and become members thereof or participate therein.

9.2. Parties shall take such reasonable measures as may be available to them to ensure that international and regional certification systems in which relevant bodies within their territories are members or participants comply with the provisions of Article 7, with the exception of paragraph 2 having regard to the provisions of Article 9 (3). In addition, Parties shall not take any measures which have the effect of, directly or indirectly, requiring or encouraging such systems to act in a manner inconsistent with any of the provisions of Article 7.

9.3. Parties shall take such reasonable measures as may be available to them to ensure that international and regional certification systems, in which relevant bodies within their territories are members or participants, are formulated and applied so as to grant access for suppliers of like products originating in the territories of other Parties, under conditions no less favourable than those accorded to suppliers of like products originating in a member country, a participant country, or in any other country, including the determination that such suppliers are able and willing to fulfil the requirements of the system. Access for suppliers is obtaining certification from an importing Party which is a member of or participant in the system, or from a body authorized by the system to grant certification, under the rules of the system. Access for suppliers also includes receiving the mark of the system, if any, under conditions no less favourable than those accorded to suppliers of like products originating in a member country or a participant country.

9.4. Parties shall ensure that their central government bodies rely on international or regional certification systems only to the extent that the systems comply with the provisions of Articles 7 and 9 (3).

INFORMATION AND ASSISTANCE

Article 10

Information about technical regulations, standards and certification systems

10.1. Each Party shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from interested parties in other Parties regarding:

10.1.1. any technical regulations adopted or proposed within its territory by central or local government bodies, by non-governmental bodies which have legal power to enforce a technical regulation, or by regional standardizing bodies of which such bodies are members or participants;

10.1.2. any standards adopted or proposed within its territory by central or local government bodies, or by regional standardizing bodies of which such bodies are members or participants;

10.1.3. any certification systems, or proposed certification systems, which are operated within its territory by central or local government bodies, or by non-governmental bodies which have legal power to enforce a technical regulation, or by regional certification bodies of which such bodies are members or participants;

10.1.4. the location of notices published pursuant to this Agreement, or the provision of information as to where such information can be obtained; and

10.1.5. the location of the enquiry points mentioned in Article 10 (2).

10.2. Each Party shall take such reasonable measures as may be available to it to ensure that one or more enquiry points exist which are able to answer all reasonable enquiries from interested parties in other Parties regarding:

10.2.1. any standards adopted or proposed within its territory by non-governmental standardizing bodies, or by regional standardizing bodies of which such bodies are members or participants; and

10.2.2. any certification systems, or proposed certification systems, which are operated within its territory by non-governmental certification bodies, or by regional certification bodies of which such bodies are members or participants.

10.3. Parties shall take such reasonable measures as may be available to them to ensure that where copies of documents are requested by other Parties, or by interested parties in other Parties in accordance with the provisions of this Agreement, they are supplied, at the same price (if any) as to the nationals of the Party concerned.

10.4. The GATT secretariat will, when it receives notifications in accordance with the provisions of this Agreement, circulate copies of the notifications to all Parties and interested international standardizing and certification bodies and draw the attention of developing country Parties to any notifications relating to products of particular interest to them.

10.5. Nothing in this Agreement shall be construed as requiring:

10.5.1. the publication of texts other than in the language of the Party;

10.5.2. the provision of particulars or copies of drafts other than in the language of the Party; or

10.5.3. Parties to furnish any information, the disclosure of which they consider contrary to their essential security interests.

10.6. Notifications to the GATT secretariat shall be in English, French or Spanish.

10.7. Parties recognize the desirability of developing centralized information systems with respect to the preparation, adoption and application of all technical regulations, standards and certification systems within their territories.

Article 11

Technical assistance to other Parties

11.1. Parties shall, if requested, advise other Parties, especially the developing countries, on the preparation of technical regulations.

11.2. Parties shall, if requested, advise other Parties, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of national standardizing bodies and participation in the international standardizing bodies and shall encourage their national standardizing bodies to do likewise.

11.3. Parties shall, if requested, take such reasonable measures as may be available to them to arrange for the regulatory bodies within their territories to advise other

Parties, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding:

11.3.1. the establishment of regulatory bodies, or certification bodies for providing a certificate or mark of conformity with technical regulations; and

11.3.2. the methods by which their technical regulations can best be met.

11.4. Parties shall, if requested, take such reasonable measures as may be available to them to arrange for advice to be given to other Parties, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of certification bodies for providing a certificate or mark of conformity with standards adopted within the territory of the requesting Party.

11.5. Parties shall, if requested, advise other Parties, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding the steps that should be taken by their producers, if they wish to take part in certification systems operated by governmental or non-governmental bodies within the territory of the Party receiving the request.

11.6. Parties which are members or participants of international or regional certification systems shall, if requested, advise other Parties, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.

11.7. Parties shall, if so requested, encourage certification bodies within their territories, if such bodies are members or participants of international or regional certification systems to advise other Parties, especially the developing countries, and should consider requests for technical assistance from them regarding the establishment of the institutions which would enable the relevant bodies within their territories to fulfil the obligations of membership or participation.

11.8. In providing advice and technical assistance to other Parties in terms of Article 11 (1) to (7), Parties

shall give priority to the needs of the least-developed countries.

Article 12

Special and differential treatment of developing countries

12.1. Parties shall provide differential and more favourable treatment to developing country Parties to this Agreement, through the following provisions as well as through the relevant provisions of other Articles of this Agreement.

12.2. Parties shall give particular attention to the provisions of this Agreement concerning developing countries' rights and obligations and shall take into account the special development, financial and trade needs of developing countries in the implementation of this Agreement both nationally and in the operation of this Agreement's institutional arrangements.

12.3. Parties shall, in the preparation and application of technical regulations, standards, test methods and certification systems, take account of the special development, financial and trade needs of developing countries, with a view to ensuring that such technical regulations, standards, test methods and certification systems and the determination of conformity with technical regulations and standards do not create unnecessary obstacles to exports from developing countries.

12.4. Parties recognize that, although international standards may exist, in their particular technological and socio-economic conditions, developing countries adopt certain technical regulations or standards, including test methods, aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Parties therefore recognize that developing countries should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.

12.5. Parties shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international certification systems are organized and operated in a way which

facilitates active and representative participation of relevant bodies in all Parties taking into account the special problems of developing countries.

12.6. Parties shall take such reasonable measures as may be available to them to ensure that international standardizing bodies, upon request of developing countries, examine the possibility of, and if practicable, prepare international standards concerning products of special interest to developing countries.

12.7. Parties shall, in accordance with the provisions of Article 11, provide technical assistance to developing countries to ensure that the preparation and application of technical regulations, standards, test methods and certification systems do not create unnecessary obstacles to the expansion and diversification of exports from developing countries. In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting country and in particular of the least-developed countries.

12.8. It is recognized that developing countries may face special problems, including institutional and infrastructural problems, in the field of preparation and application of technical regulations, standards, test methods and certification systems. It is further recognized that the special development and trade needs of developing countries, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Agreement. Parties, therefore, shall take this fact fully into account. Accordingly, with a view to ensuring that developing countries are able to comply with this Agreement, the Committee is enabled to grant upon request specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards, test methods and certification systems and the special development and trade needs of the developing country, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall in particular, take into account the special problems of the least-developed countries.

12.9. During consultations, developed countries shall bear in mind the special difficulties experienced by developing countries in formulating and implementing standards and technical regulations and methods of ensuring conformity with those standards and technical

regulations, and in their desire to assist developing countries with their efforts in this direction, developed countries shall take account of the special needs of the former in regard to financing, trade and development.

12.10. The Committee shall examine periodically the special and differential treatment as laid down in this Agreement, granted to developing countries, on national and international levels.

INSTITUTIONS, CONSULTATION AND DISPUTE SETTLEMENT

Article 13

The Committee on Technical Barriers to Trade

There shall be established under this Agreement:

13.1. A Committee on Technical Barriers to Trade composed of representatives from each of the Parties (hereinafter referred to as 'the Committee'). The Committee shall elect its own chairman and shall meet as necessary but no less than once a year for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives and shall carry out such responsibilities as assigned to it under this Agreement or by the Parties;

13.2. Working parties, technical expert groups, panels or other bodies as may be appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement.

13.3. It is understood that unnecessary duplication should be avoided between the work under this Agreement and that of governments in other technical bodies, e. g. the Joint FAO/WHO Codex Alimentarius Commission. The Committee shall examine this problem with a view to minimizing such duplication.

Article 14

Consultation and dispute settlement

Consultation

14.1. Each Party shall afford sympathetic consideration to and adequate opportunity for prompt

consultation regarding representations made by other Parties with respect to any matter affecting the operation of this Agreement.

14.2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded, by another Party or Parties, and that its trade interests are significantly affected, the Party may make written representations or proposals to the other Party or Parties which it considers to be concerned. Any Party shall give sympathetic consideration to the representations or proposals made to it, with a view to reaching a satisfactory resolution of the matter.

Dispute settlement

14.3. It is the firm intention of Parties that all disputes under this Agreement shall be promptly and expeditiously settled, particularly in the case of perishable products.

14.4. If no solution has been reached after consultations under Article 14 (1) and (2), the Committee shall meet at the request of any Party to the dispute within 30 days of receipt of such a request, to investigate the matter with a view to facilitating a mutually satisfactory solution.

14.5. In investigating the matter and in selecting, subject *inter alia* to the provisions of Article 14 (9) and (14), the appropriate procedures the Committee shall take into account whether the issues in dispute relate to commercial policy considerations and/or to questions of a technical nature requiring detailed consideration by experts.

14.6. In the case of perishable products the Committee shall, in keeping with Article 14 (3), consider the matter in the most expeditious manner possible with a view to facilitating a mutually satisfactory solution within three months of the request for the Committee investigation.

14.7. It is understood that where disputes arise affecting products with a definite crop cycle of 12 months, every effort would be made by the Committee to deal with these disputes within a period of 12 months.

14.8. During any phase of a dispute settlement procedure including the earliest phase, competent bodies and experts in matters under consideration may

be consulted and invited to attend the meetings of the Committee; appropriate information and assistance may be requested from such bodies and experts.

Technical issues

14.9. If no mutually satisfactory solution has been reached under the procedures of Article 14 (4) within three months of the request for the Committee investigation, upon the request of any Party to the dispute who considers the issues to relate to questions of a technical nature the Committee shall establish a technical expert group and direct it to:

- examine the matter;
- consult with the Parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;
- make a statement concerning the facts of the matter; and
- make such findings as will assist the Committee in making recommendations or giving rulings on the matter, including *inter alia*, and if appropriate, findings concerning the detailed scientific judgments involved, whether the measure was necessary for the protection of human, animal or plant life or health, and whether a legitimate scientific judgment is involved.

14.10. Technical expert groups shall be governed by the procedures of Annex 2.

14.11. The time required by the technical expert group considering questions of a technical nature will vary with the particular case. The technical expert group should aim to deliver its findings to the Committee within six months from the date the technical issue was referred to it, unless extended by mutual agreement between the Parties to the dispute.

14.12. Reports should set out the rationale behind any findings that they make.

14.13. If no mutually satisfactory solution has been reached after completion of the procedures in this Article, and any Party to the dispute requests a panel, the Committee shall establish a panel which shall operate under the provisions of Article 14 (15) to (18).

Panel proceedings

14.14. If no mutually satisfactory solution has been reached under the procedures of Article 14 (4) within three months of the request for the Committee investigation and the procedures of Article 14 (9) to (13) have not been invoked, the Committee shall, upon request of any Party to the dispute, establish a panel.

14.15. When a panel is established, the Committee shall direct it to:

- examine the matter;
- consult with Parties to the dispute and give full opportunity for them develop a mutually satisfactory solution;
- make a statement concerning the facts of the matter as they relate to the application of provisions of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

14.16. Panels shall be governed by the procedures in Annex 3.

14.17. Panels shall use the report of any technical expert group established under Article 14 (9) as the basis for its consideration of issues that involve questions of a technical nature.

14.18. The time required by panels will vary with the particular case. They should aim to deliver their findings, and where appropriate, recommendations to the Committee without undue delay, normally within a period of four months from the date that the panel was established.

Enforcement

14.19. After the investigation is complete or after the report of a technical expert group, working group, panel or other body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action normally within 30 days of receipt of the report, unless extended by the Committee, including:

- a statement concerning the facts of the matter; or
- recommendations to one or more Parties; or
- any other ruling which it deems appropriate.

14.20. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event the Committee shall consider what further action may be appropriate.

14.21. If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more Parties to suspend, in respect of any other Party, the application of such obligations under this Agreement as it determines to be appropriate in the circumstances. In this respect, the Committee may *inter alia* authorize the suspension of the application of obligations, including those in Articles 5 to 9, in order to restore mutual economic advantage and balance of rights and obligations.

14.22. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

Other provisions relating to dispute settlement

Procedures

14.23. If disputes arise between Parties relating to rights and obligations of this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT. Parties recognize that, in any case so referred to the Contracting Parties, any finding, recommendation or ruling pursuant to Article 14 (9) to (18) may be taken into account by the Contracting Parties, to the extent they relate to matters involving equivalent rights and obligations under the General Agreement. When Parties resort to GATT Article XXIII, a determination under that Article shall be based on GATT provisions only.

Levels of obligation

14.24. The dispute settlement provisions set out above can be invoked in cases where a Party considers that another Party has not achieved satisfactory results under Articles 3, 4, 6, 8 and 9 and its trade interests are significantly affected. In this respect, such results shall be equivalent to those envisaged in Articles 2, 5 and 7 as if the body in question were a Party.

Processes and production methods

14.25. The dispute settlement procedures set out above can be invoked in cases where a Party considers

that obligations under this Agreement are being circumvented by the drafting of requirements in terms of processes and production methods rather than in terms of characteristics of products.

Retroactivity

14.26. To the extent that a Party considers that technical regulations, standards, methods for assuring conformity with technical regulations or standards, or certification systems which exist at the time of entry into force of this Agreement are not consistent with the provisions of this Agreement, such regulations, standards, methods and systems shall be subject to the provisions in Articles 13 and 14 of this Agreement, in so far as they are applicable.

FINAL PROVISIONS

Article 15

Final provisions

Acceptance and accession

15.1. This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT, and by the European Economic Community.

15.2. This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

15.3. This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the Contracting Parties to the GATT of an instrument of accession which states the terms so agreed.

15.4. In regard to acceptance, the provisions of Article XXVI (5) (a) and (b) of the General Agreement would be applicable.

Reservations

15.5. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

Entry into force

15.6. This Agreement shall enter into force on 1 January 1980 for the governments ⁽¹⁾ which have accepted or acceded to it by that date. For each other government it shall enter into force on the 30th day following the date of its acceptance or accession to this Agreement.

Review

15.7. Each Party shall, promptly after the date on which this Agreement enters into force for the Party concerned, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement. Any changes of such measures thereafter shall also be notified to the Committee.

15.8. 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 reviews.

15.9. Not later than the end of the third year from the entry into force of this Agreement and at the end of each three-year period thereafter, the Committee shall review the operation and implementation of this Agreement, including the provisions relating to transparency, with a view to adjusting the rights and obligations of this Agreement where necessary to ensure mutual economic advantage and balance of rights and obligations, without prejudice to the provisions of Article 12, and where appropriate proposing amendments to the text of this Agreement having regard *inter alia* to the experience gained in its implementation.

Amendments

15.10. The Parties may amend this Agreement having regard *inter alia* to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

Withdrawal

15.11. Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the day on which written notice of withdrawal is received by the Director-General to the Contracting Parties to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.

Non-application of this Agreement between particular Parties

15.12. This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

Annexes

15.13. The annexes to this Agreement constitute an integral part thereof.

Secretariat

15.14. This Agreement shall be serviced by the GATT secretariat.

Deposit

15.15. This Agreement shall be deposited with the Director-General to the Contracting Parties to the GATT, who shall promptly furnish to each Party and each Contracting Party to the GATT a certified copy thereof and of each amendment thereto pursuant to Article 15 (10) and a notification of each acceptance thereof or accession thereto pursuant to Article 15 (1) to (3) and of each withdrawal therefrom pursuant to Article 15 (11).

Registration

15.16. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

⁽¹⁾ The term 'government' is deemed to include the competent authorities of the European Economic Community.

ANNEX 1

TERMS AND THEIR DEFINITIONS FOR THE SPECIFIC PURPOSES OF THIS AGREEMENT

Note: References to the definitions of international standardizing bodies in the explanatory notes are made as they stood in March 1979.

1. Technical specification

A specification contained in a document which lays down characteristics of a product such as levels of quality, performance, safety or dimensions. It may include, or deal exclusively with terminology, symbols, testing and test methods, packaging, marking or labelling requirements as they apply to a product.

Explanatory note:

This Agreement deals only with technical specifications relating to products. Thus the wording of the corresponding Economic Commission for Europe/International Organization for Standardization definition is amended in order to exclude services and codes of practice.

2. Technical regulation

A technical specification, including the applicable administrative provisions, with which compliance is mandatory.

Explanatory note:

The wording differs from the corresponding Economic Commission for Europe/International Organization for Standardization definition because the latter is based on the definition of regulation which is not defined in this Agreement. Furthermore the Economic Commission for Europe/International Organization for Standardization definition contains a normative element which is included in the operative provisions of this Agreement. For the purposes of this Agreement, this definition covers also a standard of which the application has been made mandatory not by separate regulation but by virtue of a general law.

3. Standard

A technical specification approved by a recognized standardizing body for repeated or continuous application, with which compliance is not mandatory.

Explanatory note:

The corresponding Economic Commission for Europe/International Organization for Standardization definition contains several normative elements which are not included in the above definition. Accordingly, technical specifications which are not based on consensus are covered by this Agreement. This definition does not cover technical specifications prepared by an individual company for its own production or consumption requirements. The word 'body' covers also a national standardizing system.

4. International body or system

A body or system whose membership is open to the relevant bodies of at least all Parties to this Agreement.

5. Regional body or system

A body or system whose membership is open to the relevant bodies of only some of the Parties.

6. Central government body

Central government, its ministries and departments or any body subject to the control of the central government in respect of the activity in question.

Explanatory note:

In the case of the European Economic Community the provisions governing central government bodies apply. However, regional bodies or certification systems may be established within the European Economic Community, and in such cases would be subject to the provisions of this Agreement on regional bodies or certification systems.

7. Local government body

A government other than a central government (e. g. states, provinces, Länder, cantons, municipalities, etc.), its ministries or departments or any body subject to the control of such a government in respect of the activity in question.

8. Non-governmental body

A body other than a central government body or a local government body, including a non-governmental body which has legal power to enforce a technical regulation.

9. Standardizing body

A governmental or non-governmental body, one of whose recognized activities is in the field of standardization.

10. International standard

A standard adopted by an international standardizing body.

Explanatory note:

The wording differs from the corresponding Economic Commission for Europe/International Organization for Standardization definition in order to make it consistent with other definitions of this Agreement.

ANNEX 2**TECHNICAL EXPERT GROUPS**

The following procedures shall apply to technical expert groups established in accordance with the provisions of Article 14.

1. Participation in technical expert groups shall be restricted to persons, preferably government officials, of professional standing and experience in the field in question.
2. Citizens of countries whose central governments are Parties to a dispute shall not be eligible for membership of the technical expert group concerned with that dispute. Members of technical expert groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a technical expert group.

3. The Parties to a dispute shall have access to all relevant information provided to a technical expert group, unless it is of a confidential nature. Confidential information provided to the technical expert group shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the technical expert group but release of such information by the technical expert group is not authorized, a non-confidential summary of the information will be provided by the government or person supplying the information.
4. To encourage development of mutually satisfactory solutions between the Parties and with a view to obtaining their comments, each technical expert group should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the Parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.

ANNEX 3

PANELS

The following procedures shall apply to panels established in accordance with the provisions of Article 14.

1. In order to facilitate the constitution of panels, the chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of technical barriers to trade and experienced in the field of trade relations and economic development. This list may also include persons other than government officials. In this connection, each Party shall be invited to indicate at the beginning of every year to the chairman of the Committee the name(s) of the one or two governmental experts whom the Parties would be willing to make available for such work. When a panel is established under Article 14 (13) or Article 14 (14), the chairman, within seven days shall propose the composition of the panel consisting of three or five members, preferably government officials. The Parties directly concerned shall react within seven working days to nominations of panel members by the chairman and shall not oppose nominations except for compelling reasons. Citizens of countries whose central governments are Parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.
2. Each panel shall develop its own working procedures. All Parties having a substantial interest in the matter and having notified this to the Committee, shall have an opportunity to be heard. Each panel may consult and seek information and technical advice from any source it deems appropriate. Before a panel seeks such information or technical advice from a source within the jurisdiction of a Party, it shall inform the government of that Party. In case such consultation with competent bodies and experts is necessary it should be at the earliest possible stage of the dispute settlement procedure. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information will be provided by the government or person supplying the information.
3. Where the Parties to a dispute have failed to come to a satisfactory solution, the panel shall submit its findings in a written form. Panel reports should normally set out the rationale behind any findings and recommendations that it makes. Where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.
4. To encourage development of mutually satisfactory solutions between the Parties and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the Parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.

AGREEMENT ON GOVERNMENT PROCUREMENT

PREAMBLE

PARTIES TO THIS AGREEMENT (hereinafter referred to as 'Parties'),

CONSIDERING that Ministers agreed in the Tokyo Declaration of 14 September 1973 that comprehensive multilateral trade negotiations in the framework of the General Agreement on tariffs and trade (hereinafter referred to as 'General Agreement' or 'GATT') should aim *inter alia* to reduce or eliminate non-tariff measures or, where this is not appropriate, their trade restricting or distorting effects, and to bring such measures under more effective international discipline;

CONSIDERING that Ministers also agreed that negotiations should aim to secure additional benefits for the international trade of developing countries, and recognized the importance of the application of differential measures in ways which will provide special and more favourable treatment for them where this is feasible and appropriate;

RECOGNIZING that in order to achieve their economic and social objectives to implement programmes and policies of economic development aimed at raising the standard of living of their people, taking into account their balance-of-payments position, developing countries may need to adopt agreed differential measures;

CONSIDERING that Ministers in the Tokyo Declaration recognized that the particular situation and problems of the least developed among the developing countries shall be given special attention and stressed the need to ensure that these countries receive special treatment in the context of any general or specific measures taken in favour of the developing countries during the negotiations;

RECOGNIZING the need to establish an agreed international framework of rights and obligations with respect to laws, regulations, procedures and practices regarding government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade;

RECOGNIZING that laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and to foreign or domestic suppliers so as to afford protection to domestic products or suppliers and should not discriminate among foreign products or suppliers;

RECOGNIZING that it is desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement;

RECOGNIZING the need to establish international procedures on notification, consultation, surveillance and dispute settlement with a view to ensuring a fair, prompt and effective enforcement of the international provisions on government procurement and to maintain the balance of rights and obligations at the highest possible level;

HEREBY AGREE AS FOLLOWS:

*Article I***Scope and coverage**

1. This Agreement applies to:

- (a) any law, regulation, procedure and practice regarding the procurement of products by the entities ⁽¹⁾ subject to this Agreement. This includes services incidental to the supply of products if the value of these incidental services does not exceed that of the products themselves, but not service contracts *per se*;
- (b) any procurement contract of a value of SDR 150 000 or more ⁽²⁾. No procurement requirement shall be divided with the intent of reducing the value of the resulting contracts below SDR 150 000. If an individual requirement for the procurement of a product or products of the same type results in the award of more than one contract or in contracts being awarded in separate parts, the value of these recurring contracts in the 12 months subsequent to the initial contract shall be the basis for the application of this Agreement;
- (c) procurement by the entities under the direct or substantial control of Parties and other designated entities, with respect to their procurement procedures and practices. Until the review and further negotiations referred to in the final provisions, the coverage of this Agreement is specified by the lists of entities, and to the extent that rectifications, modifications or amendments may have been made, their successor entities, in Annex I.

2. The Parties shall inform their entities not covered by this Agreement and the regional and local governments and authorities within their territories of the objectives, principles and rules of this Agreement, in particular the rules on national treatment and non-discrimination, and draw their attention to the overall benefits of liberalization of government procurement.

⁽¹⁾ Throughout this Agreement, the word 'entities' is understood to include agencies.

⁽²⁾ For contracts below the threshold, the Parties shall consider, in accordance with Article IX (6), the application in whole or in part of this Agreement. In particular, they shall review the procurement practices and procedures utilized and the application of non-discrimination and transparency for such contracts in connection with the possible inclusion of contracts below the threshold in this Agreement.

*Article II***National treatment and non-discrimination**

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, the Parties shall provide immediately and unconditionally to the products and suppliers of other Parties offering products originating within the customs territories (including free zones) of the Parties, treatment no less favourable than:

- (a) that accorded to domestic products and suppliers; and
- (b) that accorded to products and suppliers of any other Party.

2. The provisions of paragraph 1 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, and other import regulations and formalities.

3. The Parties shall not apply rules of origin to products imported for purposes of government procurement covered by this Agreement from other Parties, which are different from the rules of origin applied in the normal course of trade and at the time of importation to imports of the same products from the same Parties.

*Article III***Special and differential treatment for developing countries***Objectives*

1. The Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing countries, in particular the least-developed countries, in their need to:

- (a) safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development;
- (b) promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy;
- (c) support industrial units so long as they are wholly or substantially dependent on government procurement;

- (d) encourage their economic development through regional or global arrangements among developing countries presented to the Contracting Parties to the GATT and not disapproved by them.

2. Consistent with the provisions of this Agreement, the Parties shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of the least-developed countries and of those countries at low stages of economic development.

Coverage

3. With a view to ensuring that developing countries are able to adhere to this Agreement on terms consistent with their development, financial and trade needs, the objectives listed in paragraph 1 above shall be duly taken into account in the course of the negotiations with respect to the lists of entities of developing countries to be covered by the provisions of this Agreement. Developed countries, in the preparation of their lists of entities to be covered by the provisions of this Agreement shall endeavour to include entities purchasing products of export interest to developing countries.

Agreed exclusions

4. Developing countries may negotiate with other participants in the negotiation of this Agreement mutually acceptable exclusions from the rules on national treatment with respect to certain entities or products that are included in their lists of entities having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in paragraph 1 (a) to (c) above shall be duly taken into account. Developing countries participating in regional or global arrangements among developing countries referred to in paragraph 1 (d) above, may also negotiate exclusions to their lists, having regard to the particular circumstances of each case, taking into account *inter alia* the provisions on government procurement provided for in the regional or global arrangements concerned and taking into account, in particular, products which may be subject to common industrial development programmes.

5. After entry into force of this Agreement, the developing country Parties may modify their lists of entities in accordance with the provisions for modification of such lists contained in Article IX (5) of this Agreement, having regard to their development, financial and trade needs, or may request the

Committee to grant exclusions from the rules on national treatment for certain entities or products that are included in their lists of entities, having regard to the particular circumstances of each case and taking duly into account the provisions of paragraph 1 (a) to (c) above. The developing country Parties may also request, after entry into force of this Agreement, the Committee to grant exclusions for certain entities or products that are included in their lists in the light of their participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of paragraph 1 (d) above. Each request to the Committee by a developing country Party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.

6. Paragraphs 4 and 5 above shall apply *mutatis mutandis* to developing countries acceding to this Agreement after its entry into force.

7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 above shall be subject to review in accordance with the provisions of paragraph 13 of this Article.

Technical assistance for developing country Parties

8. Developed country Parties shall, upon request, provide all technical assistance which they may deem appropriate to developing country Parties in resolving their problems in the field of government procurement.

9. This assistance which shall be provided on the basis of non-discrimination among the developing country Parties shall relate *inter alia* to:

- the solution of particular technical problems relating to the award of a specific contract,
- any other problem which the Party making the request and another Party agree to deal with in the context of this assistance.

Information centres

10. The developed country Parties shall establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating *inter alia* to laws, regulations, procedures and practices regarding government

procurement, notices about proposed purchases which have been published, addresses of the entities covered by this Agreement, and the nature and volume of products purchased or to be purchased, including available information about future tenders. The Committee may also set up an information centre.

Special treatment for least-developed countries

11. Having regard to paragraph 6 of the Tokyo Declaration, special treatment shall be granted to the least-developed country Parties and to the suppliers in those countries with respect to products originating in those countries, in the context of any general or specific measures in favour of the developing country Parties. The Parties may also grant the benefits of this Agreement to suppliers in the least-developed countries which are not Parties, with respect to products originating in those countries.

12. Developed country Parties shall, upon request, provide assistance which they may deem appropriate to potential tenderers in the least-developed countries in submitting their tenders and selecting the products which are likely to be of interest to entities of developed countries as well as to suppliers in the least-developed countries and likewise assist them to comply with technical regulations and standards relating to products which are the subject of the proposed purchase.

Review

13. The Committee shall review annually the operation and effectiveness of this Article and after each three years of its operation on the basis of reports to be submitted by the Parties shall carry out a major review in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Article II, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 to 6 of this Article shall be modified or extended.

14. In the course of further rounds of negotiations in accordance with the provisions of Article IX (6), the developing country Parties shall give consideration to the possibility of enlarging their lists of entities having regard to their economic, financial and trade situation.

Article IV

Technical specifications

1. Technical specifications laying down the characteristics of the products to be purchased such as quality, performance, safety and dimensions, testing and test methods, symbols, terminology, packaging, marking and labelling, and conformity certification requirements prescribed by procurement entities, shall not be prepared, adopted or applied with a view to creating obstacles to international trade or have the effect of creating unnecessary obstacles to international trade.

2. Any technical specification prescribed by procurement entities shall, where appropriate:

- (a) be in terms of performance rather than design; and
- (b) be based on international standards, national technical regulations, or recognized national standards.

3. There shall be no requirement or reference to a particular trade mark or name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as 'or equivalent' are included in the tenders.

Article V

Tendering procedures

1. The Parties shall ensure that the tendering procedures of their entities are consistent with the provisions below. Open tendering procedures, for the purposes of this Agreement, are those procedures under which all interested suppliers may submit a tender. Selective tendering procedures, for the purposes of this Agreement, are those procedures under which, consistent with paragraph 7 and other relevant provisions of this Article, those suppliers invited to do so by the entity may submit a tender. Single tendering procedures, for the purposes of this Agreement, are those procedures where the entity contacts suppliers individually, only under the conditions specified in paragraph 15 below.

Qualification of suppliers

2. Entities, in the process of qualifying suppliers, shall not discriminate among foreign suppliers or between

domestic and foreign suppliers. Qualification procedures shall be consistent with the following:

- (a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;
- (b) any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to foreign suppliers than to domestic suppliers and shall not discriminate among foreign suppliers;
- (c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep foreign suppliers off a suppliers' list or from being considered for a particular proposed purchase. Entities shall recognize as qualified suppliers such domestic or foreign suppliers who meet the conditions for participation in a particular proposed purchase. Suppliers requesting to participate in a particular proposed purchase who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;
- (d) entities maintaining permanent lists of qualified suppliers shall ensure that all qualified suppliers so requesting are included in the lists within a reasonably short time;
- (e) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;
- (f) nothing in subparagraphs (a) to (e) above shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.

Notice of proposed purchase and tender documentation

3. Entities shall publish a notice of each proposed purchase in the appropriate publication listed in Annex

II. Such notice shall constitute an invitation to participate in either open or selective tendering procedures.

4. Each notice of proposed purchase shall contain the following information:

- (a) the nature and quantity of the products to be supplied, or envisaged to be purchased in the case of contracts of a recurring nature;
- (b) whether the procedure is open or selective;
- (c) any delivery date;
- (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;
- (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;
- (f) any economic and technical requirements, financial guarantees and information required from suppliers;
- (g) the amount and terms of payment of any sum payable for the tender documentation.

The entity shall publish in one of the official languages of the GATT a summary of the notice of proposed purchase containing at least the following:

- (i) subject matter of the contract;
- (ii) time limits set for the submission of tenders or an application to be invited to tender; and
- (iii) addresses from which documents relating to the contracts may be requested.

5. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each proposed purchase, invite tenders from the maximum number of domestic and foreign suppliers, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

6. (a) In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Annex III, a notice of the following:

- (i) the enumeration of the lists maintained, including their headings, in relation to the products or categories of products to be purchased through the lists;
- (ii) the conditions to be filled by potential suppliers in view of their inscription on those lists and the methods according to which each of those conditions be verified by the entity concerned;
- (iii) the period of validity of the lists, and the formalities for their renewal.

(b) Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.

(c) If, after publication of the notice under paragraph 3 above, a supplier not yet qualified requests to participate in a particular tender, the entity shall promptly start the procedure of qualification.

7. Suppliers requesting to participate in a particular proposed purchase shall be permitted to submit a tender and be considered provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under paragraphs 2 to 6 of this Article. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

8. If after publication of a notice of a proposed purchase but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular proposed purchase shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

9. (a) Any prescribed time limit shall be adequate to allow foreign as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the proposed purchase, the extent of subcontracting anticipated, and the normal time for

transmitting tenders by mail from foreign as well as domestic points.

- (b) Consistent with the entity's own reasonable needs, any delivery date shall take into account the normal time required for the transport of goods from the different points of supply.

10. (a) In open procedures, the period for the receipt of tenders shall in no case be less than 30 days from the date of publication referred to in paragraph 3 of this Article.

- (b) In selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall in no case be less than 30 days from the date of publication referred to in paragraph 3; the period for receipt of tenders shall in no case be less than 30 days from the date of issuance of the invitation to tender.

- (c) In selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall in no case be less than 30 days from the date of the initial issuance of invitations to tender. If the date of initial issuance of invitations to tender does not coincide with the date of the publication referred to in paragraph 3, there shall in no case be less than 30 days between those two dates.

- (d) The periods referred to in (a), (b) and (c) above may be reduced either where a state of urgency duly substantiated by the entity renders impracticable the periods in question or in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 4 of this Article.

11. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the GATT.

12. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including the following:

- (a) the address of the entity to which tenders should be sent;
- (b) the address where requests for supplementary information should be sent;

- (c) the language or languages in which tenders and tendering documents must be submitted;
 - (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;
 - (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
 - (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;
 - (g) a complete description of the products required or of any requirements including technical specifications, conformity certification to be fulfilled by the products, necessary plans, drawings and instructional materials;
 - (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of foreign products, customs duties and other import charges, taxes and currency of payment;
 - (i) the terms of payment;
 - (j) any other terms or conditions.
13. (a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.
- (b) In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate and shall reply promptly to any reasonable request for explanations relating thereto.
- (c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.
- (a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or telecopy are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the dispatch of a signed copy of the telex, telegram or telecopy. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or telecopy shall prevail where there is a difference or conflict between that content and any documentation received after the time limit; requests to participate in selective tendering procedures may be submitted by telex, telegram or telecopy;
- (b) the opportunities that may be given to tenderers to correct unintentional errors between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice;
- (c) a supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide;
- (d) all tenders solicited under open and selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings as well as the availability of information from the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. To this effect, and in connection with open procedures, entities shall establish provisions for the opening of tenders in the presence of either tenderers or their representatives, or an appropriate and impartial witness not connected with the procurement process. A report on the opening of tenders shall be drawn up in writing. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles VI and VII of this Agreement;

Submission, receipt and opening of tenders and awarding of contracts

14. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:

- (e) to be considered for award, a tender must, at the time of opening, conform to the essential

requirements of the notices or tenders documentation and be from suppliers which comply with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract;

- (f) unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic or foreign products, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous;
- (g) if it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation, the entity shall, in any subsequent negotiations, give equal consideration and treatment to all tenders within the competitive range;
- (h) entities should normally refrain from awarding contracts on the condition that the supplier provides offset procurement opportunities or similar conditions. In the limited number of cases where such requisites are part of a contract, Parties concerned shall limit the offset to a reasonable proportion within the contract value and shall not favour suppliers from one Party over suppliers from any other Party. Licensing of technology should not normally be used as a condition of award but instances where it is required should be as infrequent as possible and suppliers from one Party shall not be favoured over suppliers from any other Party.

Use of single tendering

15. The provisions of paragraphs 1 to 14 above governing open and selective tendering procedures need not apply in the following conditions, provided that single tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among foreign suppliers or protection to domestic producers:

- (a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have

been either collusive or do not conform to the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;

- (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, the products can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
- (c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products could not be obtained in time by means of open or selective tendering procedures;
- (d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies or installations, or as the extension of existing supplies or installations where a change of supplier would compel the entity to purchase equipment not meeting requirements of interchangeability with already existing equipment;
- (e) when an entity purchases prototypes or a first product which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent purchases of products shall be subject to paragraphs 1 to 14 of this Article ⁽¹⁾.

16. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 15 of this Article. Each report shall contain the name of the purchasing entity, value and kind of goods purchased, country of origin, and a statement of the conditions in paragraph 15 of this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles VI and VII of this Agreement.

⁽¹⁾ Original development of a first product may include limited production in order to incorporate the results of field testing and to demonstrate that the product is suitable for production in quantity to acceptable quality standards. It does not extend to quantity production to establish commercial viability or to recover research and development costs.

*Article VI***Information and review**

1. Any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, shall be published promptly by the Parties in the appropriate publications listed in Annex IV and in such a manner as to enable other Parties and suppliers to become acquainted with them. The Parties shall be prepared, upon request, to explain to any other Party their government procurement procedures. Entities shall be prepared, upon request, to explain to any supplier from a country which is a Party to this Agreement their procurement practices and procedures.

2. Entities shall, upon request by any supplier, promptly provide pertinent information concerning the reasons why that supplier's application to qualify for the suppliers' list was rejected, or why that supplier was not invited or admitted to tender.

3. Entities shall promptly, and in no case later than seven working days from the date of the award of a contract, inform the unsuccessful tenderers by written communication or publication that a contract has been awarded.

4. Upon request by an unsuccessful tenderer, the purchasing entity shall promptly provide that tenderer with pertinent information concerning the reasons why the tender was not selected, including information on the characteristics and the relative advantages of the tender selected, as well as the name of the winning tenderer.

5. Entities shall establish a contact point to provide additional information to any unsuccessful tenderer dissatisfied with the explanation for rejection of his tender or who may have further questions about the award of the contract. There shall also be procedures for the hearing and reviewing of complaints arising in connection with any phase of the procurement process, so as to ensure that, to the greatest extent possible, disputes under this Agreement will be equitably and expeditiously resolved between the suppliers and the entities concerned.

6. The government of the unsuccessful tenderer, which is a Party to this Agreement, may seek, without prejudice to the provisions under Article VII, such additional information on the contract award as may be necessary to ensure that the purchase was made fairly

and impartially. To this end, the purchasing government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders this information shall not be disclosed except after consultation with and agreement of the party which gave the information to the government of the unsuccessful tenderer.

7. Available information concerning individual contract awards shall be provided, upon a request, to any other Party.

8. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers, shall not be revealed without formal authorization from the party providing the information.

9. The Parties shall collect and provide to the Committee on an annual basis statistics on their purchases. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement:

- (a) global statistics on estimated value of contracts awarded, both above and below the threshold value;
- (b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products and either nationality of the winning tenderer or country of origin of the product, according to a recognized trade or other appropriate classification system;
- (c) statistics on the total number and value of contracts awarded under each of the cases of Article V (15).

*Article VII***Enforcement of obligations***Institutions*

1. There shall be established under this Agreement a Committee on Government Procurement (referred to in this Agreement as 'the Committee') composed of representatives from each of the Parties. This Committee shall elect its own chairman and shall meet

as necessary but not less than once a year for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.

2. The Committee may establish *ad hoc* panels in the manner and for the purposes set out in paragraph 8 of this Article and working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.

Consultations

3. Each Party shall afford sympathetic consideration to, and shall afford adequate opportunity for, consultations regarding representations made by another Party with respect to any matter affecting the operation of this Agreement.

4. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement, is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, by another Party or Parties, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultations. The Parties concerned shall initiate requested consultations promptly.

5. The Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall provide information concerning the matter subject to the provisions of Article VI (8), and attempt to conclude such consultations within a reasonably short period of time.

Dispute settlement

6. If no mutually satisfactory solution has been reached as a result of consultations under paragraph 4 between the Parties concerned, the Committee shall meet at the request of any Party to the dispute within 30 days of receipt of such a request to investigate the matter, with a view to facilitating a mutually satisfactory solution.

7. If no mutually satisfactory solution has been reached after detailed examination by the Committee under paragraph 6 within three months, the Committee shall, at the request of any Party to the dispute establish a panel to:

- (a) examine the matter;
- (b) consult regularly with the Parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;
- (c) make a statement concerning the facts of the matter as they relate to application of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

8. In order to facilitate the constitution of panels, the chairman of the Committee shall maintain an informal indicative list of governmental officials experienced in the field of trade relations. This list may also include persons other than governmental officials. In this connection, each Party shall be invited to indicate at the beginning of every year to the chairman of the Committee the name(s) of the one or two persons whom the Parties would be willing to make available for such work. When a panel is established under paragraph 7, the chairman, within seven days, shall propose to the parties to the dispute the composition of the panel consisting of three or five members and preferably government officials. The parties directly concerned shall react within seven working days to nominations of panel members by the chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as governmental representatives or as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

9. Each panel shall develop its own procedures. All Parties, having a substantial interest in the matter and having notified this to the Committee, shall have an opportunity to be heard. Each panel may consult with and seek information from any source it deems appropriate. Before a panel seeks such information from a source within the jurisdiction of a Party it shall inform the government of that Party. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the government or person providing the information, will be provided.

Where a mutually satisfactory solution to a dispute cannot be found or where the dispute relates to an interpretation of this Agreement, the panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee. Where an interpretation of this Agreement is not involved and where bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution had been reached.

10. The time required by panels will vary with the particular case. Panels should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, taking into account the obligation of the Committee to ensure prompt settlement in cases of urgency, normally within a period of four months from the date the panel was established.

Enforcement

11. After the examination is complete or after the report of a panel, working party or other subsidiary body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to these reports, the Committee shall take appropriate action normally within 30 days of receipt of the report unless extended by the Committee, including:

- (a) a statement concerning the facts of the matter;
- (b) recommendations to one or more parties; and/or
- (c) any other ruling which it deems appropriate.

Any recommendations by the Committee shall aim at the positive resolution of the matter on the basis of the operative provisions of this Agreement and its objectives set out in the Preamble.

12. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

13. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

Balance of rights and obligations

14. If the Committee's recommendations are not accepted by a Party, or Parties to the dispute, and if the Committee considers that the circumstances are serious enough to justify such action, it may authorize a Party or Parties to suspend in whole or in part, and for such time as may be necessary, the application of this Agreement to any other Party or Parties, as is determined to be appropriate in the circumstances.

Article VIII

Exceptions to the Agreement

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures necessary to protect public morals, order or safety, human, animal or plant life or health, intellectual property, or relating to the products of handicapped persons, of philanthropic institutions or of prison labour.

Article IX

Final provisions

Acceptance and accession

1. (a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community whose agreed lists of entities are contained in Annex I.

(b) Any government Contracting Party to the GATT not a Party to this Agreement may accede to it on terms to be agreed between that government and the Parties. Accession shall take place by the deposit with the Director-General to the Contracting Parties to the GATT of an instrument of accession which states the terms so agreed.

(c) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession, and whose agreed lists of entities are contained in Annex I.

(d) This Agreement shall be open to accession by any other government on terms related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the parties, by the deposit with the Director-General to the Contracting Parties to the GATT of an instrument of accession which states the terms so agreed.

(e) In regard to acceptance, the provisions of Article XXVI (5) (a) and (b) of the General Agreement would be applicable.

Reservations

2. Reservations may not be entered in respect of any of the provisions of this Agreement.

Entry into force

3. This Agreement shall enter into force on 1 January 1981 for the governments ⁽¹⁾ which have accepted or acceded to it by that date. For each other government, it shall enter into force on the 30th day following the date of its acceptance or accession to this Agreement.

National legislation

4. (a) Each government accepting or acceding to this Agreement shall ensure, not later than the date

of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by the entities contained in its list annexed hereto, with the provisions of this Agreement.

(b) Each Party 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.

Rectifications or modifications

5. (a) Rectifications of a purely formal nature and minor amendments relating to Annexes I to IV to this Agreement shall be notified to the Committee and shall become effective provided there is no objection within 30 days to such rectifications or amendments.

(b) Any modifications to lists of entities other than those referred to in subparagraph (a) may be made only in exceptional circumstances. In such cases, a Party proposing to modify its list of entities shall notify the chairman of the Committee who shall promptly convene a meeting of the Committee. The Parties shall consider the proposed modification and consequent compensatory adjustments, with a view to maintaining a comparable level of mutually agreed coverage provided in this Agreement prior to such modification. In the event of agreement not being reached on any modification taken or proposed, the matter may be pursued in accordance with the provisions contained in Article VII of this Agreement, taking into account the need to maintain the balance of rights and obligations at the highest possible level.

Reviews and negotiations

6. (a) 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 periods covered by such reviews.

(b) Not later than the end of the third year from the entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to broadening and improving this Agreement on the basis of mutual reciprocity, having regard to the provisions of Article III relating to developing countries. In this connection, the Committee shall, at an early stage, explore the possibilities of expanding the coverage of this Agreement to include service contracts.

⁽¹⁾ For the purpose of this Agreement, the term 'government' is deemed to include the competent authorities of the European Economic Community.

Amendments

7. The parties may amend this Agreement having regard *inter alia* to the experience gained in its implementation. Such an amendment, once the parties have concurred in accordance with the procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

Withdrawal

8. Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the day on which written notice of withdrawal is received by the Director-General to the Contracting Parties to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.

Non-application of this Agreement between particular Parties

9. This Agreement shall not apply as between any two Parties if either of the parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

Notes and Annexes

10. The notes and Annexes to this Agreement constitute an integral part thereof.

Secretariat

11. This Agreement shall be serviced by the GATT secretariat.

Deposit

12. This Agreement shall be deposited with the Director-General to the Contracting Parties to the GATT, who shall promptly furnish to each Party and each Contracting Party to the GATT a certified copy thereof, of each rectification or modification thereto pursuant to paragraph 5 and of each amendment thereto pursuant to paragraph 7, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 1 and of each withdrawal therefrom pursuant to paragraph 8, of this Article.

Registration

13. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the lists of entities annexed hereto.

NOTES*Article I (1)*

Having regard to general policy considerations relating to tied aid, including the objective of developing countries with respect to the untying of such aid, this Agreement does not apply to procurement made in furtherance of tied aid to developing countries so long as it is practised by Parties.

Article V (14) (h)

Having regard to the general policy considerations of developing countries in relation to government procurement, it is noted that under the provisions of Article V (14) (h), developing countries may require incorporation of domestic content, offset procurement, or

transfer of technology as criteria for award of contracts. It is noted that suppliers from one Party shall not be favoured over suppliers from any other Party.

Note concerning Annexes to the Agreement

The Annexes to this Agreement, which contain lists of purchasing entities ⁽¹⁾ to which the provisions of the Agreement will apply, and the lists of publications referred to in Article V (3) and (6), and in Article VI (1) are not reproduced here owing to their bulk. They may be found annexed to the certified version of the Agreement on Government Procurement published by the GATT Secretariat in Geneva (dated 12 April 1979).

⁽¹⁾ The following countries have deposited such lists of purchasing entities: Australia, EEC and its Member States, Finland, Hong Kong, India, Jamaica, Japan, Nigeria, Norway, Sweden, Switzerland and the United States.

AGREEMENT ON TRADE IN CIVIL AIRCRAFT

PREAMBLE

SIGNATORIES ⁽¹⁾ TO THE AGREEMENT ON TRADE IN CIVIL AIRCRAFT, hereinafter referred to as 'this Agreement';

NOTING that Ministers on 12 to 14 September 1973 agreed the Tokyo Round of multilateral trade negotiations should achieve the expansion and ever-greater liberalization of world trade through *inter alia* the progressive dismantling of obstacles to trade and the improvement of the international framework for the conduct of world trade;

DESIRING to achieve maximum freedom of world trade in civil aircraft, parts and related equipment, including elimination of duties, and to the fullest extent possible, the reduction or elimination of trade restricting or distorting effects;

DESIRING to encourage the continued technological development of the aeronautical industry on a world-wide basis;

DESIRING to provide fair and equal competitive opportunities for their civil aircraft activities and for their producers to participate in the expansion of the world civil aircraft market;

BEING MINDFUL of the importance in the civil aircraft sector of their overall mutual economic and trade interests;

RECOGNIZING that many signatories view the aircraft sector as a particularly important component of economic and industrial policy;

SEEKING to eliminate adverse effects on trade in civil aircraft resulting from governmental support in civil aircraft development, production, and marketing while recognizing that such governmental support, of itself, would not be deemed a distortion of trade;

DESIRING that their civil aircraft activities operate on a commercially competitive basis, and recognizing that government-industry relationships differ widely among them;

RECOGNIZING their obligations and rights under the General Agreement on tariffs and trade, hereinafter referred to as 'the GATT', and under other multilateral Agreements negotiated under the auspices of the GATT;

RECOGNIZING the need to provide for international notification, consultation, surveillance and dispute settlement procedures with a view to ensuring a fair, prompt and effective enforcement of the provisions of this Agreement and to maintain the balance of rights and obligations among them;

DESIRING to establish an international framework governing conduct of trade in civil aircraft;

HEREBY AGREE AS FOLLOWS:

⁽¹⁾ The term 'signatories' is hereinafter used to mean parties to this Agreement.

*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 sub-assemblies 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 2***Customs duties and other charges**

2.1. Signatories agree:

2.1.1. to eliminate by 1 January 1980, or by the date of entry into force of this Agreement, all customs duties and other charges ⁽¹⁾ of any kind levied on, or in connection with, the importation of products, classified for customs purposes under their respective tariff headings listed in the Annex, if such products are for use in a civil aircraft and incorporation therein, in the course of its manufacture, repair, maintenance, rebuilding, modification or conversion;

2.1.2. to eliminate by 1 January 1980, or by the date of entry into force of this Agreement, all customs duties and other charges ⁽¹⁾ of any kind levied on repairs on civil aircraft;

2.1.3. to incorporate in their respective GATT schedules by 1 January 1980, or by the date of entry into force of this Agreement, duty-free or duty-exempt

treatment for all products covered by Article 2.1.1 above and for all repairs covered by Article 2.1.2 above.

2.2. Each signatory shall:

- (a) adopt or adapt an end-use system of customs administration to give effect to its obligations under Article 2.1 above;
- (b) ensure that its end-use system provides duty-free or duty-exempt treatment that is comparable to the treatment provided by other signatories and is not an impediment to trade; and
- (c) inform other signatories of its procedures for administering the end-use system.

*Article 3***Technical barriers to trade**

3.1. Signatories note that the provisions of the Agreement on technical barriers to trade apply to trade in civil aircraft. In addition, signatories agree that civil aircraft certification requirements and specifications on operating and maintenance procedures shall be governed, as between signatories, by the provisions of the Agreement on technical barriers to trade.

*Article 4***Government-directed procurement, mandatory subcontracts and inducements**

4.1. Purchasers of civil aircraft should be free to select suppliers on the basis of commercial and technological factors.

4.2. Signatories shall not require airlines, aircraft manufacturers, or other entities engaged in the purchase of civil aircraft, nor exert unreasonable pressure on them, to procure civil aircraft from any particular source, which would create discrimination against suppliers from any signatory.

4.3. Signatories agree that the purchase of products covered by this Agreement should be made only on a competitive price, quality and delivery basis. In conjunction with the approval or awarding of procurement contracts for products covered by this

⁽¹⁾ 'Other charges' shall have the same meaning as in Article II of the GATT.

Agreement a signatory may, however, require that its qualified firms be provided with access to business opportunities on a competitive basis and on terms no less favourable than those available to the qualified firms of other signatories ⁽¹⁾.

4.4. 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.

Article 5

Trade restrictions

5.1. Signatories shall not apply quantitative restrictions (import quotas) or import licensing requirements to restrict imports of civil aircraft in a manner inconsistent with applicable provisions of the GATT. This does not preclude import monitoring or licensing systems consistent with the GATT.

5.2. Signatories shall not apply quantitative restrictions or export licensing or other similar requirements to restrict, for commercial or competitive reasons, exports of civil aircraft to other signatories in a manner inconsistent with applicable provisions of the GATT.

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 costs of military research and development on aircraft, components, and systems that are subsequently applied to the production of such civil aircraft, average production costs, and financial costs.

Article 7

Regional and local governments

7.1. In addition to their other obligations under this Agreement, signatories agree not to require or encourage, directly or indirectly, regional and local governments and authorities, non-governmental bodies, and other bodies to take action inconsistent with provisions of this Agreement.

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

⁽¹⁾ Use of the phrase 'access to business opportunities ... on terms no less favourable ...' does not mean that the amount of contracts awarded to the qualified firms of one signatory entitles the qualified firms of other signatories to contracts of a similar amount.

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.

Article 9

Final provisions

9.1. *Acceptance and accession*

9.1.1. This Agreement shall be open for acceptance by signature or otherwise by Government Contracting Parties to the GATT and by the European Economic Community.

9.1.2. This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

9.1.3. This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the signatories, by the deposit with the Director-General to the Contracting Parties to the GATT of an instrument of accession which states the terms so agreed.

9.1.4. In regard to acceptance, the provisions of Article XXVI (5) (a) and (b) of the General Agreement would be applicable.

9.2. *Reservations*

9.2.1. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other signatories.

9.3. *Entry into force*

9.3.1. This Agreement shall enter into force on 1 January 1980 for the governments ⁽¹⁾ which have accepted or acceded to it by that date. For each other government it shall enter into force on the 30th day following the date of its acceptance or accession to this Agreement.

9.4. *National legislation*

9.4.1. Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

9.4.2. Each signatory 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.

9.5. *Amendments*

9.5.1. The signatories may amend this Agreement, having regard *inter alia* to the experience gained in its implementation. Such an amendment, once the signatories have concurred in accordance with the procedures established by the Committee, shall not come into force for any signatory until it has been accepted by such signatory.

9.6. *Withdrawal*

9.6.1. Any signatory may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 12 months from the day on which written notice of withdrawal is received by the Director-General to the contracting parties to the GATT. Any signatory

may upon such notification request an immediate meeting of the Committee.

9.7. *Non-application of this Agreement between particular Signatories*

9.7.1. This Agreement shall not apply as between any two signatories if either of the signatories, at the time either accepts or accedes to this Agreement, does not consent to such application.

9.8. *Annex*

9.8.1. The Annex to this Agreement forms an integral part thereof.

9.9. *Secretariat*

9.9.1. This Agreement shall be serviced by the GATT secretariat.

9.10. *Deposit*

9.10.1. This Agreement shall be deposited with the Director-General to the Contracting Parties to the GATT who shall promptly furnish to each signatory and each Contracting Party to the GATT a certified copy thereof and of each amendment thereto pursuant to Article 9.5 and a notification of each acceptance thereof or accession thereto pursuant to Article 9.1, or each withdrawal therefrom pursuant to Article 9.6.

9.11. *Registration*

9.11.1. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English and French languages, each text being authentic, except as otherwise specified with respect to the various lists in the Annex.

⁽¹⁾ For the purpose of this Agreement, the term 'government' is deemed to include the competent authorities of the European Economic Community.

ANNEX

PRODUCT COVERAGE

Signatories agree that products classified for customs purposes under their respective tariff headings listed below shall be accorded duty-free or duty-exempt treatment, if such products are for use in a civil aircraft and incorporation therein, in the course of its manufacture, repair, maintenance, rebuilding, modification or conversion.

These products shall not include:

- an incomplete or unfinished product, unless it has the essential characteristics of a complete or finished civil aircraft part, component, sub-assembly or item of equipment ⁽¹⁾,
- materials in any form (e.g., sheets, plates, profile shapes, strips, bars, pipes, tubes, or other shapes) unless they have been cut to size or shape or shaped for incorporation in civil aircraft ⁽¹⁾,
- raw materials and consumable goods.

List of items from the Canadian Tariff Schedule

The following list is authentic only in the English and French languages.

Heading No	Description
44060-1	Civil aircraft; aircraft engines for use in civil aircraft
44061-1	Flight simulator systems; parts thereof, n.o.p.
44062-1	Hinges entitled to entry under tariff items 35200-1, 35400-1 and 36215-1; Furniture entitled to entry under tariff items 35400-1, 44603-1, 61800-1 and 93907-1; Castings entitled to entry under tariff items 35400-1 and 39000-1; Forgings entitled to entry under tariff item 39200-1; Sealed-beam lamps entitled to entry under tariff item 44504-1; Microphones entitled to entry under tariff item 44536-1; Magnesium castings entitled to entry under tariff item 71100-1; Goods except parts, entitled to entry under tariff items 44028-1, 44300-1, 44514-1, 44538-1, 44540-1 and 46200-1; Goods entitled to entry under tariff items 31200-1, 36800-1, 41417-1, 41417-2, 41505-1, 41505-2, 42400-1, 42405-1, 42700-1, 42701-1, 43005-1, 43300-1, 44053-1, 44057-1, 44059-1, 44500-1, 44502-1, 44516-1, 44524-1, 44532-1, 44533-1, 47100-1 and 61815-1; All the foregoing when for use in the manufacture, repair, maintenance, rebuilding, modification or conversion of the goods enumerated in tariff item 44060-1

⁽¹⁾ E.g., an article which has a civil aircraft manufacturer's parts number.

List of products based on CCCN

(Customs Cooperation Council Nomenclature) headings

The following list is authentic only in the English and French languages.

Note: For the purpose of this list, 'ex' means that for each CCCN heading listed below, the corresponding named products (or groups of products) will be accorded duty-free or duty-exempt treatment, if they are for use in civil aircraft and incorporation therein ⁽¹⁾.

CCCN heading No	Description
ex 39.07	Piping and tubing, of plastic materials, with attached fittings, suitable for conducting gases or liquids
ex 40.09	Piping and tubing, of unhardened vulcanized rubber, with attached fittings, suitable for conducting gases or liquids
ex 40.11	Pneumatic tyres, of rubber
ex 40.16	Piping and tubing of hardened rubber, with attached fittings, suitable for conducting gases or liquids
ex 62.05	Escape chutes
ex 68.13	Articles of asbestos, excluding thread and fabric
ex 68.14	Friction material (segments, discs, washers, strips, sheets, plates, rolls and the like) of a kind suitable for brakes, for clutches or the like, with a basis of asbestos
ex 70.08	Windshields of safety glass, not framed
ex 73.25	Stranded wire, cables, cordage, ropes, plaited bands, slings and the like, of iron or steel wire, fitted with fittings, or made up into articles
ex 73.38	Sanitary ware, excluding parts thereof, of iron or steel
ex 83.02	Base metal fittings and mountings (including hinges)
ex 83.07	Lamps and lighting fittings, and parts thereof, of base metal (excluding articles falling within Chapter 85 except heading No 85.22)
ex 83.08	Flexible tubing and piping, of base metal, with attached fittings
ex 84.06	Internal combustion piston engines, and parts thereof
ex 84.07	Hydraulic engines and motors, excluding parts thereof
ex 84.08	Non-piston internal combustion engines, and parts thereof; other engines and motors, excluding parts thereof
ex 84.10	Pumps for liquids, whether or not fitted with measuring devices, excluding parts thereof

⁽¹⁾ 'Flight simulators and parts thereof: ex 88.05' are also included, though they do not have to be incorporated.

CCCN heading No.	Description
ex 84.11	Air pumps, vacuum pumps; air or gas compressors; fans, blowers and the like; the foregoing excluding parts thereof
ex 84.12	Air conditioning machines, self-contained, comprising a motor-driven fan and elements for changing the temperature and humidity of air; the foregoing excluding parts thereof
ex 84.15	Refrigerators and refrigerating equipment (electrical and other), excluding parts thereof
ex 84.18	Centrifuges, filtering and purifying machinery and apparatus, for liquids or gases; the foregoing excluding parts thereof
ex 84.21	Fire extinguishers (charged or not), excluding parts thereof
ex 84.22	Elevators (lifts), hoists, winches, cranes, jacks, pulley tackle, belt conveyors and other lifting, handling, loading or unloading machinery, and conveyors; the foregoing excluding parts thereof
ex 84.53	Automatic data processing machines
ex 84.59	Non-electric starter motors, Propeller regulators, non-electric, Servo-mechanisms, non-electric, Windscreen wipers, non-electric, Hydraulic servo-motors, non-electric, Hydropneumatic spherical batteries, Pneumatic starters for jet engines, Toilet units specially designed for aircraft, Mechanical actuators for thrust reversers; the foregoing excluding parts thereof
ex 84.63	Speed changers and gear boxes, excluding parts thereof Pulleys and shaft couplings and parts of the foregoing, which are specially designed for installation in civil aircraft Torque converters and parts of the foregoing, which are specially designed for installation in civil aircraft Chain sprockets, clutches and universal joints, excluding parts thereof
ex 85.01	Transformers, rated at 1 kVA or more, excluding parts thereof Electrical motors of 1 h.p. or more, but under 200 h.p., excluding parts thereof Generators, motor-generators, converters (rotary or static), rectifiers and rectifying apparatus, inductors; the foregoing, excluding parts thereof

CCCN heading No	Description
ex 85.08	Electrical starting and ignition equipment for internal combustion engines (including ignition magnetos, magneto-dynamos, ignition coils, starter motors, sparking plugs and glow plugs); generators (dynamos and alternators) and cut-outs for use in conjunction with such engines; the foregoing, excluding parts thereof
ex 85.12	Cooking stoves and ranges, electric; furnaces, heaters, ovens, electric; food warmers, electric; the foregoing, excluding parts thereof
ex 85.14	Microphones and stands therefor; loudspeakers, audio-frequency electric amplifiers; the foregoing, excluding parts thereof
ex 85.15	Solid-state (tubeless) radio receivers, excluding parts thereof Other radio-telegraphic and radio-telephonic transmission and reception apparatus, excluding parts thereof Radio navigational aid apparatus, radar apparatus and radio remote control apparatus; assemblies and sub-assemblies of such apparatus, consisting of two or more parts or pieces fastened or joined together, specially designed for installation in civil aircraft
ex 85.17	Electric sound or visual signalling apparatus, excluding parts thereof
ex 85.20	Sealed beam lamps, excluding parts thereof
ex 85.22	Flight recorders and assemblies and sub-assemblies thereof, consisting of two or more parts or pieces fastened or joined together, specially designed for installation in civil aircraft
ex 85.23	Ignition wiring sets and wiring sets designed for use in civil aircraft
ex 88.01	Balloons and airships
ex 88.02	Gliders Flying machines, including helicopters
ex 88.03	Parts of balloons, airships, gliders, flying machines and helicopters
ex 88.05	Flight simulators and parts thereof
ex 90.14	Automatic pilots and parts thereof Optical navigational instruments, excluding parts thereof Other navigational instruments, and parts thereof Gyroscopic compasses and parts thereof Other compasses, excluding parts thereof

CCCN heading No	Description
ex 90.18	Gas masks and similar respirators, excluding parts thereof
ex 90.23	Thermometers
ex 90.24	Instruments and apparatus for measuring, checking or automatically controlling the flow, depth, pressure or other variables of liquids or gases, or for automatically controlling temperature
ex 90.27	Speed indicators and tachometers
ex 90.28	Automatic flight control instruments and apparatus Other electrical measuring, checking, analyzing or automatically controlling instruments and apparatus
ex 90.29	Parts of automatic flight control instruments and apparatus
ex 91.03	Instrument panel clocks and clocks of a similar type, with watch movements; or with clock movements measuring less than 1.77 inches in width
ex 91.08	Clock movements, assembled, without dials or hands, or with dials or hands whether or not assembled thereon; constructed or designed to operate for over 47 hours without rewinding, having over one jewel
ex 94.01	Chairs and other seats (except leather-covered chairs and seats), excluding parts thereof
ex 94.03	Other furniture, excluding parts thereof

List of items from the tariff schedules of the United States

The following list is authentic only in the English language.

TSUS No	Description
518.52	Articles NSPF, of asbestos, if certified for use in civil aircraft
544.43	Windshields, if certified for use in civil aircraft
642.22	Strands, ropes, cables and cordage; all the foregoing, of wire, fitted with fittings, or made up into articles, if certified for use in civil aircraft
647.04	Hinges and fittings and mountings, NSPF, not coated or plated with precious metal; all the foregoing of iron or steel, or aluminum, or zinc, if certified for use in civil aircraft
647.07	Hinges and fittings and mountings, NSPF, not coated or plated with precious metal, of base metal other than iron, steel, aluminum or zinc, if certified for use in civil aircraft

TSUS No	Description
652.11	Flexible metal hose or tubing, with fittings, if certified for use in civil aircraft
653.41	Illuminating articles and parts thereof, of base metal, if certified for use in civil aircraft
653.96	Toilet and sanitary ware, if certified for use in civil aircraft
660.58	Internal combustion engines, piston-type, other than compression-ignition engines, if certified for use in civil aircraft
660.61	Non-piston type internal combustion engines, if certified for use in civil aircraft
660.69	Parts of piston-type engines other than compression-ignition engines, if certified for use in civil aircraft
660.73	Parts of non-piston-type engines or compression-ignition, piston-type engines, if certified for use in civil aircraft
660.87	Non-electric engines and motors, NSPF, if certified for use in civil aircraft
660.99	Pumps for liquids operated by any kind of power unit, if certified for use in civil aircraft
661.08	Fans and blowers, if certified for use in civil aircraft
661.14	Compressors, if certified for use in civil aircraft
661.17	Air pumps and vacuum pumps, if certified for use in civil aircraft
661.22	Air-conditioning machines, if certified for use in civil aircraft
661.37	Refrigerators and refrigerating equipment, if certified for use in civil aircraft
661.91	Centrifuges, if certified for use in civil aircraft
661.97	Filtering and purifying machinery and apparatus, for liquids or gases, if certified for use in civil aircraft
662.52	Fire extinguishers, if certified for use in civil aircraft
664.12	Elevators, hoists, winches, cranes, jacks, pulley tackle, belt conveyors, and other lifting, handling, loading or unloading machinery and conveyors; all the foregoing, if certified for use in civil aircraft
676.16	Accounting, computing and other data processing machines, if certified for use in civil aircraft
678.48	Flight simulating machines and parts thereof

TSUS No	Description
680.47	Gear boxes and other speed changers, other than those provided for in items 680.43 and 680.44, if certified for use in civil aircraft
680.51	Pulleys, shaft couplings, and parts of the foregoing which are specially designed for installation in civil aircraft; all the foregoing, if certified for use in civil aircraft
680.57	Torque converters; and parts thereof which are specially designed for installation in civil aircraft; all the foregoing, if certified for use in civil aircraft
680.59	Chain sprockets, clutches and universal joints, if certified for use in civil aircraft
682.08	Electrical transformers rated at 1 kVA or more, if certified for use in civil aircraft
682.42	Electrical motors of one horsepower or more, but not over 20 horsepower, if certified for use in civil aircraft
682.46	Electrical motors of over 20 but under 200 horsepower, if certified for use in civil aircraft
682.61	Generators, motor-generators, converters (rotary or static), rectifiers and rectifying apparatus and inductors; all the foregoing which are electrical goods, if certified for use in civil aircraft
683.62	Ignition magnetos, magneto-generators, ignition coils, starter motors, spark plugs, glow plugs, and other electrical starting and ignition equipment for internal combustion engines, generators and cut-outs for use in conjunction therewith; all the foregoing, if certified for use in civil aircraft
684.26	Microwave ovens, if certified for use in civil aircraft
684.31	Cooking stoves and ranges, if certified for use in civil aircraft
684.42	Furnaces, heaters and ovens, if certified for use in civil aircraft
684.51	Food warming devices, if certified for use in civil aircraft
684.72	Microphones, loudspeakers, headphones, audio-frequency electric amplifiers, electric sound amplifier sets comprised of the foregoing components; all the foregoing, if certified for use in civil aircraft
685.25	Solid state radio receivers, if certified for use in civil aircraft
685.30	Other radiotelegraphic and radiotelephonic transmission and reception apparatus, if certified for use in civil aircraft
685.41	Tape recorders and dictation recording and transcribing machines; assemblies and subassemblies of such machines, consisting of two or more parts or pieces fastened or joined together, specially designed for installation in civil aircraft; all the foregoing, if certified for use in civil aircraft
685.61	Radio navigational aid apparatus, radar apparatus, and radio remote control apparatus; assemblies and subassemblies of such apparatus, consisting of two or

TSUS No	Description
685.61 (cont'd)	more parts or pieces fastened or joined together, specially designed for installation in civil aircraft; all the foregoing, if certified for use in civil aircraft
685.72	Bells, sirens, indicator panels, burglar and fire alarms, and other sound or visual signalling apparatus; all the foregoing which are electrical, if certified for use in civil aircraft
686.21	Automatic voltage and voltage-current regulators designed for use in a 6-volt, 12-volt or 24-volt system; if certified for use in civil aircraft
686.25	Automatic voltage and voltage current regulators other than those designed for use in a 6-volt, 12-volt or 24-volt system, if certified for use in civil aircraft
686.62	Sealed-beam lamps, if certified for use in civil aircraft
688.14	Ignition wiring sets, if certified for use in civil aircraft
688.42	Electrical synchros and transducers, if certified for use in civil aircraft
694.16	Civil balloons and airships
694.21	Civil gliders
694.41	Civil airplanes (including helicopters)
694.62	Other parts of civil aircraft, if certified for use in civil aircraft
709.46	Gas masks and similar respirators, if certified for use in civil aircraft
710.09	Optical instruments other than photogrammetrical instruments and rangefinders, if certified for use in civil aircraft
710.15	Gyroscopic compasses and parts thereof, if certified for use in civil aircraft
710.17	Other compasses, if certified for use in civil aircraft
710.31	Automatic pilots and parts thereof, if certified for use in civil aircraft
710.47	Other navigational instruments and parts thereof, if certified for use in civil aircraft
711.37	Liquid-filled thermometers other than clinical thermometers, if certified for use in civil aircraft
711.39	Other thermometers, if certified for use in civil aircraft
711.83	Flow meters, heat meters incorporating liquid supply meters, and anemometers; all the foregoing, if certified for use in civil aircraft
711.87	Pressure gauges, thermostats and other instruments and apparatus for measuring, checking, or automatically controlling the flow, depth, pressure, or other variables of

TSUS No	Description
711.87 (cont'd)	liquids or gases, or for automatically controlling temperature; all the foregoing, if certified for use in civil aircraft
711.97	Speedometers and tachometers, if certified for use in civil aircraft
712.06	Electrical optical measuring, checking, analyzing or automatically-controlling instruments, if certified for use in civil aircraft
712.48	Electrical automatic flight control instruments and apparatus, and parts thereof; all the foregoing, if certified for use in civil aircraft
712.52	Other electrical measuring, checking, analyzing or automatically-controlling instruments and apparatus, if certified for use in civil aircraft
715.16	Clocks with watch movements or with clock movements measuring less than 1.77 inches in width, if certified for use in civil aircraft
720.09	Clock movements, assembled, without dials or hands, or with dials or hands whether or not assembled thereon, constructed or designed to operate for over 47 hours without rewinding, having over one jewel, if certified for use in civil aircraft
727.49	Furniture of reinforced or laminated plastics, if certified for use in civil aircraft
727.51	Furniture of other rubber or plastics, if certified for use in civil aircraft
727.56	Furniture, of materials other than unspun fibrous vegetable materials, wood, textile materials (except cotton), rubber or plastics, copper, or leather, if certified for use in civil aircraft
772.46	Pneumatic tires, of rubber or plastics, if certified for use in civil aircraft
772.67	Hose, pipe and tubing; all the foregoing NSPF, of rubber or plastics, suitable for conducting gases or liquids, with attached fittings, if certified for use in civil aircraft

**AGREEMENT ON INTERPRETATION AND APPLICATION OF ARTICLES VI, XVI
AND XXIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE**

PREAMBLE

THE SIGNATORIES ⁽¹⁾ TO THIS AGREEMENT,

NOTING that Ministers on 12 to 14 September 1973 agreed that the multilateral trade negotiations should *inter alia* reduce or eliminate the trade restricting or distorting effects of non-tariff measures, and bring such measures under more effective international discipline;

RECOGNIZING that subsidies are used by governments to promote important objectives of national policy;

RECOGNIZING also that subsidies may have harmful effects on trade and production;

RECOGNIZING that the emphasis of this Agreement should be on the effects of subsidies and that these effects are to be assessed in giving due account to the internal economic situation of the signatories concerned as well as to the state of international economic and monetary relations;

DESIRING to ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory to this Agreement, and that countervailing measures do not unjustifiably impede international trade, and that relief is made available to producers adversely affected by the use of subsidies within an agreed international framework of rights and obligations;

TAKING INTO ACCOUNT the particular trade, development and financial needs of developing countries;

DESIRING to apply fully and to interpret the provisions of Articles VI, XVI and XXIII of the General Agreement on tariffs and trade ⁽²⁾ (hereinafter referred to as 'General Agreement' or 'GATT') only with respect to subsidies and countervailing measures and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

DESIRING to provide for the speedy, effective and equitable resolution of disputes arising under this Agreement;

HAVE AGREED AS FOLLOWS:

⁽¹⁾ The term 'signatories' is hereinafter used to mean Parties to this Agreement.

⁽²⁾ Wherever in this Agreement there is reference to 'the terms of this Agreement' or the 'Articles' or 'provisions of this Agreement' it shall be taken to mean, as the context requires, the provisions of the General Agreement as interpreted and applied by this Agreement.

PART I

Article 1

Application of Article VI of the General Agreement ⁽¹⁾

Signatories shall take all necessary steps to ensure that the imposition of a countervailing duty ⁽²⁾ on any product of the territory of any signatory imported into the territory of another signatory is in accordance with the provisions of Article VI of the General Agreement and the terms of this Agreement.

Article 2

Domestic procedures and related matters

1. Countervailing duties may only be imposed pursuant to investigations initiated ⁽³⁾ and conducted in accordance with the provisions of this Article. An investigation to determine the existence, degree and effect of any alleged subsidy shall normally be initiated upon a written request by or on behalf of the industry affected. The request 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 the General Agreement as interpreted by this Agreement ⁽⁴⁾; and

⁽¹⁾ The provisions of both Part I and Part II of this Agreement may be invoked in parallel: however, with regard to the effects of a particular subsidy in the domestic market of the importing country, only one form of relief (either a countervailing duty or an authorized countermeasure) shall be available.

⁽²⁾ The term 'countervailing duty' shall be understood to mean a special duty levied for the purpose of off-setting any bounty or subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise, as provided for in Article VI (3) of the General Agreement.

⁽³⁾ The term 'initiated' as used hereinafter means procedural action by which a signatory formally commences an investigation as provided in paragraph 3 of this Article.

⁽⁴⁾ 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 Article 6.

- (c) a causal link between the subsidized imports and the alleged injury.

If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have sufficient evidence on all points under (a) to (c) above.

2. Each signatory shall notify the Committee on Subsidies and Countervailing Measures ⁽⁵⁾;

- (a) which of its authorities are competent to initiate and conduct investigations referred to in this Article; and
- (b) its domestic procedures governing the initiation and conduct of such investigations.

3. When the investigating authorities are satisfied that there is sufficient evidence to justify initiating an investigation, the signatory or signatories, the products of which are subject to such investigation and the exporters and importers known to the investigating authorities to have an interest therein and the complainants shall be notified and a public notice shall be given. In determining whether to initiate an investigation, the investigating authorities should take into account the position adopted by the affiliates of a complainant party ⁽⁶⁾ which are resident in the territory of another signatory.

4. Upon initiation of an investigation and thereafter, the evidence of both a subsidy and injury caused thereby should be considered simultaneously. In any event the evidence of both the existence of 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.

5. The public notice referred to in paragraph 3 above shall describe the subsidy practice or practices to be investigated. Each signatory shall ensure that the investigating authorities afford all interested signatories and all interested parties ⁽⁷⁾ a reasonable opportunity,

⁽⁵⁾ As established in Part V of this Agreement and hereinafter referred to as 'the Committee'.

⁽⁶⁾ For the purpose of this Agreement 'Party' means any natural or juridical person resident in the territory of any signatory.

⁽⁷⁾ Any 'interested signatory' or 'interested party' shall refer to a signatory or a party economically affected by the subsidy in question.

upon request, to see all relevant information that is not confidential (as indicated in paragraphs 6 and 7 below) and that is used by the investigating authorities in the investigation, and to present in writing, and upon justification orally, their views to the investigating authorities.

6. Any information which is by nature confidential or which is provided on a confidential basis by parties to an investigation shall, upon cause shown, be treated as such by the investigating authorities. Such information shall not be disclosed without specific permission of the party submitting it ⁽¹⁾. Parties providing confidential information may be requested to furnish non-confidential summaries thereof. In the event such parties indicate that such information is not susceptible of summary, a statement of reasons why summarization is not possible must be provided.

7. However, if the investigating authorities find that a request for confidentiality is not warranted and if the party requesting confidentiality is unwilling to disclose the information, such authorities may disregard such information unless it can otherwise be demonstrated to their satisfaction that the information is correct ⁽²⁾.

8. The investigating authorities may carry out investigations in the territory of other signatories as required, provided they have notified in good time the signatory in question and unless the latter 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 signatory in question is notified and does not object.

9. In cases in which any interested party or signatory refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and

final findings ⁽³⁾, affirmative or negative, may be made on the basis of the facts available.

10. The procedures set out above are not intended to prevent the authorities of a signatory from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final findings, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

11. In cases where products are not imported directly from the country of origin but are exported to the country of importation 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 country of importation.

12. An investigation shall be terminated when the investigating authorities are satisfied either that no subsidy exists or that the effect of the alleged subsidy on the industry is not such as to cause injury.

13. An investigation shall not hinder the procedures of customs clearance.

14. Investigations shall, except in special circumstances, be concluded within one year after their initiation.

15. Public notice shall be given of any preliminary or final finding whether affirmative or negative and of the revocation of a finding. In the case of an affirmative finding each such notice shall set forth the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities, and the reasons and basis therefor. In the case of a negative finding each notice shall set forth at least the basic conclusions and a summary of the reasons therefor. All notices of finding shall be forwarded to the signatory or signatories the products of which are subject to such finding and to the exporters known to have an interest therein.

16. Signatories shall report without delay to the Committee all preliminary or final actions taken with

⁽¹⁾ Signatories are aware that in the territory of certain signatories disclosure pursuant to a narrowly-drawn protective order may be required.

⁽²⁾ Signatories agree that requests for confidentiality should not be arbitrarily rejected.

⁽³⁾ Because of different terms used under different systems in various countries the term 'finding' is hereinafter used to mean a formal decision of determination.

respect to countervailing duties. Such reports will be available in the GATT secretariat for inspection by government representatives. The signatories shall also submit, on a semi-annual basis, reports on any countervailing duty actions taken within the preceding six months.

Article 3

Consultations

1. As soon as possible after a request for initiation of an investigation is accepted, and in any event before the initiation of any investigation, signatories the products of which may be subject to such investigation shall be afforded a reasonable opportunity for consultations with the aim of clarifying the situation as to the matters referred to in Article 2 (1) above and arriving at a mutually agreed solution.

2. Furthermore, throughout the period of investigation, signatories the products 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⁾.

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 signatory from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final findings, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.

4. The signatory which intends to initiate any investigation or is conducting such an investigation shall permit, upon request, the signatory or signatories 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.

Article 4

Imposition of countervailing duties

1. 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 signatory. It is desirable that the imposition be permissive in the territory of all signatories and that the duty be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry.

2. 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 ⁽³⁾.

3. When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and to be 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.

4. If, after reasonable efforts have been made to complete consultations, a signatory 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 section unless the subsidy is withdrawn.

5. (a) Proceedings may ⁽⁴⁾ be suspended or terminated without the imposition of provisional measures or countervailing duties, if undertakings are accepted under which:

- (i) the government of the exporting country agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

⁽¹⁾ It is particularly important, in accordance with the provisions of this paragraph, that no affirmative finding 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 VI of this Agreement.

⁽²⁾ As used in this Agreement 'levy' shall mean the definitive or final legal assessment or collection of a duty or tax.

⁽³⁾ An understanding among signatories should be developed setting out the criteria for the calculation of the amount of the subsidy.

⁽⁴⁾ The word 'may' shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings, except as provided in paragraph 5 (b) of this Article.

(ii) 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 undertakings shall not be higher than necessary to eliminate the amount of the subsidy. Price undertakings shall not be sought or accepted from exporters unless the importing signatory has first: (1) initiated an investigation in accordance with the provisions of Article 2 of this Agreement; and (2) obtained the consent of the exporting signatory. Undertakings offered need not be accepted if the authorities of the importing signatory consider their acceptance impractical, for example if the number of actual or potential exporters is too great, or for other reasons.

(b) If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the exporting signatory so desires or the importing signatory so decides. In such a case, if a determination of no injury or threat thereof is made, the undertaking shall automatically lapse, except in cases where a determination of no threat of injury 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.

(c) Price undertakings may be suggested by the authorities of the importing signatory, but no exporter shall be forced to enter into such an undertaking. The fact that governments or exporters do not offer such undertakings or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the subsidized imports continue.

6. Authorities of an importing signatory may require any government or exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. In case of violation of undertakings, the authorities of the importing signatory may take expeditious actions under this Agreement in conformity with its provisions 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 goods 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.

7. Undertakings shall not remain in force any longer than countervailing duties could remain in force under this Agreement. The authorities of an importing signatory shall review the need for the continuation of any undertaking, where warranted, on their own initiative, or if interested exporters or importers of the product in question so request and submit positive information substantiating the need for such review.

8. Whenever a countervailing duty investigation is suspended or terminated pursuant to the provisions of paragraph 5 above and whenever an undertaking is terminated, this fact shall be officially notified and must be published. Such notices shall set forth at least the basic conclusions and a summary of the reasons therefor.

9. A countervailing duty shall remain in force only as long as, and to the extent necessary to counteract the subsidization which is causing injury. The investigating authorities shall review the need for continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.

Article 5

Provisional measures and retroactivity

1. Provisional measures may be taken only after a preliminary affirmative finding has been made that a subsidy exists and that there is sufficient evidence of injury as provided for in Article 2 (1) (a) to (c). Provisional measures shall not be applied unless the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation.

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.

3. The imposition of provisional measures shall be limited to as short a period as possible, not exceeding four months.

4. The relevant provisions of Article 4 shall be followed in the imposition of provisional measures.

5. Where a final finding 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 finding of threat of injury where the effect of the subsidized imports would, in the absence of the provisional measures, have led to a finding of injury, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

6. 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.

7. Except as provided in paragraph 5 above, where a finding 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 finding of threat of 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.

8. Where a final finding 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.

9. 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 export subsidies paid or bestowed inconsistently with the provisions of the General Agreement 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 6

Determination of injury

1. A determination of injury ⁽¹⁾ for purposes of Article VI of the General Agreement shall involve an objective examination of both:

- (a) the volume of subsidized imports and their effect on prices in the domestic market for like products ⁽²⁾; and
- (b) the consequent impact of these imports on domestic producers of such products.

2. With regard to volume of 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 signatory. 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 signatory, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3. The examination of the impact on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as 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 investment and, in the case of agriculture, whether there

⁽¹⁾ Determinations of injury under the criteria set forth in this Article shall be based on positive evidence. In determining threat of injury the investigating authorities, in examining the factors listed in this Article, may take into account the evidence on the nature of the subsidy in question and the trade effects likely to arise therefrom.

⁽²⁾ 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.

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.

4. It must be demonstrated that the subsidized imports are, through the effects ⁽¹⁾ of the subsidy, causing injury within the meaning of this Agreement. There may be other factors ⁽²⁾ which at the same time are injuring the domestic industry, and the injuries caused by other factors must not be attributed to the subsidized imports.

5. In determining injury, the term 'domestic industry' shall, except as provided in paragraph 7 below, be interpreted as referring to the domestic producers as a whole of the like products or 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 ⁽³⁾ to the exporters or importers or are themselves importers of the allegedly subsidized product the industry may be interpreted as referring to the rest of the producers.

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 production in terms of such criteria as: the production process, the producers' realization, profits. When the domestic production of the like product has no separate identity in these terms the effects of subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

7. In exceptional circumstances the territory of a signatory 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.

8. When the industry has been interpreted as referring to the producers in a certain area, as defined in paragraph 7 above, 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 signatory does not permit the levying of countervailing duties on such a basis, the importing signatory 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 assurances pursuant to Article 4 (5) of this Agreement, 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.

9. Where two or more countries have reached under the provisions of Article XXIV (8) (a) of the General Agreement 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 industry referred to in paragraphs 5 to 7 above.

PART II

Article 7

Notification of subsidies ⁽⁴⁾

1. Having regard to the provisions of Article XVI (1) of the General Agreement, any signatory may make a written request for information on the nature and ex-

⁽¹⁾ As set forth in paragraphs 2 and 3 of this Article.

⁽²⁾ Such factors can include *inter alia* the volume and prices of non-subsidized imports of the product in question, contraction in demand or changes in the pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

⁽³⁾ The Committee should develop a definition of the word 'related' as used in this paragraph.

⁽⁴⁾ In this Agreement, the term 'subsidies' shall be deemed to include subsidies granted by any government or any public body within the territory of a signatory. However, it is recognized that for signatories with different federal systems of government, there are different divisions of powers. Such signatories accept nonetheless the international consequences that may arise under this Agreement as a result of the granting of subsidies within their territories.

tent of any subsidy granted or maintained by another signatory (including any form of income or price support) which operates directly or indirectly to increase exports of any product from, or reduce imports of any product into its territory.

2. Signatories 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 signatory. Any signatory which considers that such information has not been provided may bring the matter to the attention of the Committee.

3. Any interested signatory which considers that any practice of another signatory having the effects of a subsidy has not been notified in accordance with the provisions of Article XVI (1) of the General Agreement may bring the matter to the attention of such other signatory. If the subsidy practice is not thereafter notified promptly, such signatory may itself bring the subsidy practice in question to the notice of the Committee.

Article 8

Subsidies — general provisions

1. Signatories recognize that subsidies are used by governments to promote important objectives of social and economic policy. Signatories also recognize that subsidies may cause adverse effects to the interests of other signatories.

2. Signatories agree not to use export subsidies in a manner inconsistent with the provisions of this Agreement.

3. Signatories further agree that they shall seek to avoid causing, through the use of any subsidy:

- (a) injury to the domestic industry of another signatory ⁽¹⁾;

⁽¹⁾ Injury to the domestic industry is used here in the same sense as it is used in Part I of this Agreement.

- (b) nullification or impairment of the benefits accruing directly or indirectly to another signatory under the General Agreement ⁽²⁾; or

- (c) serious prejudice to the interests of another signatory ⁽³⁾.

4. The adverse effects to the interests of another signatory required to demonstrate nullification or impairment ⁽⁴⁾ or serious prejudice may arise through:

- (a) the effects of the subsidized imports in the domestic market of the importing signatory;
- (b) the effects of the subsidy in displacing or impeding the imports of like products into the market of the subsidizing country; or
- (c) the effects of the subsidized exports in displacing ⁽⁵⁾ the exports of like products of another signatory from a third country market ⁽⁶⁾.

Article 9

Export subsidies on products other than certain primary products ⁽⁷⁾

1. Signatories shall not grant export subsidies on products other than certain primary products.

- ⁽²⁾ Benefits accruing directly or indirectly under the General Agreement include the benefits of tariff concessions bound under Article II of the General Agreement.
- ⁽³⁾ Serious prejudice to the interests of another signatory is used in this Agreement in the same sense as it is used in Article XVI (1) of the General Agreement and includes threat of serious prejudice.
- ⁽⁴⁾ Signatories recognize that nullification or impairment of benefits may also arise through the failure of a signatory to carry out its obligations under the General Agreement or this Agreement. Where such failure concerning export subsidies is determined by the Committee to exist, adverse effects may, without prejudice to Article 18 (9) below, be presumed to exist. The other signatory will be accorded a reasonable opportunity to rebut this presumption.
- ⁽⁵⁾ The term 'displacing' shall be interpreted in a manner which takes into account the trade and development needs of developing countries and in this connection is not intended to fix traditional market shares.
- ⁽⁶⁾ The problems of third country markets so far as certain primary products are concerned are dealt with exclusively under Article 10 below.
- ⁽⁷⁾ For purposes of this Agreement 'certain primary products' means the products referred to in Note Ad Article XVI of the General Agreement, Section B, paragraph 2, with the deletion of the words 'or any mineral'.

2. The practices listed in points (a) to (l) in the Annex are illustrative of export subsidies.

Article 10

Export subsidies on certain primary products

1. In accordance with the provisions of Article XVI (3) of the General Agreement, signatories agree not to grant directly or indirectly any export subsidy on certain primary products in a manner which results in the signatory granting such subsidy having more than an equitable share of world export trade in such product, account being taken of the shares of the signatories in trade in the product concerned during a previous representative period, and any special factors which may have affected or may be affecting trade in such product.

2. For purposes of Article XVI (3) of the General Agreement and paragraph 1 above:

- (a) 'more than an equitable share of world export trade' shall include any case in which the effect of an export subsidy granted by a signatory is to displace the exports of another signatory bearing in mind the developments on world markets;
- (b) with regard to new markets traditional patterns of supply of the product concerned to the world market, region or country, in which the new market is situated shall be taken into account in determining 'equitable share of world export trade';
- (c) 'a previous representative period' shall normally be the three most recent calendar years in which normal market conditions existed.

3. Signatories further agree not to grant export subsidies on exports of certain primary products to a particular market in a manner which results in prices materially below those of other suppliers to the same market.

Article 11

Subsidies other than export subsidies

1. Signatories recognize that subsidies other than export subsidies are widely used as important instruments for the promotion of social and economic policy objectives and do not intend to restrict the right of signatories to use such subsidies to achieve these and other important policy objectives which they consider

desirable. Signatories note that among such objectives are:

- (a) the elimination of industrial, economic and social disadvantages of specific regions;
- (b) to facilitate the restructuring, under socially acceptable conditions, of certain sectors, especially where this has become necessary by reason of changes in trade and economic policies, including international agreements resulting in lower barriers to trade;
- (c) generally to sustain employment and to encourage re-training and change in employment;
- (d) to encourage research and development programmes, especially in the field of high-technology industries;
- (e) the implementation of economic programmes and policies to promote the economic and social development of developing countries;
- (f) redeployment of industry in order to avoid congestion and environmental problems.

2. Signatories recognize, however, that subsidies other than export subsidies, certain objectives and possible forms of which are described, respectively, in paragraphs 1 and 3 of this Article, may cause or threaten to cause injury to a domestic industry of another signatory or serious prejudice to the interests of another signatory or may nullify or impair benefits accruing to another signatory under the General Agreement, in particular where such subsidies would adversely affect the conditions of normal competition. Signatories shall therefore seek to avoid causing such effects through the use of subsidies. In particular, signatories, when drawing up their policies and practices in this field, in addition to evaluating the essential internal objectives to be achieved, shall also weigh, as far as practicable, taking account of the nature of the particular case, possible adverse effects on trade. They shall also consider the conditions of world trade, production (e. g. price, capacity utilization, etc.) and supply in the product concerned.

3. Signatories recognize that the objectives mentioned in paragraph 1 above may be achieved *inter alia* by means of subsidies granted with the aim of giving an advantage to certain enterprises. Examples of possible forms of such subsidies are: government financing of commercial enterprises, including grants, loans or guarantees; government provision or government financed provision of utility, supply distribution and other operational or support services or facilities;

government financing of research and development programmes; fiscal incentives; and government subscription to, or provision of, equity capital.

Signatories note that the above forms of subsidies are normally granted either regionally or by sector. The enumeration of forms of subsidies set out above is illustrative and non-exhaustive, and reflects these currently granted by a number of signatories to this Agreement.

Signatories recognize, nevertheless, that the enumeration of forms of subsidies set out above should be reviewed periodically and that this should be done, through consultations, in conformity with the spirit of Article XVI (5) of the General Agreement.

4. Signatories recognize further that, without prejudice to their rights under this Agreement, nothing in paragraphs 1 to 3 above and in particular the enumeration of forms of subsidies creates, in itself, any basis for action under the General Agreement, as interpreted by this Agreement.

Article 12

Consultations

1. Whenever a signatory has reason to believe that an export subsidy is being granted or maintained by another signatory in a manner inconsistent with the provisions of this Agreement, such signatory may request consultations with such other signatory.

2. A request for consultations under paragraph 1 above shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

3. Whenever a signatory has reason to believe that any subsidy is being granted or maintained by another signatory and that such subsidy either causes injury to its domestic industry, nullification or impairment of benefits accruing to it under the General Agreement, or serious prejudice to its interests, such signatory may request consultations with such other signatory.

4. A request for consultations under paragraph 3 above 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, in the case of nullification or impairment, or serious prejudice, the adverse effects

caused to the interests of the signatory requesting consultations.

5. Upon request for consultations under paragraph 1 or 3 above, the signatory 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 acceptable solution.

Article 13

Conciliation, dispute settlement and authorized countermeasures

1. If, in the case of consultations under Article 12 (1), a mutually acceptable solution has not been reached within 30 days ⁽¹⁾ of the request for consultations, any signatory party to such consultations may refer the matter to the Committee for conciliation in accordance with the provisions of Part VI.

2. If, in the case of consultations under Article 12 (3), a mutually acceptable solution has not been reached within 60 days of the request for consultations, any signatory party to such consultations may refer the matter to the Committee for conciliation in accordance with the provisions of Part VI.

3. If any dispute arising under this Agreement is not resolved as a result of consultations or conciliations, the Committee shall, upon request, review the matter in accordance with the dispute settlement procedures of Part VI.

4. If, as a result of its review, the Committee concludes that an export subsidy is being granted in a manner inconsistent with the provisions of this Agreement or that a subsidy is being granted or maintained in such a manner as to cause injury, nullification or impairment, or serious prejudice, it shall make such recommendations ⁽²⁾ to the parties as may be appropriate to resolve the issue and, in the event the recommendations are not followed, it may authorize such countermeasures as may be appropriate, taking into account the degree and nature of the adverse effects found to exist, in accordance with the relevant provisions of Part VI.

⁽¹⁾ Any time periods mentioned in this Article and in Article 18 may be extended by mutual agreement.

⁽²⁾ In making such recommendations, the Committee shall take into account the trade, development and financial needs of developing country signatories.

PART III

Article 14

Developing countries

1. Signatories recognize that subsidies are an integral part of economic development programmes of developing countries.

2. Accordingly, this Agreement shall not prevent developing country signatories from adopting measures and policies to assist their industries, including those in the export sector. In particular the commitment of Article 9 shall not apply to developing country signatories, subject to the provisions of paragraphs 5 to 8 below.

3. Developing country signatories agree that export subsidies on their industrial products shall not be used in a manner which causes serious prejudice to the trade or production of another signatory.

4. There shall be no presumption that export subsidies granted by developing country signatories result in adverse effects, as defined in this Agreement, to the trade or production of another signatory. Such adverse effects shall be demonstrated by positive evidence, through an economic examination of the impact on trade or production of another signatory.

5. A developing country signatory should endeavour to enter into a commitment⁽¹⁾ to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs.

6. When a developing country has entered into a commitment to reduce or eliminate export subsidies, as provided in paragraph 5 above, countermeasures pursuant to the provisions of Parts II and VI of this Agreement against any export subsidies of such developing country shall not be authorized for other signatories of this Agreement, provided that the export subsidies in question are in accordance with the terms of the commitment referred to in paragraph 5 above.

7. With respect to any subsidy, other than an export subsidy, granted by a developing country signatory, action may not be authorized or taken under Parts II

and VI of this Agreement, unless nullification or impairment of tariff concessions or other obligations under the General Agreement is found to exist as a result of such subsidy, in such a way as to displace or impede imports of like products into the market of the subsidizing country, or unless injury to domestic industry in the importing market of a signatory occurs in terms of Article VI of the General Agreement, as interpreted and applied by this Agreement. Signatories recognize that in developing countries, governments may play a large role in promoting economic growth and development. Intervention by such governments in their economy, for example through the practices enumerated in Article 11 (3), shall not *per se* be considered subsidies.

8. The Committee shall, upon request by an interested signatory, undertake a review of a specific export subsidy practice of a developing country signatory to examine the extent to which the practice is in conformity with the objectives of this Agreement. If a developing country has entered into a commitment pursuant to paragraph 5 of this Article, it shall not be subject to such review for the period of that commitment.

9. The Committee shall, upon request by an interested signatory, also undertake similar reviews of measures maintained or taken by developed country signatories under the provisions of this Agreement which affect interests of a developing country signatory.

10. Signatories recognize that the obligations of this Agreement with respect to export subsidies for certain primary products apply to all signatories.

PART IV

Article 15

Special situations

1. In cases of alleged injury caused by imports from a country described in Notes and Supplementary Provisions to the General Agreement (Annex I, Article VI(1), point 2) the importing signatory may base its procedures and measures either:

(a) on this Agreement; or, alternatively

(b) on the Agreement on implementation of Article VI of the General Agreement on tariffs and trade.

⁽¹⁾ It is understood that after this Agreement has entered into force, any such proposed commitment shall be notified to the Committee in good time.

2. It is understood that in both cases (a) and (b) above the calculation of the margin of dumping or of the amount of the estimated subsidy can be made by comparison of the export price with:

- (a) the price at which a like product of a country other than the importing signatory or those mentioned above is sold; or
- (b) the constructed value ⁽¹⁾ of a like product in a country other than the importing signatory or those mentioned above.

3. If neither prices nor constructed value as established under (a) or (b) of paragraph 2 above provide an adequate basis for determination of dumping or subsidization then the price in the importing signatory, if necessary duly adjusted to reflect reasonable profits, may be used.

4. All calculations under the provisions of paragraphs 2 and 3 above shall be based on prices or costs ruling at the same level of trade, normally at the ex factory level, and in respect of operations made as nearly as possible at the same time. Due allowance shall be made in each case, on its merits, for the difference in conditions and terms of sale or in taxation and for the other differences affecting price comparability, so that the method of comparison applied is appropriate and not unreasonable.

PART V

Article 16

Committee on Subsidies and Countervailing Measures

1. There shall be established under this Agreement a Committee on Subsidies and Countervailing Measures composed of representatives from each of the signatories to this Agreement. 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 signatory. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the signatories and it shall afford signatories the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The GATT secretariat shall act as the secretariat to the Committee.

⁽¹⁾ 'Constructed value' means cost of production plus a reasonable amount for administration, selling and any other costs and for profits.

2. The Committee may set up subsidiary bodies as appropriate.

3. 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 signatory, it shall inform the signatory involved.

PART VI

Article 17

Conciliation

1. In cases where matters are referred to the Committee for conciliation failing a mutually agreed solution in consultations under any provision of this Agreement, the Committee shall immediately review the facts involved and, through its good offices, shall encourage the signatories involved to develop a mutually acceptable solution ⁽²⁾.

2. Signatories shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation.

3. Should the matter remain unresolved, notwithstanding efforts at conciliation made under paragraph 2 above, any signatory involved may, 30 days after the request for conciliation, request that a panel be established by the Committee in accordance with the provisions of Article 18 below.

Article 18

Dispute settlement

1. The Committee shall establish a panel upon request pursuant to Article 17 (3) ⁽³⁾. A panel so established shall review the facts of the matter and, in the light of such facts, shall present to the Committee its findings

⁽²⁾ In this connection, the Committee may draw signatories' attention to those cases in which, in its view, there is no reasonable basis supporting the allegations made.

⁽³⁾ This does not preclude, however, the more rapid establishment of a panel when the Committee so decides, taking into account the urgency of the situation.

concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by this Agreement.

2. A panel should be established within 30 days of a request therefor ⁽¹⁾ and a panel so established should deliver its findings to the Committee within 60 days after its establishment.

3. When a panel is to be established, the chairman of the Committee, after securing the agreement of the signatories concerned, should propose the composition of the panel. Panels shall be composed of three or five members, preferably governmental, and the composition of panels should not give rise to delays in their establishment. It is understood that citizens of countries whose governments ⁽²⁾ are parties to the dispute would not be members of the panel concerned with that dispute.

4. In order to facilitate the constitution of panels, the chairman of the Committee should maintain an informal indicative list of governmental and non-governmental persons qualified in the field of trade relations, economic development and other matters covered by the General Agreement and this Agreement, who could be available for serving on panels. For this purpose, each signatory would be invited to indicate at the beginning of every year to the chairman of the Committee the name of one or two persons who would be available for such work.

5. Panel members would serve in their individual capacities and not as government representatives or as representatives of any organization. Governments would therefore not give them instructions with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

6. To encourage development of mutually satisfactory solutions between the parties to a dispute and with a view to obtaining their comments, each panel should

first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee.

7. If a mutually satisfactory solution is developed by the parties to a dispute before a panel, any signatory with an interest in the matter has a right to enquire about and be given appropriate information about that solution and a notice outlining the solution that has been reached shall be presented by the panel to the Committee.

8. In cases where the parties to a dispute have failed to come to a satisfactory solution, the panels shall submit a written report to the Committee which should set forth the findings of the panel as to the questions of fact and the application of the relevant provisions of the General Agreement as interpreted and applied by this Agreement and the reasons and bases therefor.

9. The Committee shall consider the panel report as soon as possible and, taking into account the findings contained therein, may make recommendations to the parties with a view to resolving the dispute. If the Committee's recommendations are not followed within a reasonable period, the Committee may authorize appropriate countermeasures (including withdrawal of GATT concessions or obligations) taking into account the nature and degree of the adverse effect found to exist. Committee recommendations should be presented to the parties within 30 days of the receipt of the panel report.

PART VII

Article 19

Final provisions

1. No specific action against a subsidy of another signatory can be taken except in accordance with the provisions of the General Agreement, as interpreted by this Agreement ⁽³⁾.

⁽¹⁾ The parties to the dispute would respond within a short period of time, i.e. seven working days, to nominations of panel members by the chairman of the Committee and would not oppose nominations except for compelling reasons.

⁽²⁾ The term 'governments' is understood to mean governments of all member countries in cases of customs unions.

⁽³⁾ This paragraph is not intended to preclude action under other relevant provisions of the General Agreement, where appropriate.

Acceptance and accession

2. (a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community.

(b) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

(c) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the signatories, by the deposit with the Director-General to the Contracting Parties to the GATT of an instrument of accession which states the terms so agreed.

(d) In regard to acceptance, the provisions of Article XXVI (5) (a) and (b) of the General Agreement would be applicable.

Reservations

3. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other signatories.

Entry into force

4. This Agreement shall enter into force on 1 January 1980 for the governments ⁽¹⁾ which have accepted or acceded to it by that date. For each other government it shall enter into force on the 30th day following the date of its acceptance or accession to this Agreement.

National legislation

5. (a) Each government accepting or acceding to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of this

Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply to the signatory in question.

(b) Each signatory 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.

Review

6. 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 reviews ⁽²⁾.

Amendments

7. The signatories may amend this Agreement having regard *inter alia* to the experience gained in its implementation. Such an amendment, once the signatories have concurred in accordance with procedures established by the Committee, shall not come into force for any signatory until it has been accepted by such signatory.

Withdrawal

8. Any signatory may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the day on which written notice of withdrawal is received by the Director-General to the Contracting Parties to the GATT. Any signatory may upon such notification request an immediate meeting of the Committee.

Non-application of this Agreement between particular signatories

9. This Agreement shall not apply as between any two signatories if either of the signatories, at the time either accepts or accedes to this Agreement, does not consent to such application.

⁽¹⁾ The term 'governments' is deemed to include the competent authorities of the European Economic Community.

⁽²⁾ At the first such review, the Committee shall, in addition to its general review of the operation of the Agreement, offer all interested signatories an opportunity to raise questions and discuss issues concerning specific subsidy practices and the impact on trade, if any, of certain direct tax practices.

Annex

10. The Annex to this Agreement constitutes an integral part thereof.

Secretariat

11. This Agreement shall be serviced by the GATT secretariat.

Deposit

12. This Agreement shall be deposited with the Director-General to the Contracting Parties to the

GATT, who shall promptly furnish to each signatory and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to paragraph 7, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 2, and of each withdrawal therefrom pursuant to paragraph 8 of this Article.

Registration

13. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

ANNEX

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

- (a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.
- (b) Currency retention schemes or any similar practices which involve a bonus on exports.
- (c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.
- (d) The delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for delivery of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters.
- (e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes ⁽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.
- (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 goods that are physically incorporated (making normal allowance for waste) in the exported product ⁽³⁾.
- (i) The remission or drawback of import charges ⁽¹⁾ in excess of those levied on imported goods that are physically incorporated (making normal allowance for waste) in the exported product; provided, however, that in particular cases a firm may use a quantity of home market goods equal to, and having the same quality and characteristics as, the imported goods as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, normally not to exceed two years.
- (j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the costs of exported products ⁽⁴⁾ or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes ⁽⁵⁾.
- (k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the export credit), or

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

Provided, however, that if a signatory is a party to an international undertaking on official export credits to which at least 12 original signatories ⁽⁶⁾ to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice a signatory applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

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

Notes

- (¹) For the purpose of this Agreement:

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

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

'remission' of taxes includes the refund or rebate of taxes.

- (²) The signatories recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The signatories further recognize that nothing in this text prejudices the disposition by the Contracting Parties of the specific issues raised in GATT document L/4422.

The signatories 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 signatory may draw the attention of another signatory 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 signatories 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 signatories under the General Agreement, including the right of consultation created in the preceding sentence.

Paragraph (e) is not intended to limit a signatory from taking measures to avoid the double taxation of foreign source income earned by its enterprises or the enterprises of another signatory.

Where measures incompatible with the provisions of paragraph (e) exist, and where major practical difficulties stand in the way of the signatory concerned bringing such measures promptly into conformity with the Agreement, the signatory concerned shall, without prejudice to the rights of other signatories under the General Agreement or this Agreement, examine methods of bringing these measures into conformity within a reasonable period of time.

In this connection the European Economic Community has declared that Ireland intends to withdraw by 1 January 1981 its system of preferential tax measures related to exports, provided for under the Corporation Tax Act of 1976, whilst continuing nevertheless to honour legally binding commitments entered into during the lifetime of this system.

- (3) 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).
 - (4) The signatories agree that nothing in this paragraph shall prejudice or influence the deliberations of the panel established by the GATT Council on 6 June 1978 (C/M/126).
 - (5) In evaluating the long-term adequacy of premium rates, costs and losses of insurance programmes, in principle only such contracts shall be taken into account that were concluded after the date of entry into force of this Agreement.
 - (6) An original signatory to this Agreement shall mean any signatory which adheres *ad referendum* to the Agreement on or before 30 June 1979.
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**AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE**

PREAMBLE

THE PARTIES TO THIS AGREEMENT (hereinafter referred to as 'Parties'),

RECOGNIZING that anti-dumping practices should not constitute an unjustifiable impediment to international trade and that anti-dumping duties may be applied against dumping only if such dumping causes or threatens material injury to an established industry or materially retards the establishment of an industry;

CONSIDERING that it is desirable to provide for equitable and open procedures as the basis for a full examination of dumping cases;

TAKING into account the particular trade, development and financial needs of developing countries;

DESIRING to interpret the provisions of Article VI of the General Agreement on tariffs and trade, (hereinafter referred to as 'General Agreement' or 'GATT') and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation; and

DESIRING to provide for the speedy, effective and equitable resolution of disputes arising under this Agreement;

HEREBY AGREE AS FOLLOWS:

PART I

ANTI-DUMPING CODE

Article 1

Principles

The imposition of an anti-dumping duty is a measure to be taken only under the circumstances provided for in Article VI of the General Agreement and pursuant to investigations initiated ⁽¹⁾ and conducted in accordance with the provisions of this Code. The following provisions govern the application of Article VI of the General Agreement in so far as action is taken under anti-dumping legislation or regulations.

⁽¹⁾ The term 'initiated' as used hereinafter means the procedural action by which a Party formally commences an investigation as provided in Article 6 (6).

Article 2

Determination of dumping

1. For the purpose of this Code a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2. Throughout this Code 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.

3. In the case where products are not imported directly from the country of origin but are exported to the

country of importation from an intermediate country, the price at which the products are sold from the country of export to the country of importation shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely trans-shipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

4. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to any third country which may be the highest such export price but should be a representative price, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition for profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin.

5. In cases where there is no export price or where it appears to the authorities ⁽¹⁾ concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

6. In order to effect a fair comparison between the export price and the domestic price in the exporting country (or the country of origin) or, if applicable, the price established pursuant to the provisions of Article VI (1) (b) of the General Agreement, the two prices shall be compared at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability. In the cases referred to in Article 2 (5), allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made.

⁽¹⁾ When in this Code the term 'authorities' is used, it shall be interpreted as meaning authorities at an appropriate, senior level.

7. This Article is without prejudice to the second Supplementary Provision to Article VI (1) in Annex I to the General Agreement.

Article 3

Determination of injury ⁽²⁾

1. A determination of injury for purposes of Article VI of the General Agreement shall be based on positive evidence and involve an objective examination of both:

- (a) the volume of the dumped imports and their effect on prices in the domestic market for like products, and
- (b) the consequent impact of these imports on domestic producers of such products.

2. With regard to volume of the dumped imports the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3. The examination of the impact on the industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as 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. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

⁽²⁾ Under this Code 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.

4. It must be demonstrated that the dumped imports are, through the effects ⁽¹⁾ of dumping, causing injury within the meaning of this Code. There may be other factors ⁽²⁾ which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the dumped imports.

5. The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of production in terms of such criteria as: the production process, the producers' realizations, profits. When the domestic production of the like product has no separate identity in these terms the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

6. A determination of threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent ⁽³⁾.

7. With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be studied and decided with special care.

Article 4

Definition of industry

1. In determining injury the term 'domestic industry' shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes

a major proportion of the total domestic production of those products, except that :

- (i) when producers are related ⁽⁴⁾ to the exporters or importers or are themselves importers of the allegedly dumped product, the industry may be interpreted as referring to the rest of the producers;
- (ii) in exceptional circumstances the territory of a Party 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 dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

2. When the industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1 (ii), anti-dumping duties shall be levied ⁽⁵⁾ only on the products in question consigned for final consumption to that area. When the constitutional law of the importing country does not permit the levying of anti-dumping duties on such a basis, the importing Party may levy the anti-dumping duties without limitation only if: (a) the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 7 of this Code, and adequate assurances in this regard have not been promptly given; and (b) such duties cannot be levied on specific producers which supply the area in question.

3. Where two or more countries have reached under the provisions of Article XXIV (8) (a) of the General Agreement 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 industry referred to in paragraph 1 above.

⁽¹⁾ As set forth in paragraphs 2 and 3 of this Article.

⁽²⁾ Such factors include *inter alia* the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

⁽³⁾ One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the immediate future, substantially increased importations of the product at dumped prices.

⁽⁴⁾ An understanding among Parties should be developed defining the word 'related' as used in this Code.

⁽⁵⁾ As used in this Code 'levy' shall mean the definitive or final legal assessment or collection of a duty or tax.

4. The provisions of Article 3 (5) shall be applicable to this Article.

Article 5

Initiation and subsequent investigation

1. An investigation to determine the existence, degree and effect of any alleged dumping shall normally be initiated upon a written request by or on behalf of the industry ⁽¹⁾ affected. The request shall include sufficient evidence of the existence of:

- (a) dumping;
- (b) injury within the meaning of Article VI of the General Agreement as interpreted by this Code; and
- (c) a causal link between the dumped imports and the alleged injury.

If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have sufficient evidence on all points under (a) to (c) above.

2. Upon initiation of an investigation and thereafter, the evidence of both dumping and injury caused thereby should be considered simultaneously. In any event the evidence of both dumping 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 Code provisional measures may be applied, except in the cases provided for in paragraph 3 of Article 10 in which the authorities accept the request of the exporters.

3. An application shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There should be immediate termination in cases where the margin of dumping or the volume of dumped imports, actual or potential, or the injury is negligible.

4. An anti-dumping proceeding shall not hinder the procedures of customs clearance.

⁽¹⁾ As defined in Article 4.

5. Investigations shall, except in special circumstances, be concluded within one year after their initiation.

Article 6

Evidence

1. The foreign suppliers and all other interested parties shall be given ample opportunity to present in writing all evidence that they consider useful in respect to the anti-dumping investigation in question. They shall also have the right, on justification, to present evidence orally.

2. The authorities concerned shall provide opportunities for the complainant and the importers and exporters known to be concerned and the governments of the exporting countries, to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 3 below, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

3. Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an anti-dumping investigation shall, upon cause shown, be treated as such by the investigating authorities. Such information shall not be disclosed without specific permission of the party submitting it ⁽²⁾. Parties providing confidential information may be requested to furnish non-confidential summaries thereof. In the event that such parties indicate that such information is not susceptible of summary, a statement of the reasons why summarization is not possible must be provided.

4. However, if the authorities concerned find that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct ⁽³⁾.

5. In order to verify information provided or to obtain further details the authorities may carry out

⁽²⁾ Parties are aware that in the territory of certain Parties disclosure pursuant to a narrowly drawn protective order may be required.

⁽³⁾ Parties agree that requests for confidentiality should not be arbitrarily rejected.

investigations in other countries as required, provided they obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter object to the investigation.

6. When the competent authorities are satisfied that there is sufficient evidence to justify initiating an anti-dumping investigation pursuant to Article 5, the Party or Parties the products of which are subject to such investigation and the exporters and importers known to the investigating authorities to have an interest therein and the complainants shall be notified and a public notice shall be given.

7. Throughout the anti-dumping investigation all parties shall have a full opportunity for the defence of their interests. To this end, the authorities concerned shall, on request, provide opportunities for all directly interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

8. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final findings⁽¹⁾, affirmative or negative, may be made on the basis of the facts available.

9. The provisions of this Article are not intended to prevent the authorities of a Party from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final findings, whether affirmative or negative, or from applying provisional or final measures, in accordance with the relevant provisions of this Code.

⁽¹⁾ Because different terms are used under the different systems in the various countries, the term 'finding' is hereinafter used to mean a decision or formal determination.

Article 7

Price undertakings

1. Proceedings may⁽²⁾ be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping.

2. Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing country have initiated an investigation in accordance with the provisions of Article 5 of this Code. Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons.

3. If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a determination of no injury or threat thereof is made, the undertaking shall automatically lapse except in cases where a determination of no threat of injury is due in large part to the existence of a price undertaking. In such cases the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Code.

4. Price undertakings may be suggested by the authorities of the importing country, but no exporter shall be forced to enter into such an undertaking. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

5. Authorities of an importing country may require any exporter from whom undertakings have been accepted to provide periodically information relevant to

⁽²⁾ The word 'may' shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 3.

the fulfilment of such undertakings, and to permit verification of pertinent data. In case of violation of undertakings, the authorities of the importing country may take, under this Code 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 Code on goods 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.

6. Undertakings shall not remain in force any longer than anti-dumping duties could remain in force under this Code. The authorities of an importing country shall review the need for the continuation of any price undertaking, where warranted, on their own initiative or if interested exporters or importers of the product in question so request and submit positive information substantiating the need for such review.

7. Whenever an anti-dumping investigation is suspended or terminated pursuant to the provisions of paragraph 1 above and whenever an undertaking is terminated, this fact shall be officially notified and must be published. Such notices shall set forth at least the basic conclusions and a summary of the reasons therefor.

Article 8

Imposition and collection of anti-dumping duties

1. The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory. It is desirable that the imposition be permissive in all countries or customs territories Parties to this Agreement, and that the duty be less than the margin, if such lesser duty would be adequate to remove the injury to the domestic industry.

2. When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources, from which price undertakings under the terms of this Code

have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

3. The amount of the anti-dumping duty must not exceed the margin of dumping as established under Article 2. Therefore, if subsequent to the application of the anti-dumping duty it is found that the duty so collected exceeds the actual dumping margin the amount in excess of the margin shall be reimbursed as quickly as possible.

4. Within a basic price system the following rules shall apply provided that their application is consistent with the other provisions of this Code:

If several suppliers from one or more countries are involved, anti-dumping duties may be imposed on imports of the product in question found to have been dumped and to be causing injury from the country or countries concerned, the duty being equivalent to the amount by which the export price is less than the basic price established for this purpose, not exceeding the lowest normal price in the supplying country or countries where normal conditions of competition are prevailing. It is understood that, for products which are sold below this already established basic price, a new anti-dumping investigation shall be carried out in each particular case, when so demanded by the interested parties and the demand is supported by relevant evidence. In cases where no dumping is found, anti-dumping duties collected shall be reimbursed as quickly as possible. Furthermore, if it can be found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible.

5. Public notice shall be given of any preliminary or final finding whether affirmative or negative and of the revocation of a finding. In the case of affirmative finding each such notice shall set forth the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities, and the reasons and basis therefor. In the case of a negative finding, each notice shall set forth at least the basic conclusions and a summary of the reasons therefor. All notices of finding shall be forwarded to the Party or Parties the products of which are subject to such finding and to the exporters known to have an interest therein.

*Article 9***Duration of anti-dumping duties**

1. An anti-dumping duty shall remain in force only as long as, and to the extent necessary to counteract dumping which is causing injury.
2. The investigating authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.

*Article 10***Provisional measures**

1. Provisional measures may be taken only after a preliminary affirmative finding has been made that there is dumping and that there is sufficient evidence of injury, as provided for in Article 5 (1) (a) to (c). Provisional measures shall not be applied unless the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation.
2. Provisional measures may take the form of a provisional duty or, preferably, a security — by cash deposit or bond — equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure, provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.
3. The imposition of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved to a period not exceeding six months.
4. The relevant provisions of Article 8 shall be followed in the application of provisional measures.

*Article 11***Retroactivity**

1. Anti-dumping duties and provisional measures shall only be applied to products which enter for consumption after the time when the decision taken under Article 8 (1) and Article 10 (1), respectively, enters into force, except that in cases:

- (i) Where a final finding 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 finding of threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a finding of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

If the anti-dumping duty fixed in the final decision is higher than the provisionally paid duty, the difference shall not be collected. If the duty fixed in the final decision is lower than the provisionally paid duty or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

- (ii) Where for the dumped product in question the authorities determine:
 - (a) either that there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and
 - (b) that the injury is caused by sporadic dumping (massive dumped imports of a product in a relatively short period) to such an extent that, in order to preclude it recurring, it appears necessary to levy an anti-dumping duty retroactively on those imports,

the duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures.

2. Except as provided in paragraph 1 above where a finding of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the finding of threat of 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.

3. Where a final finding 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.

Article 12

Anti-dumping action on behalf of a third country

1. An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

2. Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

3. The authorities of the importing country in considering such an application shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say, the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports.

4. The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the Contracting Parties seeking their approval for such action shall rest with the importing country.

Article 13

Developing countries

It is recognized that special regard must be given by developed countries to the special situation of developing countries when considering the application of anti-dumping measures under this Code. Possibilities of constructive remedies provided for by this Code shall be explored before applying anti-dumping duties where they would affect the essential interests of developing countries.

PART II

Article 14

Committee on Anti-Dumping Practices

1. There shall be established under this Agreement a Committee on Anti-Dumping Practices (hereinafter referred to as 'the Committee') composed of representatives from each of the Parties to this Agreement. 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 Party. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Parties and it shall afford Parties the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The GATT secretariat shall act as the secretariat to the Committee.

2. The Committee may set up subsidiary bodies as appropriate.

3. 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 Party, it shall inform the Party involved. It shall obtain the consent of the Party and any firm to be consulted.

4. Parties shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports will be available in the GATT secretariat for inspection by government representatives. The Parties shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months.

Article 15 ⁽¹⁾

Consultation, conciliation and dispute settlement

1. Each Party shall afford sympathetic consideration to, and shall afford adequate opportunity for

⁽¹⁾ If disputes arise between Parties relating to rights and obligations under this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT.

consultation regarding, representations made by another Party with respect to any matter affecting the operation of this Agreement.

2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of the Agreement is being impeded by another Party or Parties, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultation. The Parties concerned shall initiate consultation promptly.

3. If any Party considers that the consultation pursuant to paragraph 2 has failed to achieve a mutually agreed solution and final action has been taken by the administering authorities of the importing country to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Committee for conciliation. When a provisional measure has a significant impact and the Party considers the measure was taken contrary to the provisions of paragraph 1 of Article 10 of this Agreement, a Party may also refer such matter to the Committee for conciliation. In cases where matters are referred to the Committee for conciliation the Committee shall meet within 30 days to review the matter, and, through its good offices, shall encourage the Parties involved to develop a mutually acceptable solution ⁽¹⁾.

4. Parties shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation.

5. If no mutually agreed solution has been reached after detailed examination by the Committee under paragraph 3 within three months, the Committee shall, at the request of any party to the dispute, establish a panel to examine the matter, based upon:

- (a) a written statement of the Party making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and

- (b) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing country.

6. Confidential information provided to the panel shall not be revealed without formal authorization from the person or authority providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the authority or person providing the information, will be provided.

7. Further to paragraphs 1 to 6 the settlement of disputes shall *mutatis mutandis* be governed by the provisions of the understanding regarding notification, consultation, dispute settlement and surveillance. Panel members shall have relevant experience and be selected from the Parties not parties to the dispute.

PART III

Article 16

Final provisions

- 1. No specific action against dumping of exports from another Party can be taken except in accordance with the provisions of the General Agreement, as interpreted by this Agreement ⁽²⁾.

Acceptance and accession

- 2. (a) This Agreement shall be open for acceptance by signature or otherwise, by Government Contracting Parties to the GATT and by the European Economic Community.
- (b) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

⁽¹⁾ In this connection the Committee may draw Parties' attention to those cases in which, in its view, there are no reasonable bases supporting the allegations made.

⁽²⁾ This is not intended to preclude action under other relevant provisions of the General Agreement, as appropriate.

(c) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the Contracting Parties to the GATT of an instrument of accession which states the terms so agreed.

(d) In regard to acceptance, the provisions of Article XXVI (5) (a) and (b) of the General Agreement would be applicable.

Reservations

3. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

Entry into force

4. This Agreement shall enter into force on 1 January 1980 for the governments ⁽¹⁾ which have accepted or acceded to it by that date. For each other government it shall enter into force on the 30th day following the date of its acceptance or accession to this Agreement.

Denunciation of the 1967 Agreement

5. Acceptance of this Agreement shall carry denunciation of the Agreement on Implementation of Article VI of the General Agreement on tariffs and trade, done at Geneva on 30 June 1967, which entered into force on 1 July 1968, for Parties to the 1967 Agreement. Such denunciation shall take effect for each Party to this Agreement on the date of entry into force of this Agreement for each such Party.

National legislation

6. (a) Each government accepting or acceding to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws,

regulations and administrative procedures with the provisions of this Agreement as they may apply for the Party in question.

(b) Each Party 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.

Review

7. 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 reviews.

Amendments

8. The Parties may amend this Agreement having regard *inter alia* to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

Withdrawal

9. Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the day on which written notice of withdrawal is received by the Director-General to the Contracting Parties to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.

Non-application of this Agreement between particular Parties

10. This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

Secretariat

11. This Agreement shall be serviced by the GATT secretariat.

⁽¹⁾ The term 'government' is deemed to include the competent authorities of the European Economic Community.

Deposit

12. This Agreement shall be deposited with the Director-General to the Contracting Parties to the GATT, who shall promptly furnish to each Party and each Contracting Party to the GATT a certified copy thereof and of each amendment thereto pursuant to paragraph 8, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 2,

and of each withdrawal therefrom pursuant to paragraph 9 of this Article.

Registration

13. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

ADDENDUM 1

to Agreement on implementation of Article VI of the General Agreement on tariffs and trade

The following statement is circulated at the request of the delegations of Austria, Brazil, Canada, Colombia, European Communities, Egypt, Finland, Japan, Norway, Romania, Sweden, Switzerland and United States.

With regard to the Agreement on implementation of Article VI of the General Agreement on tariffs and trade, the above-noted delegations, cognizant of the commitment in Article 13 of the Agreement that special regard must be given by developed countries to the special situation of developing countries when considering the application of anti-dumping measures under this Code, agree that:

1. In developing countries, governments play a large role in promoting economic growth and development in accordance with their national priorities, and their economic regimes for the export sector can be different from those relating to their domestic sectors resulting *inter alia* in different cost structures. This Agreement is not intended to prevent developing countries from adopting measures in this context, including measures in the export sector, as long as they are used in a manner which is consistent with the provisions of the

General Agreement on tariffs and trade, as applicable to these countries.

2. In the case of imports from a developing country, the fact that the export price may be lower than the comparable price for the like product when destined for domestic consumption in the exporting country does not *per se* justify an investigation or the determination of dumping unless the other factors mentioned in Article 5 (1) are also present. Due consideration should be given to all cases where, because special economic conditions affect prices in the home market, these prices do not provide a commercially realistic basis for dumping calculations. In such cases the normal value for the purposes of ascertaining whether the goods are being dumped shall be determined by methods such as a comparison of the export price with the comparable price of the like product when exported to any third country or with the cost of production of the exported goods in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits.

In view of the foregoing, it would be the understanding of the above-noted delegations that the proposal for an amendment to the text of the Agreement on the implementation of Article VI of the General Agreement on tariffs and trade is no longer maintained.

ADDENDUM 2**to Agreement on implementation of Article VI of the General Agreement on tariffs and trade**

The following statement is circulated at the request of the delegations of Austria, Brazil, Canada, Colombia, European Communities, Egypt, Finland, Japan, Norway, Romania, Sweden, Switzerland and United States.

It is recognized that developing countries may face special problems initially in adapting their legislation to the requirements of the Code, including administrative and infrastructural problems, in carrying out anti-dumping investigations initiated by them. Accordingly, the Committee on Anti-Dumping Practices may grant, upon specific request and on conditions to

be negotiated on a case-by-case basis, time-limited exceptions in whole or in part from obligations which relate to investigations undertaken by a developing country under this Agreement.

Developed countries Parties to this Agreement shall endeavour to furnish, upon request and on terms to be agreed, technical assistance to developing countries Parties to this Agreement, with regard to the implementation of this Agreement, including training of personnel, and the supplying of information on methods, techniques and other aspects of conducting investigations on dumping practices.

AGREEMENT ON IMPORT LICENSING PROCEDURES

PREAMBLE

Having regard to the multilateral trade negotiations, THE PARTIES TO THIS AGREEMENT ON IMPORT LICENSING PROCEDURES (hereinafter referred to as 'Parties' and 'this Agreement');

DESIRING to further the objectives of the General Agreement on tariffs and trade (hereinafter referred to as 'General Agreement' or 'GATT');

TAKING into account the particular trade, development and financial needs of developing countries;

RECOGNIZING the usefulness of automatic import licensing for certain purposes and that such licensing should not be used to restrict trade;

RECOGNIZING that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of the GATT;

RECOGNIZING also that the inappropriate use of import licensing procedures may impede the flow of international trade;

DESIRING to simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices;

DESIRING to provide for a consultative mechanism and the speedy, effective and equitable resolution of disputes arising under this Agreement;

HEREBY AGREE AS FOLLOWS:

Article 1

General provisions

1. For the purpose of this Agreement, import licensing is defined as administrative procedures ⁽¹⁾ used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing country.

2. The Parties shall ensure that the administrative procedures used to implement import licensing regimes are in conformity with the relevant provisions of the

GATT including its annexes and protocols, as interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing countries.

3. The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner.

4. The rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms and institutions to make such applications, and the lists of products subject to the licensing requirement shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Any changes in either the rules concerning licensing procedures or the list of

⁽¹⁾ Those procedures referred to as 'licensing' as well as other similar administrative procedures.

products subject to import licensing shall also be promptly published in the same manner. Copies of these publications shall also be made available to the GATT secretariat.

5. Application forms and, where applicable, renewal forms shall be as simple as possible. Such documents and information as are considered strictly necessary for the proper functioning of the licensing regime may be required on application.

6. Application procedures and, where applicable, renewal procedures shall be as simple as possible. Applicants shall have to approach only one administrative body previously specified in the rules referred to in paragraph 4 above in connexion with an application and shall be allowed a reasonable period therefor. In cases where it is strictly indispensable that more than one administrative body is to be approached in connexion with an application, these shall be kept to the minimum number possible.

7. No application shall be refused for minor documentation errors which do not alter basic data contained therein. No penalty greater than necessary to serve merely as a warning shall be imposed in respect of any omission or mistake in documentation or procedures which is obviously made without fraudulent intent or gross negligence.

8. Licensed imports shall not be refused for minor variations in value, quantity or weight from the amount designated on the licence due to differences occurring during shipment, differences incidental to bulk loading and other minor differences consistent with normal commercial practice.

9. The foreign exchange necessary to pay for licensed imports shall be made available to licence holders on the same basis as to importers of goods not requiring import licences.

10. With regard to security exceptions, the provisions of Article XXI of the GATT apply.

11. The provisions of this Agreement shall not require any 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, public or private.

Article 2

Automatic import licensing ⁽¹⁾

1. Automatic import licensing is defined as import licensing where approval of the application is freely granted.

2. The following provisions ⁽²⁾, in addition to those in Articles 1 (1) to (11) and 2 (1) above, shall apply to automatic import licensing procedures:

- (a) automatic licensing procedures shall not be administered in a manner so as to have restricting effects on imports subject to automatic licensing;
- (b) Parties recognize that automatic import licensing may be necessary whenever other appropriate procedures are not available. Automatic import licensing may be maintained as long as the circumstances which gave rise to its introduction prevail or as long as its underlying administrative purposes cannot be achieved in a more appropriate way;
- (c) any person, firm or institution which fulfils the legal requirements of the importing country for engaging in import operations involving products subject to automatic licensing shall be equally eligible to apply for and to obtain import licences;
- (d) applications for licences may be submitted on any working day prior to the customs clearance of the goods;
- (e) applications for licences when submitted in appropriate and complete form shall be approved immediately on receipt, to the extent administratively feasible, but within a maximum of 10 working days.

⁽¹⁾ Those import licensing procedures requiring a security which have no restrictive effects on imports, are to be considered as falling within the scope of Article 2 (1) and (2) below.

⁽²⁾ A developing country Party, which has specific difficulties with the requirements of subparagraphs (d) and (e) below may, upon notification to the Committee referred to in Article 4 (1), delay the application of these subparagraphs by not more than two years from the date of entry into force of this Agreement for such Party.

Article 3

Non-automatic import licensing

The following provisions, in addition to those in Article 1 (1) to (11) above, shall apply to non-automatic import licensing procedures, that is, import licensing procedures not falling under Article 2 (1) and (2) above:

- (a) licensing procedures adopted, and practices applied, in connexion with the issuance of licences for the administration of quotas and other import restrictions, shall not have trade restrictive effects on imports additional to those caused by the imposition of the restriction;
- (b) Parties shall provide, upon the request of any Party having an interest in the trade in the product concerned, all relevant information concerning:
 - (i) the administration of the restrictions,
 - (ii) the import licences granted over a recent period,
 - (iii) the distribution of such licences among supplying countries,
 - (iv) where practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing. The developing countries would not be expected to take additional administrative or financial burdens on this account;
- (c) Parties administering quotas by means of licensing shall publish the overall amount of quotas to be applied by quantity and/or value, the opening and closing dates of quotas, and any change thereof;
- (d) in the case of quotas allocated among supplying countries, the Party applying the restrictions shall promptly inform all other Parties having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall give public notice thereof;
- (e) where there is a specific opening date for the submission of licensing applications, the rules and product lists referred to in Article 1 (4) shall be published as far in advance as possible of such date, or immediately after the announcement of the quota or other measure involving an import licensing requirement;
- (f) any person, firm or institution which fulfils the legal requirements of the importing country shall be equally eligible to apply and to be considered for a licence. If the licence application is not approved, the applicant shall, on request, be given the reasons therefor and shall have a right of appeal or review in accordance with the domestic legislation or procedures of the importing country;
- (g) the period for processing of applications shall be as short as possible;
- (h) the period of licence validity shall be of reasonable duration and not be so short as to preclude imports. The period of licence validity shall not preclude imports from distant sources, except in special cases where imports are necessary to meet unforeseen short-term requirements;
- (i) when administering quotas, Parties shall not prevent importation from being effected in accordance with the issued licences, and shall not discourage the full utilization of the quotas;
- (j) when issuing licences, Parties shall take into account the desirability of issuing licences for products in economic quantities;
- (k) in allocating licences, Parties should consider the import performance of the applicant, including whether licences issued to the applicant have been fully utilized, during a recent representative period;
- (l) consideration shall be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for products in economic quantities. In this regard, special consideration should be given to those importers importing products originating in developing countries and, in particular, the least-developed countries;
- (m) in the case of quotas administered through licences which are not allocated among supplying countries, licence holders ⁽¹⁾ shall be free to choose the sources of imports. In the case of quotas allocated among supplying countries, the licence shall clearly stipulate the country or countries;
- (n) in applying Article 1 (8) above, compensating adjustments may be made in future licence allocations where imports exceeded a previous licence level.

⁽¹⁾ Sometimes referred to as 'quota holders'.

*Article 4***Institutions, consultation and dispute settlement**

1. There shall be established under this Agreement a Committee on Import Licensing composed of representatives from each of the Parties (referred to in this Agreement as 'the Committee'). The Committee shall elect its own chairman and shall meet as necessary for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives.

2. Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement, shall be subject to the procedures of Articles XXII and XXIII of the GATT.

*Article 5***Final provisions****1. Acceptance and accession**

(a) This Agreement shall be open for acceptance by signature or otherwise, by Government Contracting Parties to the GATT and by the European Economic Community.

(b) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

(c) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the Contracting Parties to the GATT of an instrument of accession which states the terms so agreed.

(d) In regard to acceptance, the provisions of Article XXVI (5) (a) and (b) of the General Agreement would be applicable.

2. Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

3. Entry into force

This Agreement shall enter into force on 1 January 1980 for the governments ⁽¹⁾ which have accepted or acceded to it by that date. For each other government it shall enter into force on the 30th day following the date of its acceptance or accession to this Agreement.

4. National legislation

(a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

(b) Each Party 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.

5. Review

The Committee shall review as necessary, but at least once every two years, the implementation and operation of this Agreement taking into account the objectives thereof and shall inform the Contracting Parties to the GATT of developments during the period covered by such reviews.

6. Amendments

The Parties may amend this Agreement, having regard *inter alia* to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

7. Withdrawal

Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the day on which written notice of withdrawal is received by the Director-General to the Contracting Parties to the GATT. Any Party may upon

⁽¹⁾ For the purpose of this Agreement, the term 'governments' is deemed to include the competent authorities of the European Economic Community.

such notification request an immediate meeting of the Committee.

8. *Non-application of this Agreement between particular Parties*

This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

9. *Secretariat*

This Agreement shall be serviced by the GATT secretariat.

10. *Deposit*

This Agreement shall be deposited with the Director-General to the Contracting Parties to the GATT, who shall promptly furnish to each Party and each Contracting Party to the GATT a certified copy thereof and of each amendment thereto pursuant to paragraph 6, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 1 and of each withdrawal therefrom pursuant to paragraph 7 of this Article.

11. *Registration*

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April, nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

**AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE**

GENERAL INTRODUCTORY COMMENTARY

1. The primary basis for customs value under this Agreement is 'transaction value' as defined in Article 1. Article 1 is to be read together with Article 8 which provides *inter alia* for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Articles 2 to 7, inclusive, provide methods of determining the customs value whenever it cannot be determined under the provisions of Article 1.

2. Where the customs value cannot be determined under the provisions of Article 1 there should normally be a process of consultation between the customs administration and importer with a view to arriving at a basis of value under the provisions of Articles 2 or 3. It may occur, for example, that the importer has information about the customs value of identical or similar imported goods which is not immediately available to the customs administration in the port of importation. On the other hand, the customs administration may have information about the customs value of identical or similar imported goods which is

not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for customs purposes.

3. Articles 5 and 6 provide two bases for determining the customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar imported goods. Under Article 5 (1) the customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if he so requests. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods.

4. Article 7 sets out how to determine the customs value in cases where it cannot be determined under the provisions of any of the preceding Articles.

PREAMBLE

Having regard to the multilateral trade negotiations, THE PARTIES TO THIS AGREEMENT (hereinafter referred to as 'Parties'),

DESIRING to further the objectives of the General Agreement on tariffs and trade (hereinafter referred to as 'General Agreement' or 'GATT') and to secure additional benefits for the international trade of developing countries ;

RECOGNIZING the importance of the provisions of Article VII of the General Agreement and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

RECOGNIZING the need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values;

RECOGNIZING that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;

RECOGNIZING that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

RECOGNIZING that valuation procedures should not be used to combat dumping;

HEREBY AGREE AS FOLLOWS:

PART I

RULES ON CUSTOMS VALUATION

Article 1

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8, provided:

- (a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - (i) are imposed or required by law or by the public authorities in the country of importation,
 - (ii) limit the geographical area in which the goods may be resold, or
 - (iii) do not substantially affect the value of the goods;
- (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

- (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8; and

- (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2 of this Article.

2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and he shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation ;
- (ii) the customs value of identical or similar goods as determined under the provisions of Article 5;
- (iii) the customs value of identical or similar goods as determined under the provisions of Article 6;
- (iv) the transaction value in sales to unrelated buyers for export to the same country of importation of goods which would be identical to the imported goods except for having a different country of production provided that the sellers in any two transactions being compared are not related.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

- (c) The test set forth in paragraph 2 (b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2 (b).

Article 2

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.
- (b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level

and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in Article 8 (2) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 3

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.
- (b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in Article 8 (2) are included in the transaction value, an adjustment shall be made to take account of significant

differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 4

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3 the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

Article 5

1. (a) If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

- (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within the country of importation;
- (iii) where appropriate, the costs and charges referred to in Article 8 (2); and
- (iv) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the

provisions of paragraph 1 (a) of this Article, be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1 (a) of this Article.

Article 6

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation;
- (c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Party under Article 8 (2).

2. No Party may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the

producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 to 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of the General Agreement and on the basis of data available in the country of importation.

2. No customs value shall be determined under the provisions of this Article on the basis of:

- (a) the selling price in the country of importation of goods produced in such country;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;
- (e) the price of the goods for export to a country other than the country of importation;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

3. If he so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 8

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:

- (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 - (i) commissions and brokerage, except buying commissions,
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question,
 - (iii) the cost of packing whether for labour or materials;
- (b) the value, apportioned as appropriate, of the following goods and services where supplied directly

or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

- (i) materials, components, parts and similar items incorporated in the imported goods,
- (ii) tools, dies, moulds and similar items used in the production of the imported goods,
- (iii) materials consumed in the production of the imported goods,
- (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;
- (c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

2. In framing its legislation, each Party shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:

- (a) the cost of transport of the imported goods to the port or place of importation;
- (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (c) the cost of insurance.

3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 9

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of

exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.

2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Party.

Article 10

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 11

1. The legislation of each Party shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.

2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Party shall provide for the right of appeal without penalty to a judicial authority.

3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. He shall also be informed of his rights of any further appeal.

Article 12

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of the General Agreement by the country of importation concerned.

Article 13

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final

determination of such customs value, the importer shall nevertheless be able to withdraw his goods from customs if, where so required, he provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Party shall make provisions for such circumstances.

Article 14

The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement.

Article 15

1. In this Agreement:

(a) 'customs value of imported goods' means the value of goods for the purposes of levying *ad valorem* duties of customs on imported goods;

(b) 'country of importation' means country or customs territory of importation; and

(c) 'produced' includes grown, manufactured and mined.

2. (a) In this Agreement 'identical goods' means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical.

(b) In this Agreement 'similar goods' means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.

(c) The terms 'identical goods' and 'similar goods' do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 8 (1) (b) (iv) because such elements were undertaken in the country of importation.

(d) Goods shall not be regarded as 'identical goods' or 'similar goods' unless they were produced in the same country as the goods being valued.

(e) Goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

3. In this Agreement 'goods of the same class or kind' means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.

4. For the purposes of this Agreement, persons shall be deemed to be related only if:

- (a) they are officers or directors of one another's business;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family.

5. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4 of this Article.

Article 16

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of his imported goods was determined.

Article 17

Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART II

ADMINISTRATION, CONSULTATION AND DISPUTE SETTLEMENT

Institutions

Article 18

There shall be established under this Agreement:

1. a Committee on Customs Valuation (hereinafter referred to as 'the Committee') composed of representatives from each of the Parties. The Committee shall elect its own chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording Parties the opportunity to consult on matters relating to the administration of the customs valuation system by any Party as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Parties. The GATT secretariat shall act as the secretariat to the Committee;
2. a Technical Committee on Customs Valuation (hereinafter referred to as 'the Technical Committee') under the auspices of the Customs Cooperation Council, which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Consultation

Article 19

1. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Party or of other Parties, it may, with a view to reaching a mutually satisfactory solution of the matter, request consultations with the Party or Parties in question. Each Party shall afford

sympathetic consideration to any request from another Party for consultations.

2. The Parties concerned shall initiate requested consultations promptly.

3. Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall attempt to conclude such consultations within a reasonably short period of time. The Technical Committee shall provide, upon request, advice and assistance to Parties engaged in consultations.

Dispute settlement

Article 20

1. If no mutually satisfactory solution has been reached between the Parties concerned in consultations under Article 19 above, the Committee shall meet at the request of any party to the dispute, within 30 days of receipt of such a request, to investigate the matter, with a view to facilitating a mutually satisfactory solution.

2. In investigating the matter and in selecting its procedures, the Committee shall take into account whether the issues in dispute relate to commercial policy considerations or to questions requiring detailed technical consideration. The Committee may request on its own initiative that the Technical Committee carry out an examination, as provided in paragraph 4 below, of any question requiring technical consideration. Upon the request of any party to the dispute that considers the issues to relate to questions of a technical nature, the Committee shall request the Technical Committee to carry out such an examination.

3. During any phase of a dispute settlement procedure, competent bodies and experts in matters under consideration may be consulted; appropriate information and assistance may be requested from such bodies and experts. The Committee shall take into consideration the results of any work of the Technical Committee that pertain to the matter in dispute.

Technical issues

4. When the Technical Committee is requested under the provisions of paragraph 2 above, it shall examine the matter and report to the Committee no later than three months from the date the technical issue was referred to it, unless the period is extended by mutual agreement between the parties to the dispute.

Panel proceedings

5. In cases where the matter is not referred to the Technical Committee, the Committee shall establish a panel upon the request of any party to the dispute if no mutually satisfactory solution has been reached within three months from the date of the request to the Committee to investigate the matter. Where the matter is referred to the Technical Committee, the Committee shall establish a panel upon the request of any party to the dispute if no mutually satisfactory solution has been reached within one month from the date when the Technical Committee presents its report to the Committee.

6. (a) When a panel is established, it shall be governed by the procedures as set forth in Annex III.

(b) If the Technical Committee has made a report on the technical aspects of the matter in dispute, the panel shall use this report as the basis for its consideration of the technical aspects of the matter in dispute.

Enforcement

7. After the investigation is completed or after the report of the Technical Committee or panel is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action normally within 30 days of receipt of the report. Such action shall include:

- (i) a statement concerning the facts of the matter; and
- (ii) recommendations to one or more Parties or any other ruling which it deems appropriate.

8. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

9. If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more Parties to suspend the application to any other Party or Parties of such obligations under this Agreement as it determines to be appropriate in the circumstances.

10. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

11. If a dispute arises between Parties relating to rights and obligations under this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT, including invoking Article XXIII thereof.

PART III

SPECIAL AND DIFFERENTIAL TREATMENT

Article 21

1. Developing country Parties may delay application of its provisions for a period not exceeding five years from the date of entry into force of this Agreement for such countries. Developing country Parties who choose to delay application of this Agreement shall notify the Director-General to the Contracting Parties to the GATT accordingly

2. In addition to paragraph 1 above, developing country Parties may delay application of Article 1 (2) (b) (iii) and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement. Developing country Parties that choose to delay application of the provisions specified in this paragraph shall notify the Director-General to the Contracting Parties to the GATT accordingly.

3. Developed country Parties shall furnish, on mutually agreed terms, technical assistance to developing country Parties that so request. On this basis developed country Parties shall draw up programmes of technical assistance which may include *inter alia* training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.

PART IV

FINAL PROVISIONS

Acceptance and accession

Article 22

1. This Agreement shall be open for acceptance by signature or otherwise by Government Contracting

Parties to the GATT and by the European Economic Community.

2. This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

3. This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the Contracting Parties to the GATT of an instrument of accession which states the terms so agreed.

4. In regard to acceptance, the provisions of Article XXVI (5) (a) and (b) of the General Agreement would be applicable.

Reservations

Article 23

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

Entry into force

Article 24

This Agreement shall enter into force on 1 January 1981 for the governments ⁽¹⁾ which have accepted or acceded to it by that date. For each other government it shall enter into force on the 30th day following the date of its acceptance or accession to this Agreement.

National legislation

Article 25

1. Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

⁽¹⁾ The term 'governments' is deemed to include the competent authorities of the European Economic Community.

2. Each Party 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.

Review

Article 26

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 reviews.

Amendments

Article 27

The Parties may amend this Agreement, having regard *inter alia* to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

Withdrawal

Article 28

Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date on which written notice of withdrawal is received by the Director-General to the

Contracting Parties to the GATT. Any Party may, upon the receipt of such notice, request an immediate meeting of the Committee.

Secretariat

Article 29

This Agreement shall be serviced by the GATT secretariat except in regard to those responsibilities specifically assigned to the Technical Committee, which will be serviced by the secretariat of the Customs Cooperation Council.

Deposit

Article 30

This Agreement shall be deposited with the Director-General to the Contracting Parties to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to Article 27, and a notification of each acceptance thereof or accession thereto pursuant to Article 22 and of each withdrawal therefrom pursuant to Article 28.

Registration

Article 31

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

ANNEX I

INTERPRETATIVE NOTES

GENERAL NOTE

Sequential application of valuation methods

1. Articles 1 to 7, inclusive, define how the customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 1 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of Article 1, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 4, it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.

3. If the importer does not request that the order of Articles 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 6, the customs value is to be determined under the provisions of Article 5, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of Articles 1 to 6, inclusive, it is to be determined under the provisions of Article 7.

Use of generally accepted accounting principles

1. 'Generally accepted accounting principles' refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Agreement, the customs administration of each party shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 would be

carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in Article 8 (1) (b) (ii) undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 1

Price actually paid or payable

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (b) the cost of transport after importation;
- (c) duties and taxes of the country of importation.

The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1 (a) (iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such

restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1 (b)

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

- (a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Paragraph 2

1. Paragraphs 2 (a) and (b) provide different means of establishing the acceptability of a transaction value.
2. Paragraph 2 (a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Paragraph 2 (b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a 'test' value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 1. Where a test under paragraph 2 (b) is met, it is not necessary to examine the question of influence under paragraph 2 (a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2 (b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In paragraph 2 (b) the term 'unrelated buyers' means buyers who are not related to the seller in any particular case.

Paragraph 2 (b)

A number of factors must be taken into consideration in determining whether one value 'closely approximates' to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the 'test' values set forth in Article 1 (2) (b).

Note to Article 2

1. In applying Article 2, the customs administration shall, wherever possible, use a sale of identical goods at the same

commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression 'and/or' allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 2, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1 (b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 is not appropriate.

Note to Article 3

1. In applying Article 3, the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression 'and/or' allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 3, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1 (b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 3 is not appropriate.

Note to Article 5

1. The term 'unit price at which ... goods are sold in the greatest aggregate quantity' means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1 to 10 units	100	10 sales of 5 units 5 sales of 3 units	65
11 to 25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) *Sales*

<i>Sale quantity</i>	<i>Unit price</i>
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) *Totals*

<i>Total quantity sold</i>	<i>Unit price</i>
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in Article 8 (1) (b), should not be taken into account in establishing the unit price for the purposes of Article 5.

6. It should be noted that 'profit and general expenses' referred to in Article 5.1 should be taken as a whole. The

figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The 'general expenses' include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of Article 5 (1) (a) (iv) shall be deducted under the provisions of Article 5 (1) (a) (i).

9. In determining either the commissions or the usual profits and general expenses under the provisions of Article 5 (1), the question whether certain goods are 'of the same class or kind' as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 5, 'goods of the same class or kind' includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of Article 5 (1) (b), the 'earliest date' shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in Article 5 (2) is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in Article 5 (2) would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to Article 6

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The 'cost or value' referred to in Article 6 (1) (a) is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The 'cost or value' shall include the cost of elements specified in Article 8 (1) (a) (ii) and (iii). It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 8, of any element specified in Article 8 (1) (b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in Article 8 (1) (b) (iv) which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The 'amount for profit and general expenses' referred to in Article 6 (1) (b) is to be determined on the basis of information supplied by or on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

5. It should be noted in this context that the 'amount for profit and general expenses' has to be taken as a whole. It

follows that if, in any particular case, the producer's profit figure is low and his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10.

7. The 'general expenses' referred to in Article 6 (1) (b) covers the direct and indirect costs of producing and selling the goods for export which are not included under Article 6 (1) (a).

8. Whether certain goods are 'of the same class or kind' as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 6, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 6, 'goods of the same class or kind' must be from the same country as the goods being valued.

Note to Article 7

1. Customs values determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 7 should be those laid down in Articles 1 to 6, inclusive, but a

reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 7.

3. Some examples of reasonable flexibility are as follows:

- (a) *Identical goods* — the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 5 and 6 could be used.
- (b) *Similar goods* — the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 5 and 6 could be used.
- (c) *Deductive method* — the requirement that the goods shall have been sold in the 'condition as imported' in Article 5 (1) (a) could be flexibly interpreted; the '90 days' requirement could be administered flexibly.

Note to Article 8

Paragraph 1 (a) (i)

The term 'buying commissions' means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Paragraph 1 (b) (ii)

1. There are two factors involved in the apportionment of the elements specified in Article 8 (1) (b) (ii) to the imported goods — the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay

duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10 000 units. By the time of arrival of the first shipment of 1 000 units, the producer has already produced 4 000 units. The importer may request the customs administration to apportion the value of the mould over 1 000 units, 4 000 units or 10 000 units.

Paragraph 1 (b) (iv)

1. Additions for the elements specified in Article 8 (1) (b) (iv) should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the

adjustment should be limited to the value actually added to that element outside the country of importation.

Paragraph 1 (c)

1. The royalties and licence fees referred to in Article 8 (1) (c) may include, among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Note to Article 9

For the purposes of Article 9, 'time of importation' may include the time of entry for customs purposes.

Note to Article 11

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

2. 'Without penalty' means that the importer shall not be subject to a fine or threat of fine merely because he chose to exercise his right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.

3. However, nothing in Article 11 shall prevent a Party from requiring full payment of assessed customs duties prior to an appeal.

Note to Article 15

Paragraph 4

For the purposes of this Article, the term 'persons' includes legal persons, where appropriate.

Paragraph 4 (e)

For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

ANNEX II

TECHNICAL COMMITTEE ON CUSTOMS VALUATION

1. In accordance with Article 18 of this Agreement, the Technical Committee shall be established under the auspices of the Customs Cooperation Council with a view, at the technical level, towards uniformity in interpretation and application of this Agreement.

2. The responsibilities of the Technical Committee shall include the following:

- (a) to examine specific technical problems arising in the day-to-day administration of the customs valuation systems of Parties and to give advisory opinions on appropriate solutions based upon the facts presented;
- (b) to study, as requested, valuation laws, procedures and practices as they relate to this Agreement and to prepare reports on the results of such studies;
- (c) to prepare and circulate annual reports on the technical aspects of the operation and status of this Agreement;
- (d) to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Party or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;
- (e) to facilitate, as requested, technical assistance to Parties with a view to furthering the international acceptance of this Agreement; and
- (f) to exercise such other responsibilities as the Committee may assign to it.

General

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Parties or the Committee, in a reasonably short period of time.

4. The Technical Committee shall be assisted as appropriate in its activities by the Secretariat of the Customs Cooperation Council.

Representation

5. Each Party shall have the right to be represented on the Technical Committee. Each Party may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a Party so represented on the Technical Committee is hereinafter referred to as a member of the Technical Committee. Representatives of members of the

Technical Committee may be assisted by advisers. The GATT secretariat may also attend such meetings with observer status.

6. Members of the Customs Cooperation Council who are not Parties may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

7. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the Customs Cooperation Council (hereinafter referred to as 'the Secretary-General') may invite representatives of governments which are neither Parties nor members of the Customs Cooperation Council and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

8. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Technical Committee meetings

9. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session. The date of the meeting may be varied either at the request of any member of the Technical Committee concurred in by a simple majority of the members of the Technical Committee or, in cases requiring urgent attention, at the request of the Chairman.

10. The meetings of the Technical Committee shall be held at the headquarters of the Customs Cooperation Council unless otherwise decided.

11. The Secretary-General shall inform all members of the Technical Committee and those included under paragraphs 6 and 7 at least 30 days in advance, except in urgent cases, of the opening date of each session of the Technical Committee.

Agenda

12. A provisional agenda for each session shall be drawn up by the Secretary-General and circulated to the members of the Technical Committee and to those included under paragraphs 6 and 7 at least 30 days in advance of the session, except in urgent cases. This agenda shall comprise all items whose inclusion has been approved by the Technical Committee during its preceding sessions, all items included by the chairman on his own initiative, and all items whose inclusion has been requested by the Secretary-General, by the Committee or by any member of the Technical Committee.

13. The Technical Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the technical Committee.

Officers and conduct of business

14. The Technical Committee shall elect from among the delegates of its members a chairman and one or more vice-chairmen. The chairman and vice-chairmen shall each hold office for a period of one year. The retiring chairman and vice-chairmen are eligible for re-election. A chairman or vice-chairman who ceases to represent a member of the Technical Committee shall automatically lose his mandate.

15. If the chairman is absent from any meeting or part thereof, a vice-chairman shall preside. In that event, the latter shall have the same powers and duties as the chairman.

16. The chairman of the meeting shall participate in the proceedings of the Technical Committee as such and not as the representative of a member of the Technical Committee.

17. In addition to exercising the powers conferred upon him elsewhere by these rules, the chairman shall declare the opening and closing of each meeting, direct the discussion, accord the right to speak, and, pursuant to these rules, have control of the proceedings. The chairman may also call a speaker to order if his remarks are not relevant.

18. During discussion of any matter a delegation may raise a point of order. In this event, the chairman shall immediately state his ruling. If this ruling is challenged, the chairman shall submit it to the meeting for decisions and it shall stand unless overruled.

19. The Secretary-General, or officers of the Secretariat designated by him, shall perform the secretarial work of meetings of the Technical Committee.

Quorum and voting

20. Representatives of a simple majority of the members of the Technical Committee shall constitute a quorum.

21. Each member of the Technical Committee shall have one vote. A decision of the Technical Committee shall be taken by a majority comprising at least two-thirds of the members present. Regardless of the outcome of the vote on a particular matter, the Technical Committee shall be free to make a full report to the Committee and to the Customs Cooperation Council on that matter indicating the different views expressed in the relevant discussions.

Languages and records

22. The official languages of the Technical Committee shall be English, French and Spanish. Speeches or statements made in any of these three languages shall be immediately translated into the other official languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French and Spanish, subject to the same conditions, but in that event the delegation concerned shall provide the translation into English, French or Spanish. Only English, French and Spanish shall be used for the official documents of the Technical Committee. Memoranda and correspondence for the consideration of the Technical Committee must be presented in one of the official languages.

23. The Technical Committee shall draw up a report of all its sessions and, if the chairman considers it necessary, minutes or summary records of its meetings. The chairman or his designee shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the Customs Cooperation Council.

ANNEX III

'Ad hoc' panels

1. *Ad hoc* panels established by the Committee under this Agreement shall have the following responsibilities:

- (a) to examine the matter referred to it by the Committee;
- (b) to consult with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and
- (c) to make a statement concerning the facts of the matter as they relate to the application of the provisions of this Agreement and, make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

2. In order to facilitate the constitution of panels, the chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of customs valuation and experienced in the field of trade relations and economic development. This list may also include persons other than government officials. In this connection, each Party shall be invited to indicate at the beginning of every year to the chairman of the Committee the name(s) of the one or two governmental experts whom the Parties would be willing to make available for such work. When a panel is established, the chairman, after consultation with the Parties concerned, shall, within seven days of such establishment propose the composition of the panel consisting of three or five members and preferably government officials. The Parties directly concerned shall react within seven working days to nominations of panel members by the chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

3. Each panel shall develop its own working procedures. All Parties having a substantial interest in the matter and having

notified this to the Committee shall have an opportunity to be heard. Each panel may consult and seek information and technical advice from any source it deems appropriate. Before a panel seeks such information or technical advice from a source within the jurisdiction of a Party, it shall inform the government of that Party. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be disclosed without the specific permission of the person or government providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person or government providing the information, will be provided.

4. Where the parties to the dispute have failed to reach a satisfactory solution, the panel shall submit its findings in writing. The report of a panel should normally set out the rationale behind its findings. Where a settlement of the matter is reached between the parties, the report of the panel may be confined to a brief description of the dispute and to a statement that a solution has been reached.

5. Panels shall use such report of the Technical Committee as may have been issued under Article 20 (4) of this Agreement as the basis for their consideration of issues that involve questions of a technical nature.

6. The time required by panels will vary with the particular case. They should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, normally within a period of three months from the date that the panel was established.

7. To encourage development of mutually satisfactory solutions between the parties to a dispute and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.

PROTOCOL TO THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The Parties to the Agreement on implementation of Article VII of the General Agreement on tariffs and trade (hereinafter referred to as 'the Agreement'),

Having regard to the multilateral trade negotiations and to the desire expressed by the Trade Negotiations Committee at its meeting of 11 and 12 April 1979 to arrive at a single text of an Agreement on implementation of Article VII of the General Agreement of tariffs and trade;

Recognizing that developing countries may have particular problems in applying the Agreement;

Considering that the provisions of Article 27 of the Agreement relating to amendments have not yet entered into force;

Hereby:

I

1. Agree to the deletion of the provision of Article 1 (2) (b) (iv) of the Agreement;

2. Recognize that the five-year delay in the application of the provisions of the Agreement by developing countries provided for in Article 21 (1) may, in practice, be insufficient for certain developing countries. In such cases a developing country Party to the Agreement may request before the end of the period referred to in Article 21 (1) an extension of such period, it being understood that the Parties to the Agreement will give sympathetic consideration to such a request in cases where the developing country in question can show good cause;

3. Recognize that developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Parties to the Agreement;

4. Recognize that developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make a reservation to Article 4 in the following terms:

'The Government of reserves the right to provide that the relevant provision of Article 4 of

the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6.'

If developing countries make such a reservation, the Parties to the Agreement shall consent to it under Article 23 of the Agreement;

5. Recognize that developing countries may wish to make a reservation with respect to Article 5 (2) of the Agreement in the following terms:

'The Government of reserves the right to provide that Article 5 (2) of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests.'

If developing countries make such a reservation, the Parties to the Agreement shall consent to it under Article 23 of the Agreement;

6. Recognize that certain developing countries have expressed concern that there may be problems in the implementation of Article 1 of the Agreement in so far as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. The Parties to the Agreement agree that, if such problems arise in practice in developing countries applying the Agreement, a study of this question shall be made, at the request of such countries, with a view to finding appropriate solutions;

7. Agree that Article 17 recognizes that in applying the Agreement, customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes. They further agree that the Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. They recognize that Parties to the Agreement, subject to their national laws and procedures, have the right to expect the full cooperation of importers in these enquiries;

8. Agree that the price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to

the seller, or by the buyer to a third party to satisfy an obligation of the seller.

II

1. Upon the entry into force of the Agreement the provisions of this Protocol shall be deemed to be part of the Agreement.

2. This Protocol shall be deposited with the Director-General to the Contracting Parties to the GATT. It is open for acceptance, by signature or otherwise, by signatories of the Agreement on implementation of Article VII of the General Agreement on tariffs and trade and by other governments accepting or acceding to the Agreement pursuant to the provisions of Article 22 thereof.

Done at Geneva this first day of November nineteen hundred and seventy-nine in a single copy in the English, French and Spanish languages, each text being authentic.

COUNCIL DECISION

of 10 December 1979

concerning the conclusion of the Bilateral Agreements resulting from the 1973 to 1979 trade negotiations

(80/272/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the recommendation from the Commission,

Whereas the 1973 to 1979 trade negotiations resulted in the first instance in Multilateral Agreements which were approved on behalf of the Community by Decision 80/271/EEC; whereas, furthermore, some of the reciprocal concessions and undertakings negotiated by the Community and certain countries participating in the negotiations are embodied in special Bilateral Agreements;

Whereas the reciprocal concessions and undertakings contained in those Bilateral Agreements represent an acceptable result,

HAS DECIDED AS FOLLOWS:

Article 1

1. The following are hereby approved on behalf of the European Economic Community:

- agreement reached in Paris on 15 June 1979 between certain participants in the Agreement on Trade in Civil Aircraft (EEC, Canada, Japan, Sweden, United States) on reciprocal negotiating rights in case of withdrawal of tariff concessions;
- exchange of letters between the United States and the Community on possible extension of restrictive procurement practices in the USA and reserve by the European Community on its application of the Agreement on Government Procurement in this connection;
- Arrangement between the United States and the Community concerning cheeses;

- exchange of letters between the European Economic Community and the United States concerning the poultry sector;
- exchange of letters between the European Economic Community and the United States concerning rice;
- exchange of letters between the European Economic Community and the United States concerning the elimination of the Wine Gallon Assessment;
- exchange of letters between the European Economic Community and the United States concerning high-quality beef;
- exchange of letters between the European Economic Community and the United States concerning fresh, chilled and frozen beef;
- exchange of letters between the European Economic Community and Canada concerning quality wheat;
- Arrangement between Canada and the European Economic Community concerning cheese;
- memorandum of understanding (results of bilateral negotiations between the delegations of New Zealand and the European Communities to the multilateral trade negotiations) with the following annexes:

1. New Zealand supplementary tariff offer made in response to specific requests from the European Communities.
 2. New Zealand import licensing offer made in response to specific requests from the European Communities.
 3. Joint discipline arrangement between New Zealand and the Community concerning cheese.
 4. Arrangement concerning beef between New Zealand and the Community;
- agreed record of conclusions reached in bilateral negotiations between the European Communities and Australia in the GATT multilateral trade negotiations, with the following annexes:

(¹) See page 1 of this Official Journal.

1. Australian concessions to the Community:
 - (a) tariff concessions,
 - (b) attachment — 'Fancy Cheese' concession,
 2. Arrangement between Australia and the Community concerning beef.
 3. Arrangement between Australia and the Community concerning cheese.
 4. Community tariff concessions.
 5. Arrangement on buffalo meat.
- Arrangement concerning beef between the Argentine Republic and the Community;
 - Arrangement concerning beef between the Eastern Republic of Uruguay and the Community and letter relating to that Arrangement;
 - Arrangement concerning beef between the Hungarian People's Republic and the Community;
 - Arrangement concerning beef between the Socialist Republic of Romania and the Community;
 - Arrangement concerning beef between the Polish People's Republic and the Community.
2. The texts of the agreements referred to in this Article are annexed to this Decision.

Article 2

The President of the Council is hereby authorized to designate the person empowered to take such measures as are necessary to give effect to the undertakings entered into by the Community in the areas covered by the bilateral agreements listed in this Decision.

Done at Brussels, 10 December 1979.

For the Council

The President

T. HUSSEY

Agreement reached in Paris on 15 June 1979 between certain participants in the Agreement on trade in civil aircraft (EEC, Canada, Japan, Sweden, United States) on reciprocal negotiating rights in case of withdrawal of tariff concessions

The delegations of Canada, EEC, Japan, Sweden and the United States agreed that withdrawal of tariff concessions can upset the balance of rights and obligations under the Agreement on trade in civil aircraft. Each of these delegations is prepared to enter into consultations with each other in order to find means to restore the balance. Such measures may include provisions for compensatory adjustment.

Exchange of letters between the United States and the Community on possible extension of restrictive procurement practices in the USA and reserve by the European Community on its application of the Agreement on government procurement in this connection

Letter from Viscount Davignon to Ambassador Strauss

In conjunction with the Agreement on government procurement and with reference to the discussions held between our delegations in the context of the multilateral trade negotiations, I have the honour to declare the following:

1. It has been one of the major objectives of the European Communities to eliminate the Buy American Act.
2. The European Communities have also been very concerned to avoid any possible extension of the Buy American Act or other restrictions by Congress acting on its own initiative or on that of the US Administration. It had also been concerned to avoid any extension of Buy American type or other restrictions on procurement at state or local level.
3. Any such extension of trade restrictions on US procurement practices would have a serious impact on the ability and willingness of the European Communities to undertake, or bring to a successful conclusion, negotiations with a view to broadening and improving the agreement on government procurement on the basis of mutual reciprocity referred to in Part IX (6), of that Agreement. Such restrictions would also be detrimental to the operation of the agreement by the European Communities.
4. In so far as the objectives and concerns set out in paragraphs 1 and 2 have been met the European Communities will seek to avoid similar restrictions in its territory.

I would be grateful if you would acknowledge agreement to the above.

Letter from Ambassador Strauss to Viscount Davignon

This will acknowledge receipt of your July 17 note containing a 'Declaration of interpretation of Agreement on government procurement'.

We share the principal objective contained in your 'Declaration' with regard to expanding coverage and regret the Commission was unable to make a larger coverage offer, thus reducing the level of coverage to a lower common denominator than we sought. In conjunction with the terms of the agreement and discussions held between our delegations in the context of the multilateral trade negotiations, I offer the following comments concerning the intentions of the United States.

It has been the endeavor of the United States, from the outset of these procurement negotiations, to include within the scope of the Government Procurement Agreement, the maximum possible coverage.

The fundamental equation of the procurement negotiations is that those countries with visible discriminatory systems will eliminate such discrimination in return for the adoption of transparency by those countries maintaining more subtle forms of discrimination. For this reason, the United States is more than willing to include a maximum number of entities under the Agreement coverage and to employ as low a threshold as possible, but only in those instances where full provisions of the Agreement apply.

The United States will continue to seek and expand the coverage of this Agreement through subsequent negotiation. In this connection, the United States administration will seek to discourage any action that might prejudice the successful outcome of such negotiations. Furthermore we will take those steps necessary to encourage expansion of Agreement coverage and enlargement of membership to the Agreement.

The United States has consistently opposed measures to further increase discriminatory government procurement practices. We believe that the existence of the Government procurement Agreement will encourage opposition to possible future restrictive measures taken for the purposes of protecting domestic suppliers. We shall, as provided in the Government Procurement Agreement, maintain the position that for those purchases covered by the Agreement, foreign bids from suppliers in countries which are signatories to the Agreement must be handled on the same basis as domestic tenders.

My Government appreciates the concern expressed by the Commission with regard to the possible expansion of buy-national restrictions, and we share the concern of the Commission in regard to the possible detrimental effects of such action on achieving the objectives of the Government Procurement Agreement. We would hope that further expansion of this Agreement will alleviate these concerns. Without the Government Procurement Agreement, the situation would certainly prove to be considerably more disconcerting.

With respect to paragraph 3 of your 'Declaration', the United States will live up fully to the terms of the Government Procurement Agreement and expects no less from every other signatory to the Agreement. We also look forward to discussing the European Communities' efforts to avoid any extension of restrictions on government procurement below the central government level.

Our Congress has acted with great restraint in the face of the imbalance between our relatively open procurement market and those restricted markets of the European Communities. They have viewed the Agreement's commercial utility with some skepticism, particularly in light of the modest EC offer. Therefore, the Congress has proposed a series of reporting requirements to gain a clear picture of the operation of the Agreement. We are confident that these reports will reveal significant progress toward opening procurement markets and bolster our mutual endeavors for expanded coverage. If the signatory group is unable to move towards genuine openness and reciprocity of access to comparable markets, we can anticipate that the political pressures here will increase to strike the balance through restrictions in the US market.

We look forward to working together to our mutual benefit by increasing commercial opportunities in the government procurement area.

**Content of Arrangement between the United States and the Community concerning
cheeses**

1. The US agrees that its import system will be adjusted so that:
 - the cheeses which are listed in Annex 1 will not be subject to quotas;
 - the other cheeses will be freely imported within the limits of fixed quotas.
2. The global volume of the quotas granted to the Community for cheeses subject to the quota system will amount to a minimum of 43 554 tonnes. The distribution of the quotas between the different varieties is that listed in Annex 2 to this Arrangement. The US commits itself to take all necessary measures so that the management of the quotas by the administration will be such as to permit their maximum utilization.
3. The Community agrees not to grant restitutions or permit other similar practices in a manner such as to result in the prices for cheeses of Community origin on the US wholesale market below the prices of like US domestic cheeses. Other suppliers of cheese under quota to the US will be subject to the same commitment.
4. The US agrees not to impose countervailing duties on cheese imported from the Community as long as the price condition on the American market, as stated in paragraph 3, is met.

If the American Government considers that the price conditions mentioned in the previous paragraph are no longer respected, it will inform the Community and agree to enter into consultations before undertaking any counteraction.
5. The Community accepts the commitment of the US with regard to the amount of the quotas, established by virtue of Section 22 and in conformity with the Waiver of 1955, without prejudice to its rights under the General Agreement.

ANNEX 1

1. In accordance with the Arrangement, the cheeses covered by the following tariff categories of the tariff schedules of the United States shall not be subject to quota.

(a) Those provided for in items:

TSUS No	Description
117.0020	Stilton cheese, in original loaves, product of England
117.0520	Stilton cheese, other, product of England
117.1000	Bryndza cheese
117.3000	Gjetost cheese, made from goat's milk whey or from whey obtained from a mixture of goat's milk and not more than 20 % of cow's milk
117.3500	Gjetost cheese, other
ex 117.4060	Goya cheese, in original loaves
117.4500	Roquefort cheese, in original loaves, product of France
117.5000	Roquefort cheese, other, product of France
117.6060	Gammelost and Nokkelost cheeses
117.6500	Cheeses made from sheep's milk, in original loaves and suitable for grating
117.6700	Pecorino cheese, made from sheep's milk, in original loaves, not suitable for grating
117.7000	Other sheep's milk cheese
117.7575	Other goat's milk cheese valued not over 25 cents per pound
117.8575	Other goat's milk cheese valued over 25 cents per pound

- (b) Those provided for in an item to be created the wording of which shall be based on the following definition for soft ripened cow's milk cheeses:

'Soft ripened cheese is cured or ripened by biological curing agents such as molds, yeasts, and other organisms which have formed a prominent crust on the surface of the cheese. The curing or ripening is conducted so that the cheese visibly cures or ripens from the surface toward the center. Fat content in the dry matter is not less than 50 %. Moisture content, calculated by weight of the non-fatty matter is not less than 65 %.

The term 'soft ripened cheese' does not include cheeses with molds, yeasts and other organisms on the surface which also contain molds, blue or otherwise, distributed throughout the interior of the cheese.'

2. The following non-comprehensive list is given for illustrative purpose only. Administrative cooperation should be established at the technical level concerning any difficulty related to the classification of these cheeses:

- Bibress
- Brie
- Camembert
- Cambré

- Carré de l'Est
- Chaource
- Coulommiers
- Époisse
- Herve
- Limbourg
- Livarot
- Maroilles
- Munster — from France and Germany along both sides of the Rhine
- Pont-l'Évêque
- Reblochon
- St. Marcellin
- Taleggio

(Examples offered for sale under commercial names):

- Boursault
 - Caprice des Dieux
 - Ducs (Suprême des)
 - Explorateur
-

ANNEX 2

Cheese quotas

TSUS No (Appendix)	Description	Annual import quota 1 January to 31 December (tonnes)
950.07	Blue mold (except Stilton produced in England) and cheese substitutes for cheese containing, or processed from, blue mold cheese	2 479
950.08	Cheddar cheese and cheese and substitutes for cheese containing, or processed from, Cheddar cheese	263
950.08 A	American-type cheese, including Colby, washed, cured, and granular cheese (but not including Cheddar) and cheese containing, or processed from, such American-type cheese	254
950.09 A	Edam and Gouda cheese	4 011
950.09 B	Cheese and substitutes for cheese containing, or processed from, Edam and Gouda cheese. Italian-type cheeses, made from cow's milk (Romani made from cow's milk, Reggiano, Parmesano, Provoloni, Provolette, and Sbrinz)	1 237
950.10	In original loaves	1 763
950.10 A	Not in original loaves and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses	47
	Swiss or Emmenthaler cheese with eye formation; Gruyere-process cheese; and cheese and substitutes for cheese containing, old processed from, such cheeses	
950.10 B	Swiss or Emmenthaler cheese with eye formation	6 000
950.10 C	Other than Swiss or Emmenthaler with eye formation (reported statistically as Gruyere-process)	3 500
950.10 D	Cheeses and substitutes for cheese provided for in items 117.75 and 117.85, part 4 C, schedule 1, of the tariff schedules of the United States (except cheese not containing cow's milk; cheese, except cottage cheese, containing 0.5 % or less by weight of butterfat, and articles within the scope of other import quotas provided for in this part)	20 000
950.10 E	Cheese, and substitutes for cheese, containing 0.5 % or less by weight of butterfat as provided for in items 117.75 and 117.85, part 4 C, schedule 1 (except articles within the scope of other import quotas provided for in this part)	4 000

Content of exchange of letters between the European Economic Community and the United States concerning the poultry sector

The United States and the European Economic Community have agreed as follows:

1. The Commission will take measures so that at the date of the coming into force of the concessions internal procedures will have been completed modifying the coefficients used in the calculation of the sluice-gate price and the levy for certain turkey parts on the basis of those applicable to whole turkeys, so that these will be fixed at the following levels for the positions:

02.02 B II e) 2 aa)	drumsticks:	0.75
02.02 B II e) 2 bb)	thighs:	1.35
02.02 B II d) 2	breasts:	1.60

These modifications are such that they would have entailed at the date of 1 December 1978, other things being equal, reductions of the threshold prices and levies, respectively of:

for the tariff line 02.02 B II e) 2 aa)	drumsticks:	17 %
02.02 B II e) 2 bb)	thighs:	13 %
02.02 B II d) 2	breasts:	3 %

2. The European Economic Community confirms the binding for uncooked seasoned turkey meat under the tariff position 16.02 B I A of the CXT. Uncooked seasoned poultrymeat other than turkey meat, now classified under the same tariff position, may be reclassified.
3. If exports of turkey meat from the United States to the European Economic Community exceed the average level realized in the course of the years 1977 and 1978, the United States and the European Economic Community will enter into consultation in order to examine the situation and, if needed, to find a solution to the problem thus created on the Community market for turkey.

Content of exchange of letters between the European Economic Community and the United States concerning rice

1. The European Economic Community agrees that at 1 September 1979 and 1 September 1980, internal procedures will be completed in the Community which will reduce, in two stages, the threshold price for long grain rice — which presently exceeds that for round grain rice by 20 units of account per tonne — to the level of the threshold price for round grain rice including the corresponding modifications of the external corrective amounts used in the calculation of the cif prices.
 2. The European Economic Community agrees to retain the classification of parboiled rice in Chapter 10 of the CXT as provided for in Council Regulation (EEC) No 2800/78 of 27 November 1978. This classification will also be maintained in the future.
 3. The European Economic Community agrees that these concessions will not be negated through any changes in the method used for calculating the European Economic Community threshold price and the import levies for rice.
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Content of exchange of letters between the European Economic Community and the United States concerning the elimination of the 'wine gallon assessment'

The United States agrees to eliminate the wine gallon method of assessment used in the calculation of the customs duties and of the internal taxes on products imported under the following tariff numbers:

168.05	Aquavit
168.17	Bitters of all kinds containing spirits, fit for use as beverages
	Brandy:
	Pisco and singani:
	in containers each holding not over one gallon:
168.18	valued not over \$ 9 per gallon
168.23	valued over \$ 9 per gallon
	Other:
	in containers each holding not over one gallon:
168.28	valued over \$ 9 per gallon
168.33	Cordials, liqueurs, kirschwasser, and ratafia
168.34	Ethyl alcohol for beverage purposes
168.35	Gin
168.45	Whiskey:
	Irish and Scotch
	Other spirits, and preparations in chief value of distilled spirits, fit for use as beverages or for beverage purposes:
168.55	Other

Content of exchange of letters between the European Economic Community and the United States concerning high quality beef

1. The European Economic Community agrees to establish a levy-free quota of 10 000 tonnes of high-quality beef with an a. v. tariff of 20 % to be bound in GATT. This beef shall be defined by either of the two following definitions and certified to by the exporting country:
 - (i) Beef quarters, wholesale cuts, boneless primal and subprimal cuts or portioned steaks from carcasses possessing the following characteristics:
 - (a) minimum external white fat covering over the ribeye muscle at the 12th rib of 0.4 to 0.9 inch;
 - (b) carcass weight of 600 to 850 pounds;
 - (c) minimum ribeye area at 12th rib — nine square inches;
 - (d) maximum age — 30 months. Carcass must have no visible ossification of cartilage buttons over tips of spinous processes associated with the 1st through 11th thoracic vertebrae;

- (e) minimum intermuscular fat intermingled in lean of longissimus (ribeye) muscle at the 12th rib as shown by photographic standard (equivalent to modest or fat content of lean of 6.0 minimum, wet tissue basis, for longissimus);

Note: this will not apply to other muscles of carcass;

- (f) colour: lean must be a bright, cherry red colour at time of cutting of carcass;
 - (g) fresh chilled carcasses or cuts must be at a temperature (internal or ribeye muscle) of less than 4 °C when packed for shipment.
- (ii) Carcasses or any cuts from cattle not over 30 months of age which have been fed for 100 days or more on a nutritionally balanced, high energy feed concentration ration containing no less than 70 % grain, and at least 20 pounds total feed per day.

It should be noted that US beef which is graded USDA choice or prime will automatically meet the definition of one of the above.

- 2. By 1983 the United States and the European Economic Community will consult about the possibility of further expanding trade in high-quality beef.

Content of exchange of letters between the European Economic Community and the United States concerning fresh, chilled and frozen beef

- 1. The United States agrees to operate its import system of fresh, chilled and frozen beef in such a manner as to allow access for 5 000 tonnes of EC beef from member countries free of foot and mouth disease. The European Economic Community will administer the amount. As regards countervailing duties, the United States will act in conformance with the relevant provisions of the subsidy countervail code.
 - 2. By 1983, the United States and the European Economic Community will consult about the possibility of further expanding trade in fresh, chilled and frozen beef.
-

Content of exchange of letters between the European Economic Community and Canada
concerning quality wheat

With reference to the talks that have taken place between the Delegations of Canada and the European Economic Community, I have the honour to confirm the following concerning quality wheat:

'Canada and the Commission of the European Communities agree to meet in 1982 with a view to examining the question of the disposition of the outstanding matters concerning Canada's exports of quality wheat to the EC arising out of the exchange of letters which resulted from the GATT Article XXIV § 6 negotiations of 1962 and 1975.'

Content of Agreement between Canada and the European Economic Community concerning
cheese

I. Community undertaking with respect to the importation of aged Canadian Cheddar

1. The Community undertakes to establish a tariff quota for aged Cheddar, setting down specific conditions for the import of an annual total quantity of 2 750 tonnes reserved for Canada. The definition of the system, the specifications of the cheese eligible for it and the conditions of eligibility for the special system are set out in the Annex to this Arrangement. Canada undertakes that the Cheddar shipped to the Community will be accompanied by a certificate of authenticity issued by the Canadian Dairy Commission, certifying the nature and the origin of the product.
2. Canada undertakes to ensure that, for cheese exported to the Community under this Arrangement, the minimum prices specified in the Annex to this Arrangement will be respected at the cif stage. The Community for its part, undertakes that, to the extent necessary, the minimum prices will be adjusted to ensure that the annual total quantity allowed to be imported from Canada can be achieved, taking into account competitive supply and demand conditions on the cheese markets of the Member States of the Community. The Community will also ensure that the advantage thus granted to Canada is not compromised by other import measures.
3. In the event that Canadian prices are such as to cause serious difficulties on the cheese market of a Member State of the Community, consultations will be opened without delay with a view to taking the necessary measures.
4. It is understood that monetary compensatory amounts or any other similar monetary measure which could affect the marketing of aged Canadian Cheddar in the Community will not be applied so as to discriminate between third country suppliers.
5. This undertaking replaces the arrangement of 28 February 1975.

II. Canadian undertaking with respect to imports

1. Canada undertakes to open quotas for all cheeses for a global volume of not less than 45 million pounds per year. Within this volume of 45 million pounds, an unallocated reserve of one million pounds will be set aside for Cheddar; it is understood that the Community will be treated no less favourably than other Cheddar suppliers. The quota allocated to the European Economic Community will not, in any case, be less than 60 % of this volume of 45 million pounds, that is, 27 million pounds.
2. Canada undertakes to implement all the necessary measures to ensure that the administration of the quotas by the Canadian authorities will be such as to allow for their maximum utilization.

Canada will ensure that the advantage thus granted to the Community is not compromised by other import measures.

3. The Community undertakes to ensure that the restitutions it grants will be such that the prices, ex-quay duty paid Canadian port, of cheeses from Community sources on the Canadian market do not undercut the prices, ex factory, of the same domestic cheeses or of similar cheeses made in Canada, inasmuch as Canada attempts to obtain a similar undertaking from other suppliers.

The monitoring of prices on the Canadian market will be done on the basis of a common agreement between the Community and Canada and presupposes the introduction in Canada of an information system on ex factory prices.

In the event that Community prices are such as to cause serious difficulties on the cheese markets in Canada, consultations will be opened without delay with a view to taking the necessary measures.

III. Reciprocal undertakings

1. The Community and Canada undertake to hold consultations on the implementation of this Arrangement on an annual basis and, if necessary, upon request of either party.
 2. This Arrangement will be re-examined in 1982, in particular with respect to the possibility of increasing the quotas which have been fixed reciprocally and also with respect to their binding within the GATT.
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ANNEX

Description of the EEC concession on aged Cheddar

CCT heading No	Description	Rate of duty Autonomous % or levy (L)
04.04	Cheese and curd: E. Other: I. Not grated or powdered, of a fat content, by weight, not exceeding 40 % and a water content, calculated by weight of the non-fatty matter: b) Exceeding 47 % but not exceeding 72 %: 1. Cheddar: (aa) Cheddar made from unpasteurized milk, of a minimum fat content of 50 % by weight, in the dry matter, matured for at least nine months (a): (11) In standard whole sizes (b) and of a free-at-frontier value of not less than 170 u.a. (c) per 100 kg net weight (22) Others of a net weight of: (aaa) Not less than 500 g and of a free-at-frontier value of not less than 185 u.a. per 100 kg net weight (bbb) Less than 500 g and of a free-at-frontier value of not less than 195 u.a. (c) per 100 kg net weight	L (d) L (d) L (d)

(a) Entry under this subheading is subject to conditions to be determined by the competent authorities.

(b) The expression 'standard whole sizes' in relation to subheading 04.04 E I b) 1 (aa) (11) shall be taken to apply to:

- rounds of a net weight of between 33 and 44 kg inclusive;
- cubic blocks or rounds of a net weight of not less than 10 kg.

(c) The minimum values shall be automatically adjusted to take account of changes in the factors determining the formation of Cheddar prices in the Community. This adjustment shall be by way of an increase or decrease equal to that of the Community threshold price for Cheddar.

(d) 10 u.a. per 100 kg net weight within a 2 750 tonnes annual tariff quota to be allocated by the competent authorities of the European Communities.

MEMORANDUM OF UNDERSTANDING

Results of bilateral negotiations between the Delegations of New Zealand and the European Communities to the multilateral trade negotiations

The Delegation of New Zealand and the Delegation of the European Communities agree that, subject to approval by their relevant authorities, they have completed bilateral negotiations in the context of the multilateral trade negotiations on the following basis:

- (a) tariff offers, as tabled by both parties, to be included in Schedule XIII — New Zealand, and Schedule LXXII — European Communities;
- (b) supplementary tariff offer by New Zealand in response to specific request from the European Communities (see Annex 1);
- (c) supplementary offer by New Zealand on import licensing in response to specific requests from the European Communities (see Annex 2);
- (d) an offer by the European Communities on cheese imports in response to specific requests from New Zealand (see Annex 3);
- (e) an offer by the European Communities on beef (see Annex 4) in response to requests from New Zealand.

The Delegations note that the offers as set out above are subject to technical clarification, including any modifications resulting from the preparation of revised GATT schedules.

They also note that these offers and their acceptance are without prejudice to their GATT rights and obligations.

*For the Delegation of the
European Communities*

*For the Delegation of
New Zealand*

ANNEX 1

New Zealand supplementary tariff offer made in response to specific requests from the European Communities

I. New Zealand agrees to implement the offers set out below on 1 January 1980.

Tariff item	Description	Offer bound rate
17.04.001	Chewing gum	30 %
17.04.009	Other sugar confectionery	30 %
18.06.000	Chocolate etc.	30 %
19.03.001	Macaroni, spaghetti etc.; retail packs	30 %
19.03.009	Macaroni, spaghetti etc.; other packs	30 %
19.08.001	Biscuits	35 %
20.01.000	Fruit and vegetables; preserved by vinegar etc.	20 %
ex 20.02.051	Tomatoes; preserved, viz. whole or in pieces	10 %
20.03.000	Fruit, frozen	10 %
20.05.000	Jams; jellies, marmalades etc.	30 %
ex 20.07.021	Citrus juice, other than in bulk; with added sugar	30 %
ex 20.07.021	Tomato juice, other than in bulk; with added sugar	30 %
21.05.001	Soups and broths; of fish etc.	25 %
21.05.005	Soups and broths; other	25 %
ex 21.07.009	Spaghetti etc.; with other foods, cooked	30 %
22.05.001	Champagne	20 c/l
22.06.001	Vermouth	10 c/l

II. The following items which were the subject of requests by the European Communities were included in New Zealand's global tariff offer.

The maintenance of that offer on these items, and their implementation on 1 January 1980 is confirmed by New Zealand.

Tariff item	Description	Offer
ex 15.07.001	Vegetable oils in retail packs	Free
19.02.009	Food preparations	35 %
ex 19.07.009	Biscuits etc., not containing sugar, viz. other than ships' biscuits	35 %

Tariff item	Description	Offer
21.02.009	Coffee and chicory essences	35 %
21.03.011	Prepared mustard; retail packs	30 %
21.03.019	Prepared mustard; other packs	20 %
21.04.000	Sauces and condiments	30 %
35.07.001	Rennet, flavoured	20 %

III. In addition, for many items included in New Zealand's global tariff offer, the Community was the principal supplier in 1976/77. It is New Zealand's intention that these offers will be maintained and will be implemented with effect from 1 January 1980.

ANNEX 2

New Zealand import licensing offer made in response to specific requests from the European Communities

I. New Zealand agrees to implement the offers on import licensing, set out below, with effect from 1 January 1980.

A. *Exemption from import licensing*

New Zealand agrees to exempt the following items from import licensing:

22.03.003	}	Beer
22.03.007		
22.03.008		
22.05.001		Champagne
35.07.001		Rennet, flavoured

B. *Additional licensing provision for items in retail packs*

New Zealand agrees to provide additional licensing provision, to the extent of 10 % of bulk imports in 1977/78 (year ended June), for the following items:

ex 15.07.001	}	Vegetable oils in retail packs
15.07.059		

C. *Additional licensing provision*

New Zealand agrees to provide additional licensing provision:

(a) in the case of basic items, by increasing the allocation above that provided for in the import licensing schedule and/or providing for some new entrants; or

(b) in the case of 'C' items, by:

(i) increasing the initial allocation provided for in the import licensing schedule, or

(ii) creating an initial basic allocation for the following items:

17.04.001	Chewing gum
17.04.009	Other sugar confectionery
18.05.000	Cocoa powder
18.06.000	Chocolate etc.
19.02.000	Food preps
19.03.001	Macaroni, spaghetti etc.; retail packs
19.03.009	Macaroni, spaghetti etc.; other packs
19.07.009	Biscuits etc., not containing sugar
19.08.001	Biscuits
20.01.000	Fruit and vegetables, preserved by vinegar etc.

20.02.041	Tomatoes, purée or concentrate
20.02.051	Tomatoes, preserved
20.03.000	Fruit, frozen
20.05.000	Jams, jellies, marmalades etc.
20.07.021	Fruit and vegetable juices, in other containers
20.07.025	
20.07.028	
21.02.009	Coffee and chicory essences
21.03.011	Prepared mustard, retail packs
21.03.019	Prepared mustard, other packs
21.04.000	Sauces and condiments
21.05.001	Soups and broths, of fish etc.
21.05.005	Soups and broths, other
ex 21.07.009	Spaghetti etc.; with other foods, cooked

ANNEX 3

Content of Joint Discipline Arrangement between New Zealand and the Community concerning cheese***I. Undertaking by the Community on imports of Cheddar for direct consumption***

1. The Community undertakes to establish a tariff quota for Cheddar for direct consumption, as provided for under defined conditions of importation, for a global annual quantity of 9 000 tonnes of which 6 500 tonnes will be reserved for New Zealand.

The details of this system, the specification of the cheese which may benefit from it, and the conditions under which this special regime will be operated are set out in Appendix I to this Arrangement.

2. New Zealand undertakes to take all the necessary measures so that the quantity of Cheddar for direct consumption, exported to the Community, does not exceed 6 500 tonnes per year and that sales of this quantity will be as regular as possible. It also undertakes that such Cheddar exported to the Community shall be accompanied by a certificate of authenticity, delivered by the New Zealand Dairy Board, guaranteeing the nature and origin of the product.

New Zealand undertakes to ensure that for cheese exported to the Community as a result of this Arrangement, the minimum price will be respected at the cif stage.

The Community, for its part, undertakes, as necessary, to adjust the minimum price so as to ensure that New Zealand's share of the global annual quantity admitted for importation can be effectively marketed each year as regularly as possible.

3. In the event that New Zealand's prices create serious difficulties in the cheese market of a Member State of the Community, consultations will take place, without delay, with a view to seeking a mutually satisfactory solution for remedying the situation.

II. Undertaking by the Community on imports of other cheese for processing

1. The Community undertakes to establish a tariff quota for other cheese for processing, as provided for under defined conditions of importation, for a global annual quantity of 3 500 tonnes, of which 3 000 tonnes will be reserved for New Zealand.

The details of this system, the specification of the cheese which may benefit from it, and the conditions under which this special regime will be operated are set out in Appendix II to this Arrangement.

2. New Zealand undertakes to take all the necessary measures so that the quantity of other cheese for processing exported to the Community does not exceed 3 000 tonnes per year and that sales of this quantity will be as regular as possible. It also undertakes that such cheese exported to the Community shall be accompanied by a certificate of authenticity, delivered by the New Zealand Dairy Board, guaranteeing the nature and origin of the product.

New Zealand undertakes to ensure that for cheese exported to the Community as a result of this Arrangement the minimum price will be respected at the cif stage.

The Community, for its part, undertakes, as necessary, to adjust the minimum price so as to ensure that New Zealand's share of the global annual quantity admitted for importation can be effectively marketed each year as regularly as possible.

3. In the event that New Zealand's prices create serious difficulties in the cheese market of a Member State of the Community, consultations will take place, without delay, with a view to seeking a mutually satisfactory solution for remedying the situation.

III. *Administrative cooperation*

The Community and New Zealand undertake to establish administrative cooperation for the application of the present Arrangement, concerning in particular the exchange of information on prices and quantities exported, and all other relevant matters.

Appendix I

Text of concession on EEC Cheddar cheese

CCT heading No	Description	Rate of conventional duty
04.04	Cheese and curd: E. Other: I. Not grated or powdered, of a fat content, by weight, not exceeding 40 % and a water content, calculated by weight of the non-fatty matter: b) Exceeding 47 % but not exceeding 72 %: 1. Cheddar: (bb) Other: — Whole cheddar cheese (a) of a minimum fat content of 50 % by weight, in the dry matter, matured for at least three months and of a free-at-frontier value of not less than 165 u.a. (b) per 100 kg net weight (c)	L (d)

- (a) The expression 'whole cheeses', as used in subheading 04.04 E I b) 1 (bb), shall be taken to apply to:
- whole cheeses of the conventional flat cylindrical shape of a net weight of not less than 33 kg but not more than 44 kg,
 - cubic blocks of cheese of a net weight of not less than 10 kg.
- (b) The value limits are automatically adjusted by reference to changes to the factors determining the formation of the price of Cheddar in the Community. This adjustment is made on the basis of an increase or a reduction equal to that of the threshold price of Cheddar in the Community.
- (c) Entry under this subheading is subject to conditions to be determined by the competent authorities.
- (d) 10 u. a. per 100 kg net weight within the limits of an annual tariff quota of 9 000 tonnes to be granted by the competent authorities of the European Communities.

Appendix II

Text of EEC concession on other cheeses destined for processing

CCT heading No	Description	Rate of conventional duty
04.04	Cheese and curd: E. Other: I. Not grated or powdered, of a fat content, by weight, not exceeding 40 % and a water content calculated by weight of the non-fatty matter: b) Exceeding 47 % but not exceeding 72 %: 1. Cheddar: (bb) Other: — Cheddar for processing (a), of a free-at-frontier value of not less than 145 u. a. (b) per 100 kg net weight (c) 5. Other: — For processing (a), of a free-at-frontier value of not less than 145 u. a. (b) per 100 kg net weight (c)	L (d)

- (a) Checks on the utilization for this specific purpose are undertaken through the application of the Community provisions laid down in this matter.
- (b) The value limits are automatically adjusted by reference to changes to the factors determining the formation of the price of Cheddar in the Community. This adjustment is made on the basis of an increase or a reduction equal to that of the threshold price of Cheddar in the Community.
- (c) Entry under this subheading is subject to conditions to be determined by the competent authorities.
- (d) 10 u. a. per 100 kg net weight within the limits of an annual tariff quota of 3 500 tonnes to be granted by the competent authorities of the European Communities.

ANNEX 4

Content of Arrangement concerning beef between New Zealand and the Community

I. *GATT annual tariff quota*

The Community undertakes to increase the global annual tariff quota (customs duty 20 % free of levy) for frozen beef (subheading 02.01 A II b) 1 to 4) from 38 500 tonnes (boneless) to 50 000 tonnes (boneless).

II. *Advance fixing of the levy*

The Community undertakes to adopt all the necessary measures to ensure that the levy on frozen beef (02.01 A II b)) may on request be fixed in advance.

For this purpose an advance-fixing certificate would be drawn up, having a period of validity of not more than 60 days and fixing the levy at the level in force on the day on which the certificate was applied for; issue of the certificate would be subject to a deposit of a security of 8 u. a. per 100 kg being made with the application.

III. *Suspension of the levy for meat intended for processing covered by the balance sheet*

The Community will endeavour to fix the suspension of the levy on imports of beef for processing, covered by the balance sheet, at the highest possible level.

In any case the suspension must be fixed at such a level that the levy on the products in question will not exceed 45 % of the full amount of the levy for frozen beef for processing or 0 % for frozen beef for canning.

IV. *Cooperation in preparing the estimate for imports*

There would be an exchange of letters between the Commission and New Zealand concerning the estimate for imports, the content of which is as follows:

'The cooperation could be made on the following basis:

1. The Services of the Commission would proceed to collect information supplied by the Member States on their respective needs for frozen beef destined for processing.

On the basis of this information and on their own forecasts, they would establish a global estimation of Community needs in the different products concerned.

2. The third countries concerned will be informed of the estimates.
3. This would be followed as soon as possible by meetings between the Commission and the third countries concerned.

The objectives of these meetings would be as follows:

- to have an exchange of views with the participants on the whole situation of the beef market in the European Economic Community and in other third countries as well as the forecasts for production and consumption;

- proceed with analysis by both sides of the elements which would help to establish the estimation of Community needs for frozen beef for processing;
 - exchange information with regard to export possibilities of participating countries.
4. Following these meetings, the Commission would formulate the draft balance sheet for transmission to the Council taking into account all the elements outlined during the discussions with third countries and which are possible to quantify on as realistic a basis as possible.

The draft balance sheet given to the Council will be accompanied by a document reflecting the basic points of view expressed by the participants about Community needs and their export possibilities relating to the same or similar products.

5. The balance sheet should be drawn up in such a way as to ensure the regular supply of the Community market and permit an increase in imports in proportion to the increase in Community consumption taking into account the foreseeable expansion of the market.

In the light of these considerations, it is expected that the annual level of imports of frozen beef for the processing industry under the balance sheet will show a tendency to increase over a period of several years, in relation to the increase in Community needs.'

Agreed record of conclusions reached in bilateral negotiations between the European Communities and Australia in the GATT multilateral trade negotiations

The attached record of the conclusions in bilateral negotiations between the European Communities and Australia has been reached *ad referendum*.

In addition there will be detailed discussion on a few Community industrial requests and clarification of the Australian position on the MTN codes.

It was noted that the Council of Ministers has accepted the terms of the exchange of letters in respect of the balance sheet on beef for processing.

CONFIRMED

F. O. GUNDELACH

*Vice-President
EEC Commission*

R. V. GARLAND

*Minister for Special
Trade Representations
Australia*

Canberra, A.C.T.
Australia
29 May 1979

ANNEX 1

Australian concessions to the Community

Australia undertakes to include in the list of concessions annexed to the GATT the bindings indicated hereunder:

Tariff No	Brief description	Offer
ex 03.03.000	Crustaceans and molluscs, fresh, chilled, etc., other than shrimps and prawns	Free
04.04.900	Other cheese and curd: — Fancy cheeses (a) — Edam and Gouda	Free \$A 0.096/kg for not less than 1 000 tonnes
	— Other varieties (excluding Cheddar, Fetta, Kasseri)	\$A 0.096/kg for not less than 2 500 tonnes

(a) Imports under this concession will be subject to conditions to be determined by the relevant Australian Government authorities.
(See Appendix to this Annex.)

Tariff No	Brief description	Offer
07.02.900	Other frozen vegetables	\$A 0.003 per kg
07.04.900	Other vegetables, dried, dehydrated, etc.	\$A 0.42 per kg
07.05.200	Peas and beans, pricked, slit, etc.	\$A 0.42 per kg
ex 16.02.900	Frozen cooked turkey roll; canned poultry	3 % + \$A 0.032 per kg
ex 16.02.900	Balance — other prepared or preserved meat	7.5 % + \$A 0.08 per kg
ex 16.05.900	Crustaceans prepared or preserved, not extracts, pastes, etc.	Free
17.04.900	Other sugar confectionery not containing cocoa	30 %
18.04.900	Cocoa butter	Free
18.06.000	Chocolate and other food preparations containing cocoa	30 %
19.05.000	Puffed rice, cornflakes, etc.	12 %
21.02.110	Extracts, essences, etc. of coffee	\$A 0.66 per kg
21.07.991	Hop shoots, protein concentrates, etc.	30 %
29.39.000	Hormones and derivatives thereof, etc.	Free
29.44.900	Other antibiotics	Free
ex 30.05.000	Other pharmaceutical goods, excluding dental products	Free
32.12.100	Glazier's putty, etc., of polyester	20 %
32.12.900	Glazier's putty, etc., other	7.5 %
33.06.900	Perfume and cosmetics other than joss sticks and aqueous distillates	30 %
34.01.000	Soap	12 %
34.02.100	Organic surface active agents, etc. in small packs	Free
35.04.100	Protein isolates	6 %
35.04.900	Peptones and other protein substances	Free
ex 37.02.200	Photographic film, unexposed, in bulk rolls not perforated excluding spools and reels	6 %
38.11.400	Disinfectants, herbicides, stock washes, etc.	30 %
39.01.132	Silicone fluids	30 %
ex 39.01.139	Silicone rubber	30 %
39.01.500	Planar forms NSA of polyester coated with an adhesive	19 %
39.01.600	Profile shapes NSA of polyamides or of polyurethane	12 %
39.01.700	Planar forms, NSA of polyurethane	12 %
39.03.150	Goods of hydroxethylcellulose not being adhesives	22.5 %

Tariff No	Brief description	Offer
40.10.910	Conveyor or elevator belting other — not wholly of vulcanized rubber	26 %
48.01.990	Other paper and board in sheets or rolls NSA	30 % or \$A 48.23
69.07.900	Other unglazed setts, flags and wall tiles	30 %
69.08.900	Other glazed setts, flags and wall tiles	30 %
71.12.900	Other jewellery	34 %
ex 73.23.000	Aerosol cans	30 %
84.06.100	Fuel injection equipment, other	5 %
84.06.500	Outboard engines not including parts	11 %
84.08.900	Other engines and motors (including aircraft engines, etc.)	Free
84.10.900	Other pumps for liquids	26 %
84.15.210	Parts for electrical refrigerators	30 %
84.15.900	Other refrigerators and refrigerating appliances	25 %
84.19.200	Electric dishwashers	30 %
84.19.900	Other machinery for cleaning and drying bottles, etc.	21 %
84.22.420	Crawler mounted cranes	20 %
84.23.110	Tractor bases of the tracklaying or wheeled agricultural types	Free
84.23.190	Tractor bases, other	20 %
84.23.200	Road rollers, graders, scrapers etc.	(a) As per PI (b) 30 %
84.23.311	Loaders, backhoes, etc., up to 50 tonnes, self propelling ARC up to 270°	(a) As per PI (b) 30 % (c) 40 %
84.23.319	Other excavating, levelling and tamping machines, having a working weight of up to 50 tonnes	(a) As per PI (b) 30 %
ex 84.23.320	Other excavating, levelling and tamping machines excluding direct current mill-type motors	(a) As per PI (b) 30 % (c) 20 %
84.23.400	Wearing parts, etc., for boring, extracting, etc. machinery	19 %
84.23.910	Diamond drilling machines and parts	22.5 %
84.23.990	Other boring, extracting, etc. machinery	6 %

Tariff No	Brief description	Offer
ex 84.24.900	Other agricultural, etc. machinery <i>viz.</i> ploughs	15 %
84.25.900	Other harvesting and threshing machinery, etc.	15 %
84.26.000	Dairy machinery (including milking machines)	15 %
84.28.000	Other agricultural, horticultural etc. machinery	15 %
84.49.100	Chain saws other than pneumatic or hydraulic type	26 %
84.53.100	Cathode ray display terminals	24 %
84.53.900	Automatic data processing machines	(a) 25 % (b) 24 % (c) 6 %
84.61.200	Hydraulic control valves for use in agricultural tractors for operation of implements	Free
ex 85.01.190	a.c. generators over 500 kVA excluding parts	Free
85.15.900	Other radio-telegraphic, etc. transmission apparatus	30 %
86.09.900	Parts for railway and tramway locomotives, rolling stock, etc.	30 %
87.01.200	Tractors of the track laying type	Free
87.01.310	Agricultural wheeled tractors, etc. PTO of 15 kW or more	Free to 40 %
87.01.900	Other tractors	20 %
87.06.300	Parts and accessories for tractors falling in 87.01.9, NSA	20 %
87.12.310	Bicycle frames	41 % or \$A 1-88 each plus 7 %
87.12.390	Other parts and accessories for cycles, NSA	6 %
90.17.100	Catheters, canulae, difibrillators, etc.	30 %
90.17.200	Specified medical and dental equipment (drills, incubators, etc.)	20 %
90.17.300	Ophthalmic instruments and appliances	Free
ex 90.17.900	Other medical, etc. appliances (excluding hand pieces for dental equipment)	Free
90.25.100	Ultra violet absorbance monitors	15 %
90.25.900	Other instruments, etc. for physical or chemical analysis	Free
90.28.100	Distortion meters, cathode ray oscilloscopes, etc.	30 %

Tariff No	Brief description	Offer
90.28.200	Instruments, etc. for measuring or checking electrical quantities	25 %
90.28.300	Specified electrical measuring instruments (planimeters, etc.)	15 %
90.28.900	Other electrical measuring instruments	Free

The fact that these products are listed in this Agreement does not imply that the EEC is automatically considered to have initial negotiating rights for these concessions.

APPENDIX

Fancy cheese concession

The cheeses to benefit from the concession will be:

1. *Soft surface-ripened cheeses*

Soft surface-ripened cheese is cured or ripened by biological curing agents such as moulds, yeasts, and other organisms which have formed a prominent crust on the surface of the cheese. The curing or ripening is conducted so that the cheese visibly cures or ripens from the surface toward the centre. Fat content in the dry matter is not less than 50 %. Moisture content, calculated by weight of the non-fatty matter, is not less than 65 %.

The term 'soft surface-ripened cheese' does not include cheeses with moulds, yeasts and other organisms on the surface which also contain moulds, blue or otherwise, distributed throughout the interior of the cheese.

The following non-comprehensive list is given by the Community as illustrative of types of cheeses it considers fall under this definition. Administrative cooperation should be established at the technical level concerning any difficulty related to the classification of these cheeses:

- Bibress
- Brie
- Camembert
- Cambre
- Carré de l'Est
- Chaource
- Coulommiers
- Époisse
- Herve
- Limbourg
- Livarot
- Maroilles
- Munster — from France and Germany along both sides of the Rhine
- Pont-l'Évêque
- Taleggio

Examples offered for sale under commercial names:

- Boursault
- Caprice des Dieux
- Ducs (Supreme des)
- Explorateur

2. *Other*

Stilton cheese, in original loaves

Stilton cheese, other

Roquefort cheese, in original loaves

Roquefort cheese, other

Goats' milk cheeses (except Fetta and Kasseri)

ANNEX 2

Content of Arrangement between Australia and the Community concerning beef

1. *GATT levy-free quota*

- (i) The Community undertakes to increase the annual global tariff quota (customs duty of 20 % without levy) for frozen beef (subheading 02.01 A II b) 1 to 4) from 38 500 tonnes to 50 000 tonnes (bone out basis). This will be included in the Community's schedule of concessions annexed to the GATT.
- (ii) The Community recognizes the expectation of all exporting countries to be able to sell a reasonable share of the beef imported under the GATT levy-free quota on an acceptable commercial basis. If this expectation by Australia is not fulfilled and, taking account of Australia's importance as a beef exporter in world trade, the Community would be prepared to enter into consultations with Australia in order to ensure that such commercial sales are facilitated.

2. *Special quota for high quality cuts*

- (i) The Community will open each year a tariff quota for the annual importation of 20 000 tonnes at 20 % duty *ad valorem* without levy for the following product:

ex 02.01 A II. Bovine meat, fresh chilled or frozen:
High quality bone-in and boneless cuts (a)

This quota will be included in the Community's schedule of concessions to be annexed to the GATT.

- (ii) Of the above quota a quantity of 5 000 tonnes (bone out basis) fresh, chilled and/or frozen will be reserved for Australia.
- (iii) Australia will take all measures necessary to ensure that beef exported to the Community under this high quality quota will be accompanied by documentation issued by the Australian Department of Primary Industry certifying the nature and origin of the product. The Australian Meat and Livestock Corporation will ensure that the quantity shipped under this arrangement does not exceed 5 000 tonnes (bone out basis) per year.
- (iv) Australian meat admitted under this tariff item would be selected cuts of fresh, chilled or frozen beef derived from bovine animals which do not have more than four permanent incisor teeth, the carcasses of which have a dressed weight of not more than 327 kg (720 lb) a compact appearance with a good eye of meat of light and uniform colour and adequate but not excessive fat cover. The meat shall be certified 'High quality beef (EEC)'.

3. *Levy prefixation*

- (i) In view of the length of the shipment time from Australia to Europe and in order to place Australia in a situation not less favourable than other supplying countries, the

(a) Entry under this subheading is subject to conditions to be determined by the competent authorities.

Community, on demand and within the framework of the common organization of the markets in the bovine meat sector, will take all necessary measures to ensure that the levy applicable to the products defined hereunder is fixed in advance.

- (ii) To this end, the Community will issue on demand a certificate of prefixation, the validity of which will be for a period of 60 days, which will fix the levy at the level operating on the day on which the certificate is requested. Issuance of the certificate will be dependent upon the lodgement of a security deposit equal to 8 u.a. per 100 kilograms net.

Product definition

02.01. Edible meat and offals of animals covered under heading Nos 01.01 to 01.04 including fresh, chilled, or frozen:

A. Meat:

II. Of the bovine species:

b) Frozen

4. *Suspension of the levy on beef destined for the processing industry*

- (i) The Community shall endeavour to fix the suspension of the levy applicable to the importation of beef for the processing industry under the annually estimated balance sheet at the highest possible level.
- (ii) This suspension shall be fixed such that the levy applicable to imports intended for the manufacture of preserved food containing only beef and jelly shall be nil and the levy applicable to imports intended for the processing industry for manufacture of other products shall be a maximum of 45 % of the total levy.

5. *Cooperation in establishing the level of balance sheet imports*

The Commission and Australia will exchange letters concerning the estimation annually of balance sheet imports, the texts of which are contained in the Appendix to this Arrangement.

Appendix

Dear Mr Garland,

Further to our discussions regarding cooperation in establishing the level of EEC imports under the balance sheet of beef for processing, I am writing to confirm the arrangements which are to be applied by the Community.

The services of the Commission will collect information supplied by the Member States on their respective needs for frozen beef destined for processing. On the basis of this information and on their own forecasts, they will estimate total Community needs for the different products concerned.

Australia will be informed of the estimates and be provided by the end of October each year with the basis for such estimates with full details of production and consumption in each member country.

This will be followed as soon as possible by meetings between the Commission and the third countries concerned.

The objective of these meetings will be as follows:

- to have an exchange of views with the participants on the whole situation of the beef market in the European Economic Community and in third countries as well as the forecasts of production and consumption;
- to proceed with an analysis by both sides of the elements which would help to establish the estimates of Community needs for frozen beef for processing;
- to exchange information concerning export possibilities of participating countries.

Following these meetings, the Commission will formulate the draft balance sheet for transmission to the Council taking into account all the elements outlined during the discussions with third countries and which are possible to quantify on as realistic a basis as possible.

The draft balance sheet given to the Council will be accompanied by a document reflecting the basic points of view expressed by the participants about Community needs and their export possibilities.

The balance sheet will be drawn up in such a way as to ensure the regular supply of the Community market and permit an increase in imports in proportion to the increase in Community consumption, taking into account the foreseeable expansion of the market.

In the light of these considerations, it is expected that the annual level of imports of frozen beef for the processing industry under the balance sheet will increase, year by year, in proportion to the increase in Community consumption, over the current level of imports.

I should be glad of your confirmation of the foregoing.

(Complimentary close)

F. O. GUNDELACH

Vice-President

EEC Commission

Letter to Mr Gundelach

I refer to your letter of setting out details of the arrangements to be applied by the Community for the annual estimation of imports under the balance sheet of beef for processing. I can confirm that those arrangements accord with my own understanding of our discussions.

In this context, I wish also to confirm my earlier advice to you that it is Australia's expectation that the balance sheet for beef for processing established each year by the Council of Ministers will be fixed at a level rising progressively above 60 000 tonnes and that the adoption of a lower figure would not correspond to expectations that Australia would reasonably hold about future levels of imports into the Community and consequently Australia would reserve its right to consider this as affecting the overall balance of concessions concluded between Australia and the Community in the context of the MTN.

(Complimentary close).

R. V. GARLAND

Letter to Mr Garland

I acknowledge your letter of on the subject of Community imports under the balance sheet of beef for processing. The views which you expressed have been duly noted.

(Complimentary close)

F. O. GUNDELACH

ANNEX 3

Content of Arrangement between Australia and the Community concerning cheese***I. Community undertaking to import Cheddar for direct consumption***

1. The Community undertakes to open a reduced levy quota for Cheddar for direct consumption to enable a total quantity of 9 000 tonnes to be imported under specific conditions. This quota will be included in the Community's schedule of concessions annexed to the GATT.
2. Of the above quota a quantity of 2 500 tonnes will be reserved for Australia. The definition of the arrangements applying to the imports of this cheese, the details of the cheese covered by them and the conditions for the granting of these special arrangements are contained in Appendix I to this Arrangement.
3. Australia undertakes to adopt all such measures as are necessary to ensure that the quantities of Cheddar for direct consumption exported to the Community under this Arrangement do not exceed 2 500 tonnes per annum. In addition, Australia undertakes that exports of such Cheddar to the Community are accompanied by documentation issued by the Department of Primary Industry certifying the nature and origin of the product.
4. Australia undertakes to ensure that the minimum price for cheese exported to the Community under this Arrangement is observed at the cif stage. The Community for its part undertakes that, in consultation with Australia, the minimum price will be adjusted as necessary to ensure that Australia's total annual import quota can be filled in the most regular way possible.
5. Should prices applied by Australia be such as to cause serious difficulties in the cheese market of a Member State of the Community, Australia, in consultation with the Community, undertakes to implement what price measures might be necessary to relieve the situation in that market.

II. Community undertaking to import other cheeses for processing

1. The Community undertakes to open a reduced levy quota for other cheeses for processing to enable a total quantity of 3 500 tonnes to be imported under specific conditions. This quota will be included in the Community's schedule of concessions in the GATT.
2. Of the above quota a quantity of 500 tonnes will be reserved for Australia. The definition of these Arrangements, the details of the cheese covered by them and the conditions for the granting of these special arrangements are contained in Appendix II to this Arrangement.
3. Australia undertakes to adopt all such measures as are necessary to ensure that the quantities of cheese for processing exported to the Community under this Arrangement do not exceed 500 tonnes per annum. In addition, Australia undertakes that exports of such cheese to the Community are accompanied by documentation issued by the Department of Primary Industry certifying the nature and origin of the product.

4. Australia undertakes to ensure that the minimum price for cheese exported to the Community under this Arrangement is observed at the cif stage. The Community for its part undertakes that, in consultation with Australia, the minimum price will be adjusted as necessary to ensure that Australia's total annual import quota can be filled in the most regular way possible.
5. Should prices applied by Australia be such as to cause serious difficulties in the cheese market of a Member State of the Community, Australia, in consultation with the Community, undertakes to implement what price measures might be necessary to relieve the situation in that market.

Administrative cooperation

1. The Community and Australia undertake to establish administrative cooperation procedures for the purpose of applying this Arrangement, covering notably exchanges of information on prices and quantities exported and any other relevant matters.
 2. With respect to provisions made under this Arrangement for consultations on specific aspects, it is understood by both Australia and the Community that these consultations will be entered into as soon as practicable with a view to reaching a prompt decision.
 3. The Community undertakes that exports of cheese to Australia will be accompanied by documentation issued by the relevant Community authorities certifying the nature and origin of the product.
-

Appendix I

EEC concession on Cheddar

CCT heading No	Description	Rate of conventional duty
04.04	Cheese and curd: E. Other: I. Not grated or powdered, of a fat content, by weight, not exceeding 40 % and a water content, calculated by weight of the non-fatty matter: b) Exceeding 47 % but not exceeding 72 % : 1. Cheddar: (bb) Other: Whole cheddar cheeses (a) of a minimum fat content of 50 % by weight, in the dry matter, matured for at least three months and of a free-at-frontier value of not less than 165 u. a. (b) per 100 kg net weight (c)	(L) (d)

- (a) The expression 'whole cheeses', as used in subheading 04.04 E I b) 1 (bb), shall be taken to apply to:
 (i) whole cheeses of the conventional flat cylindrical shape of a net weight of not less than 33 kg but not more than 44 kg;
 (ii) cubic blocks of cheese of a net weight of 10 kg or greater.
 (b) The value limits are automatically adjusted in the light of changes in the factors determining the formation of the price of Cheddar in the Community. That adjustment will take place on the basis of an increase equal to that applying to the threshold price for Cheddar in the Community.
 (c) Entry under this subheading is subject to conditions to be determined by the competent authorities.
 (d) 10 u. a. per 100 kg net weight within the limit of an annual levy reduced quota of 9 000 tonnes to be granted by the competent authorities of the European Communities.

Appendix II

EEC concession on other cheese for processing

CCT heading No	Description	Rate of conventional duty
04.04	Cheese and curd: E. Other: I. Not grated or powdered, of a fat content, by weight, not exceeding 40 % and a water content, calculated by weight of the non-fatty matter: b) Exceeding 47 % but not exceeding 72 % : 1. Cheddar: (bb) Other: — Cheddar for processing (a), of a free-at-frontier value of not less than 145 u. a. (b) per 100 kg net weight (c) 5. Other: — For processing (a), of a free-at-frontier value of not less than 145 u. a. (b) per 100 kg net weight (c)	} (L) (d)

- (a) The checks on use for this particular end-use are carried out pursuant to the Community provisions governing this matter.
 (b) The value limits are automatically adjusted in the light of the changes in the factors determining the formation of the price of Cheddar in the Community. That adjustment will take place on the basis of an increase or decrease equal to that applying to the threshold price for Cheddar in the Community.
 (c) Entry under this subheading is subject to conditions to be determined by the competent authorities.
 (d) 10 u. a. per 100 kg net weight within the limit of an annual levy reduced quota of 3 500 tonnes to be granted by the competent authorities of the European Communities.

ANNEX 4

Community tariff concessions

The European Communities' tariff concessions are those recorded in the draft list of concessions deposited with the GATT secretariat on 11 April 1979 which will be reproduced in the European Communities' schedule of multilateral trade negotiations concessions with full description and appropriate notes.

Implementation of these concessions will be made according to the relevant notes in the schedule.

ANNEX 5

Content of Arrangement on buffalo meat

1. The Community undertakes to establish an annual quota of 2 250 tonnes of frozen buffalo meat (bone-cut basis) under tariff subheading 02.01 A II b) 4 bb) 33 of the Common Customs Tariff (a) from 1 July 1979 or as soon as possible thereafter. Imports into the Community under this quota will be made without levy and at a customs duty of 20 % *ad valorem*. This will be included in the Community's schedule of concessions annexed to the GATT.
2. Australia will take all measures necessary to ensure that exports of buffalo meat in the Community under this arrangement will be accompanied by documentation issued by the Australian Department of Primary Industry certifying the nature and origin of the product. The Australian Meat and Livestock Corporation will ensure that the quantity shipped does not exceed 2 250 tonnes (bone-cut basis) per year.
3. The Community and Australia undertake to consult as necessary about all aspects of the application of this agreement. In particular, the Community undertakes to consult with Australia if it appears that buffalo meat availabilities seem likely to fall below this level, and in any event not later than 1 July 1984, for the purpose of reviewing to what extent the quota had been used and whether circumstances make it desirable to replace this arrangement by compensation of equivalent value in the beef sector.

(a) Imports under this subheading will be subject to conditions to be determined by the relevant authorities.

Content of Arrangement concerning beef between the Argentine Republic and the Community

I. GATT annual tariff quota

The Community undertakes to increase the overall annual tariff quota (rate of duty 20 % free of levy) for frozen beef (subheading 02.01 A II b) 1 to 4) from 38 500 tonnes (boneless) to 50 000 tonnes (boneless).

II. Advance fixing of the levy

- (i) The Community undertakes to adopt all the necessary measures to ensure that the levy on frozen beef (02.01 A II b)) may be fixed in advance where this is requested.

For this purpose an advance-fixing certificate would be drawn up, having a period of validity of not more than 60 days and fixing the levy at the level in force on the day on which the certificate was applied for; issue of the certificate would be subject to a deposit of 8 u.a. per 100 kg being made with the application.

- (ii) The Community confirms the undertaking it gave in the Trade Agreement with the Argentine Republic regarding the period of validity of the certificate for the advance fixing of the levy on fresh or chilled beef (02.01 A II a)).

III. Suspension of the levy for meat intended for processing covered by the estimate

The Community will endeavour to fix the suspension of the levy on imports of beef for processing, covered by the estimate, at the highest possible level.

In any case the suspension must be fixed at such a level that the levy on the products in question will not exceed 45 % of the full amount of the levy.

IV. Cooperation in preparing the estimate for imports

There would be an exchange of letters between the Commission and Argentina concerning the estimate for imports, the content of which is as follows:

'The cooperation could be made on the following basis:

1. The services of the Commission would proceed to collect information supplied by the Member States on their respective needs for frozen beef destined for processing.

On the basis of this information and on their own forecasts, they would establish a global estimation of Community needs in the different products concerned.

2. The Argentine Republic concerned will be informed of the estimates.
3. This would be followed as soon as possible by meetings between the Commission and the third countries concerned.

The objective of these meetings would be as follows:

- to have an exchange of views with the participants on the whole situation of the beef market in the Community and the forecasts for production and consumption,
- proceed with analysis by both sides of the elements which would help to establish the estimation of Community needs for frozen beef for processing,
- exchange information with regard to Argentina's export possibilities.

4. Following these meetings, the Commission would formulate the draft balance sheet for transmission to the Council taking into account all the elements outlined during the discussions with third countries and which are possible to quantify on as realistic a basis as possible.

The draft balance sheet given to the Council will be accompanied by a document reflecting the basic points of view expressed by the participants about Community needs and their export possibilities relating to the same or similar products.

5. The balance sheet should be drawn up in such a way as to ensure the regular supply of the Community market and permit an increase in imports in proportion to the increase in Community consumption taking into account the foreseeable expansion of the market.

In the light of these considerations, it is expected that the annual level of imports of frozen beef for the processing industry under the balance sheet will show a tendency to increase over a period of several years, in relation to the increase in Community needs.'

V. Special arrangements for 'special cuts'

- (i) The Community will open each year an annual tariff quota at a rate of duty of 20 % free of levy for the following products:

ex 02.01 A II. Meat of bovine animals, fresh, chilled or frozen: 'high-quality bone-in and boneless cuts' ⁽¹⁾ ⁽²⁾

of which 5 000 tonnes (boneless) of chilled meat will be reserved for Argentina.

(1) Entry under this subheading is subject to conditions to be determined by the competent authorities.

(2) Argentine meat admitted under this subheading must meet the following specifications: 'Cortes de carne de animales bovinos de edad comprendida entre 22 y 24 meses con 2 dientes incisivos permanentes, alimentados exclusivamente en pasturas, cuyo peso a la faena no exceda de 460 kilos vivos, de calidad especiales o buenos denominados cortes vacunos especiales en cajas "special boxed beef" dichos cortes estan autorizados a llevar la marca "SC" (special cuts).'

(ii) Argentina undertakes to adopt all necessary measures to ensure that meat falling within the above subheading shipped to the Community is accompanied by a certificate of authenticity issued by the relevant authorities of the Junta Nacional de Carnes guaranteeing the nature, source and origin of the product, and that the authorities will ensure that the quantities covered do not exceed 5 000 tonnes per year.

Content of Arrangement concerning beef between the Eastern Republic of Uruguay and the Community

I. GATT annual tariff quota

The Community undertakes to increase the overall annual tariff quota (rate of duty 20 % free of levy) for frozen beef (subheading 02.01 A II b) 1 to 4) from 38 500 tonnes (boneless) to 50 000 tonnes (boneless).

II. Advance fixing of the levy

(i) The Community undertakes to adopt all the necessary measures to ensure that the levy on frozen beef (02.01 A II b)) may be fixed in advance where this is requested.

For this purpose an advance-fixing certificate would be drawn up, having a period of validity of not more than 60 days and fixing the levy at the level in force on the day on which the certificate was applied for; issue of the certificate would be subject to a deposit of 8 u.a. per 100 kg being made with the application.

(ii) The Community confirms the undertaking it gave in the Trade Agreement with Uruguay regarding the period of validity of the certificate for the advance fixing of the levy on fresh or chilled beef (02.01 A II a)).

III. Suspension of the levy for meat intended for processing covered by the estimate

The Community will endeavour to fix the suspension of the levy on imports of beef for processing, covered by the estimate, at the highest possible level.

In any case the suspension must be fixed at such a level that the levy on the products in question will not exceed 45 % of the full amount of the levy.

IV. Cooperation in preparing the estimate for imports

There would be an exchange of letters between the Commission and Uruguay concerning the estimate for imports, the content of which is as follows:

'The cooperation could be on the following basis:

1. The services of the Commission would proceed to collect information supplied by the Member States on their respective needs for frozen beef destined for processing.

On the basis of this information and on their own forecasts, they would establish a global estimation of Community needs in the different products concerned.

2. Uruguay will be informed of the estimates.
3. This would be followed as soon as possible by meetings between the Commission and the third countries concerned.

The objective of these meetings would be as follows:

- to have an exchange of views with the participants on the whole situation of the beef market in the Community and the forecasts for production and consumption;
 - proceed with analysis by both sides of the elements which would help to establish the estimation of Community needs for frozen beef for processing;
 - exchange information with regard to Uruguay's export possibilities.
4. Following these meetings, the Commission would formulate the draft balance sheet for transmission to the Council taking into account all the elements outlined during the discussions with third countries and which are possible to quantify on as realistic a basis as possible.

The draft balance sheet given to the Council will be accompanied by a document reflecting the basic points of view expressed by the participants about Community needs and their export possibilities relating to the same or similar products.

5. The balance sheet should be drawn up in such a way as to ensure the regular supply of the Community market and permit an increase in imports in proportion to the increase in Community

consumption taking into account the foreseeable expansion of the market.

In the light of these considerations, it is expected that the annual level of imports of frozen beef for the processing industry under the balance sheet will show a tendency to increase over a period of several years, in relation to the increase in Community needs.'

V. *Special arrangements for 'special cuts'*

- (i) The Community will open each year an annual tariff quota at a rate of duty of 20 % free of levy for the following products:
ex 02.01 A II. Meat of bovine animals, fresh, chilled or frozen: 'high-quality bone-in and boneless cuts' ⁽¹⁾ ⁽²⁾
of which 1 000 tonnes (boneless) of fresh, chilled and/or frozen meat will be reserved for Uruguay.
- (ii) Uruguay undertakes to adopt all necessary measures to ensure that meat falling within the above subheading shipped to the Community is accompanied by a certificate of authenticity issued by the relevant authorities of the Instituto Nacional de Carnes (INAC) guaranteeing the nature, source and origin of the product, and that the authorities will ensure that the quantities covered do not exceed 1 000 tonnes per year.
- (iii) The Community is prepared to envisage the possibility of Uruguay being able to export additional annual quantities of these special cuts if the overall quota referred to in paragraph (i) should not be fully used by other beneficiary countries.

⁽¹⁾ Entry under this subheading is subject to conditions to be determined by the competent authorities.

⁽²⁾ Uruguayan meat admitted under this subheading must meet the following specifications: 'Cortes de carne de animales bovinos con 2 dientes incisivos permanentes, alimentados exclusivamente en pasturas, cuyo peso a la faéna no exceda de 460 kilos vivos, de calidad especiales o buenos denominados cortes vacunos especiales en cajas "special boxed beef", dichos cortes estan autorizados a llevar la marca "SC" (special cuts).'

Brussels, 5 July 1979

Sir,

I have the honour to refer to the Arrangement concerning beef signed today by the European Community and Uruguay.

I wish to assure you that my Government undertakes to include in its list of GATT concessions the following products, which will be bound at the tariff levels given below:

<i>Customs tariff</i>	<i>Product</i>	<i>Overall rate</i>
22.09.02.04	Irish whiskey	71 %
22.09.02.13	Cognac	100 %
22.09.03.00	Liqueurs	100 %

Please accept, Sir, the expression of my highest consideration.

Gustavo MAGARIÑOS
*Ambassador Extraordinary
 and Plenipotentiary*

Content of Arrangement concerning beef between the Hungarian People's Republic and the Community

I. GATT annual tariff quota

The Community undertakes to increase, as from the entry into force of the concessions, the overall annual tariff quota (rate of duty 20 % free of levy) for frozen beef (subheading 02.01 A II b) 1 to 4) from 38 500 tonnes (boneless) to 50 000 tonnes (boneless).

On the basis of this information and on their own forecasts, they will establish a global estimation of Community needs in the different products concerned.

II. Cooperation in preparing the estimate for imports

There will be an exchange of letters between the Head of the Delegation of the Commission of the European Communities and Hungary's Delegate to GATT concerning the estimate for imports of frozen beef for processing and animals for fattening, the content of which will be as follows:

1. The services of the Commission will proceed to collect information supplied by the Member States on their respective needs for frozen beef destined for processing and animals for fattening.

2. Hungary will be informed of the estimates relating to its trade interests.

3. This will be followed as soon as possible by meetings between the Commission of the European Communities and the representatives of Hungary.

The objective of these meetings will be as follows:

— to have an exchange of views with the participants on the whole situation of the beef market in the Community as well as the forecasts for production and consumption,

— proceed with analysis by both sides of the elements which would help to establish the estimation of Community needs for frozen beef for processing and live animals for fattening,

— exchange information with regard to Hungary's export possibilities.

4. Following these meetings, the Commission will formulate the draft estimate for transmission to the Council taking into account all the elements outlined during the discussions with third countries and which are possible to quantify on as realistic a basis as possible.

The draft estimate given to the Council will be accompanied by a document reflecting the basic points of view expressed by the participants about Community needs and their export possibilities relating to the same or similar products.

5. The estimate should be drawn up in such a way as to ensure the regular supply of the Community market and permit an increase in imports in proportion to the increase in Community consumption taking into account the foreseeable expansion of the market.

In the light of these considerations, it is expected that the annual level of imports of frozen beef for the processing industry and of animals for fattening under the estimate will show a tendency to increase over a period of several years, in relation to the increase in Community needs.'

III. *Suspension of the levy for products covered by the estimate*

The Community will endeavour to fix the suspension of the levy on imports of frozen beef for processing and on animals for fattening, covered by the estimate, at the highest possible level.

In any event, the suspension must be fixed at such a level that the levy applicable will not exceed 45 % of the full amount of the levy in the case of frozen beef for processing, 0 % in the case of frozen beef for preserving or 40 % in the case of animals for fattening.

IV. *Joint declaration concerning trade in live bovine animals for slaughter*

It is agreed that the Commission of the European Communities and the representatives of Hungary will hold consultations, at the request of either party, on Community import requirements as regards live animals for slaughter and fresh beef.

V. *Unilateral declaration*

In its reply regarding this Arrangement, Hungary will make the following declaration:

'Hungary expects that the Community will continue to examine the feasibility of extending the Arrangement concerning frozen beef for processing and animals for fattening to live animals for slaughter and fresh beef.'

Content of Arrangement concerning beef between the Socialist Republic of Romania and the Community

I. *GATT annual tariff quota*

- (i) The Community undertakes to increase, as from the entry into force of the concessions, the overall annual tariff quota (rate of duty 20 % free of levy) for frozen beef (subheading 02.01 A II b) 1 to 4) from 38 500 tonnes (boneless) to 50 000 tonnes (boneless).
- (ii) Allocation of the GATT quota among third supplier countries: the Community confirms that the overall annual tariff quota of 50 000 tonnes (boneless), which will be bound in GATT at the rate of 20 %, will be opened and used in accordance with the relevant GATT rules.

II. *Cooperation in preparing the balance sheet for imports*

There will be an exchange of letters between the Head of the Delegation of the Commission of the European Communities and Romania's Delegate to GATT concerning the estimate for imports of frozen beef for processing and animals for fattening, the content of which will be as follows:

- '1. The services of the Commission will proceed to collect information supplied by the Member States on their respective needs for frozen beef destined for processing and animals for fattening.

On the basis of this information and on their own forecasts, they will establish a global estimation of Community needs in the different products concerned.

2. The Socialist Republic of Romania will be informed of the estimates.

3. This will be followed as soon as possible by meetings between the Commission of the European Communities and the representatives of Romania.

The objective of these meetings will be as follows:

- to have an exchange of views with the participants on the whole situation of the beef market in the Community as well as the forecasts for production and consumption,
- proceed with analysis by both sides of the elements which would help to establish the estimation of Community needs for frozen beef for processing and live animals for fattening,
- exchange information with regard to Romania's export possibilities.

4. Following these meetings, the Commission will formulate the draft estimate for transmission to the Council taking into account all the elements outlined during the discussions with third countries and which are possible to quantify on as realistic a basis as possible.

The draft estimate given to the Council will be accompanied by a document reflecting the basic points of view expressed by the participants about Community needs and their export possibilities relating to the same or similar products.

5. The estimate should be drawn up in such a way as to ensure the regular supply of the Community market and permit an increase in imports in proportion to the increase in Community consumption taking into account the foreseeable expansion of the market.

In the light of these considerations, it is expected that the annual level of imports of frozen beef for the processing industry and of animals for fattening under the estimate will show a tendency to increase

over a period of several years, in relation to the increase in Community needs.'

III. *Advance fixing of the levy*

The Community undertakes to adopt all the necessary measures to ensure that the levy on frozen beef (02.01 A II b)) may be fixed in advance where this is requested.

For this purpose an advance-fixing certificate would be drawn up, having a period of validity of not more than 45 days and fixing the levy at the level in force on the day on which the certificate was applied for; issue of the certificate would be subject to a deposit of 8 u.a. per 100 kg being made with the application.

IV. *Suspension of the levy for products covered by the estimate*

The Community will endeavour to fix the suspension of the levy on imports of frozen beef intended for processing and on animals for fattening, covered by the estimate, at the highest possible level.

In any event, the suspension must be fixed at such a level that the levy applicable will not exceed 45 % of the full amount of the levy in the case of frozen beef for processing, 0 % in the case of frozen beef for preserving and 40 % in the case of animals for fattening.

V. *Joint declaration*

In so far as the matters referred to by this Arrangement are concerned, the Community undertakes to apply treatment to Romania which is no less favourable than the treatment it applies to other partners.

VI. *Unilateral declaration*

In its reply concerning this Arrangement, Romania will make the following declaration:

'The Socialist Republic of Romania expects that the estimate in respect of bovine animals for fattening drawn up by the Council each year will be fixed at a level at least equal to the 1979 level and that it will take

fully into account in the future the trend of Community demand for this particular kind of livestock.'

Romania would also emphasize the advisability of raising the weight of animals for fattening covered by the estimate from that currently laid down under

Community rules, and suggests that it be increased to 350 kg.

In addition, Romania repeats its request concerning the level of the levy that should be applied to imports and has asked that the Council of the Communities take its request into consideration.

Content of Arrangement concerning beef between the Polish People's Republic and the Community

I. Cooperation in preparing the estimate for imports

There will be an exchange of letters between the Head of the Delegation of the Commission of the European Communities and the Permanent Representative of the Polish People's Republic to GATT concerning the estimate for imports of animals for fattening, the content of which will be as follows:

'In the course of our talks in the framework of the multilateral trade negotiations we have agreed on the following:

1. The services of the Commission will proceed to collect information supplied by the Member States on their respective needs for frozen beef destined for processing and animals for fattening.

On the basis of this information and on their own forecasts, they will establish a global estimation of Community needs in the different products concerned.

2. The Permanent Representative of the Polish People's Republic to GATT will be informed of the estimates.
3. This will be followed as soon as possible by meetings between the Head of the Delegation of the Commission of the European Communities and the Permanent Representative of the Polish People's Republic to GATT.

The objective of these meetings will be as follows:

- to have an exchange of views with the participants on the whole situation of the beef market in the Community as well as the forecasts for production and consumption,

- proceed with analysis by both sides of the elements which would help to establish the estimation of Community needs for frozen beef for processing and live animals for fattening,

- exchange information with regard to Poland's export possibilities.

4. Following these meetings, the Commission will formulate the draft estimate for transmission to the Council taking into account all the elements outlined during the discussions with third countries and which are possible to quantify on as realistic a basis as possible.

The draft estimate given to the Council will be accompanied by a document reflecting the basic points of view expressed by the participants about Community needs and their export possibilities relating to the same or similar products.

5. The estimate should be drawn up in such a way as to ensure the regular supply of the Community market and permit an increase in imports in proportion to the increase in Community consumption taking into account the foreseeable expansion of the market.

In the light of these considerations, it is expected that the annual level of imports of frozen beef for the processing industry and of animals for fattening under the estimate will show a tendency to increase over a period of several years, in relation to the increase in Community needs.'

II. Suspension of the levy for products covered by the estimate

The Community will endeavour to fix the suspension of the levy on imports of frozen beef for processing and on animals for fattening, covered by the estimate, at the highest possible level.

In any event, the suspension must be fixed at such a level that the levy applicable will not exceed 45 % of the full amount of the levy in the case of frozen beef for processing, 0 % in the case of frozen beef for preserving or 40 % in the case of animals for fattening.

III. Joint declaration concerning trade in live bovine animals for slaughter

It is agreed that the Head of the Delegation of the Commission of the European Communities and the Permanent Representative of the Polish People's Republic to GATT will hold consultations, at the request of either party, on Community import requirements as regards live animals for slaughter.

IV. Unilateral declaration

In his reply concerning this Arrangement, the Permanent Representative of the Polish People's Republic to GATT will make the following declaration:

'The Permanent Representative of the Polish People's Republic to GATT expects that the estimate in respect of bovine animals for fattening drawn up by the Council each year will be fixed at a level at least equal to the 1979 level and that it will take fully into account in the future the trend of Community demand for this particular kind of livestock.

He would also emphasize the advisability of raising the weight of animals for fattening covered by the estimate from that currently laid down under Community rules, and suggests that it be increased to 350 kg.

In addition, he repeats his request concerning the level of the levy that should be applied to imports and wishes the Council of the Communities to take his request into consideration.'

COUNCIL DECISION**of 10 December 1979****concerning the conclusion of the Protocol for the accession of the Republic of the Philippines to the General Agreement on tariffs and trade****(80/273/EEC)****THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

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

Whereas the Republic of the Philippines has entered into negotiations with the European Economic Community and with the other Contracting Parties to the General Agreement on tariffs and trade with a view to its accession to that General Agreement;

Whereas the outcome of these negotiations is acceptable to the Community,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol for the accession of the Republic of the Philippines to the General Agreement on tariffs and trade is hereby approved on behalf of the European Economic Community.

The text of the Protocol is annexed to this Decision.

Article 2

The President of the Council is hereby authorized to designate the person empowered to sign the Protocol in order to bind the Community.

Done at Brussels, 10 December 1979.

*For the Council**The President***T. HUSSEY**

PROTOCOL FOR THE ACCESSION OF THE PHILIPPINES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

THE GOVERNMENTS WHICH ARE CONTRACTING PARTIES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE (hereinafter referred to as 'Contracting Parties' and 'the General Agreement', respectively), THE EUROPEAN ECONOMIC COMMUNITY and the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES (hereinafter referred to as 'the Philippines'),

HAVING REGARD to the results of the negotiations directed towards the accession of the Philippines to the General Agreement,

HAVE through their representatives agreed as follows:

PART I

Agreement, the applicable date in respect of the Philippines shall be the date of this Protocol.

General

1. The Philippines shall, upon entry into force of this Protocol pursuant to paragraph 7, become a Contracting Party to the General Agreement, as defined in Article XXXII thereof, and shall apply to Contracting Parties provisionally and subject to this Protocol:

- (a) Parts I, III and IV of the General Agreement, and
- (b) Part II of the General Agreement to the fullest extent not inconsistent with its legislation existing on the date of this Protocol.

3. The Philippines intends to bring into line with Article III of the General Agreement, the sales and specific taxes with respect to the items listed in document L/4724/Add. 1 whose rates, in accordance with the relevant sections of Titles IV and V of the Philippines internal revenue code in force on the date of this Protocol, vary according to whether the items are locally manufactured or imported and will endeavour to do so as soon as possible in the light of its development, financial and trade needs. If by 31 December 1984, the abovementioned taxes are still in effect with differential rates for imported items, the matter will be reviewed by the Contracting Parties.

The obligations incorporated in paragraph 1 of Article I by reference to Article III and those incorporated in paragraph 2 (b) of Article II by reference to Article VI of the General Agreement shall be considered as falling within Part II for the purpose of this paragraph.

PART II

Schedule

- 2. (a) The provisions of the General Agreement to be applied to Contracting Parties by the Philippines shall, except as otherwise provided in this Protocol, be the provisions contained in the text annexed to the Final Act of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as rectified, amended or otherwise modified by such instruments as may have become effective on the day on which the Philippines becomes a Contracting Party.

4. The schedule in the Annex shall, upon the entry into force of this Protocol, become a schedule to the General Agreement relating to the Philippines.

- 5. (a) In each case in which Article II (1) of the General Agreement refers to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in the schedule annexed to this Protocol shall be the date of this Protocol.

- (b) In each case in which Article V (6), Article VII (4) (d) and Article X (3) (c) of the General Agreement refer to the date of that

- (b) For the purpose of the reference in Article II (6) (a) of the General Agreement to the date of that Agreement, the applicable date in respect of the schedule annexed to this Protocol shall be the date of this Protocol.

PART III

Final provisions

6. This Protocol shall be deposited with the Director-General to the Contracting Parties. It shall be open for signature by the Philippines until1979. It shall also be open for signature by Contracting Parties and by the European Economic Community.

7. This Protocol shall enter into force on the 30th day following the day upon which it shall have been signed by the Philippines.

8. The Philippines, having become a Contracting Party to the General Agreement pursuant to paragraph 1 of this Protocol, may accede to the General Agreement upon the applicable terms of this Protocol by deposit of an instrument of accession with the Director-General. Such accession shall take effect on the day on which the General Agreement enters into force pursuant to Article XXVI or on the 30th day following the day of the deposit of the instrument of accession, whichever is

the later. Accession to the General Agreement pursuant to this paragraph shall, for the purposes of Article XXXII (2) of that Agreement, be regarded as acceptance of the Agreement pursuant to Article XXVI (4) thereof.

9. The Philippines may withdraw its provisional application of the General Agreement prior to its accession thereto pursuant to paragraph 8 and such withdrawal shall take effect on the 60th day following the day on which written notice thereof is received by the Director-General.

10. The Director-General shall promptly furnish a certified copy of this Protocol and a notification of each signature thereto, pursuant to paragraph 6, to each Contracting Party, to the European Economic Community, to the Philippines and to each government which shall have acceded provisionally to the General Agreement.

11. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this, day of one thousand nine hundred and seventy-nine, in a single copy, in the English and French languages, except as otherwise specified with respect to the schedule annexed hereto, both texts being authentic.

ANNEX

SCHEDULE LXXV — PHILIPPINES

(The schedule may be consulted at the GATT secretariat in Geneva.)

DECISION
OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES
OF THE EUROPEAN COAL AND STEEL COMMUNITY MEETING IN COUNCIL
of 10 December 1979
approving the Geneva (1979) Protocol resulting from the 1973 to 1979 trade negotiations
(80/274/ECSC)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY, MEETING IN COUNCIL,

Whereas the multilateral trade negotiations under the General Agreement on tariffs and trade, opened pursuant to the Ministerial Declaration adopted in Tokyo on 14 September 1973, resulted in agreement on the Geneva (1979) Protocol to the General Agreement on tariffs and trade;

Whereas all the reciprocal concessions and undertakings negotiated by the Commission in the name of the Community and by third countries participating in the negotiations, as embodied in the above Protocol, constitute an acceptable result,

HAVE DECIDED AS FOLLOWS:

Sole Article

The Geneva (1979) Protocol to the General Agreement on tariffs and trade in so far as it relates to products falling under the Treaty establishing the European Coal and Steel Community and identified as such in the list of concessions of the Communities annexed to this Protocol, is hereby approved on behalf of the Member States of the European Coal and Steel Community.

Done at Brussels, 10 December 1979.

The President

T. HUSSEY
