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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 29 March 1996

concerning the signing and provisional application of the International Tropical Timber Agreement 1994 on behalf of the European Community

(96/493/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the proposal from the Commission,

Whereas the International Tropical Timber Agreement 1994 negotiated on the basis of Resolution 93 (IV) of the text entitled 'A new partnership for development: Cartagena Commitment' and the relevant objectives in the final document 'Cartagena Spirit' adopted by the United Nations Trade and Development Conference was opened for signing from 1 April 1994 until one month after the date of its entry into force;

Whereas the said Agreement has not yet entered into force;

Whereas, pursuant to Article 42 (3) of the 1983 International Tropical Timber Agreement, that Agreement was extended until the provisional or definitive entry into force of the new Agreement;

Whereas the objectives pursued by the new Agreement fit into the context of the common commercial policy;

Whereas the Member States participate, through financial contributions, in the measures provided for in that Agreement;

Whereas all the Member States have expressed their intention to sign and to contribute towards the provisional application of the Agreement; whereas the Community therefore should sign the Agreement lodged with the United Nations Secretary-General and, as soon as possible, notify its intention to apply the Agreement provisionally,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Community shall sign the International Tropical Timber Agreement 1994 lodged with the United Nations Secretary-General.

The text of the Agreement is attached to this Decision.

2. The Community shall notify the United Nations Secretary-General of its intention to apply the Agreement referred to in paragraph 1 provisionally, in accordance with Articles 40 and 41 (2) thereof.

Article 2

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement on behalf of the Community and deposit the notification of its provisional application by the Community, together with the declaration attached to this Decision.

Done at Brussels, 29 March 1996.

For the Council

The President

T. TREU

ANNEX**Declaration by the European Community and its Member States**

The European Community and its Member States interpret the terms of the International Tropical Timber Agreement 1994 as follows:

- (a) unless the scope of the Agreement is changed pursuant to Article 35 of the Agreement, the Agreement shall refer solely to tropical timber and tropical forests;
 - (b) any financial contribution other than the contribution to the administrative budget provided for in Article 19 of the Agreement shall be entirely voluntary.
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TRANSLATION

INTERNATIONAL TROPICAL TIMBER AGREEMENT, 1994

UNITED NATIONS

New York and Geneva, 1994

INTERNATIONAL TROPICAL TIMBER AGREEMENT, 1994

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PREAMBLE

THE PARTIES TO THIS AGREEMENT,

RECALLING the Declaration and the Programme of Action on the Establishment of a New International Economic Order; the Integrated Programme for Commodities; A New Partnership for Development; the Cartagena Commitment and the relevant objectives contained in the Spirit of Cartagena,

RECALLING the International Tropical Timber Agreement, 1983, and RECOGNIZING the work of the International Tropical Timber Organization and its achievements since its inception, including a strategy for achieving international trade in tropical timber from sustainably managed sources,

RECALLING FURTHER the Rio Declaration on Environment and Development, the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, and the relevant chapters of Agenda 21 as adopted by the United Nations Conference on Environment and Development in June 1992, in Rio de Janeiro; the United Nations Framework Convention on Climate Change; and the Convention on Biological Diversity,

RECOGNIZING the importance of timber to the economies of countries with timber-producing forests,

FURTHER RECOGNIZING the need to promote and apply comparable and appropriate guidelines and criteria for the management, conservation and sustainable development of all types of timber-producing forests,

TAKING INTO ACCOUNT the linkages of tropical timber trade and the international timber market and the need for taking a global perspective in order to improve transparency in the international timber market,

NOTING the commitment of all members, made in Bali, Indonesia, in May 1990, to achieve exports of tropical timber products from sustainably managed sources by the year 2000 and RECOGNIZING Principle 10 of the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests which states that new and additional financial resources should be provided to developing countries to enable them to sustainably manage, conserve and develop their forests, including through afforestation, reforestation and combating deforestation and forest and land degradation,

NOTING ALSO the statement of commitment to maintain, or achieve by the year 2000, the sustainable management of their respective forests made by consuming members who are parties to the International Tropical Timber Agreement, 1983 at the fourth session of the United Nations Conference for the Negotiation of a Successor Agreement to the International Tropical Timber Agreement, 1983 in Geneva on 21 January 1994,

DESIRING to strengthen the framework of international cooperation and policy development between members in finding solutions to the problems facing the tropical timber economy,

HAVE AGREED AS FOLLOWS:

CHAPTER I

OBJECTIVES

*Article 1***Objectives**

Recognizing the sovereignty of members over their natural resources, as defined in Principle 1 (a) of the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, the objectives of the International Tropical Timber Agreement, 1994 (hereinafter referred to as 'this Agreement') are:

- (a) to provide an effective framework for consultation, international cooperation and policy development among all members with regard to all relevant aspects of the world timber economy;
- (b) to provide a forum for consultation to promote non-discriminatory timber trade practices;
- (c) to contribute to the process of sustainable development;

- (d) to enhance the capacity of members to implement a strategy for achieving exports of tropical timber and timber products from sustainably managed sources by the year 2000;
- (e) to promote the expansion and diversification of international trade in tropical timber from sustainable sources by improving the structural conditions in international markets, by taking into account, on the one hand, a long-term increase in consumption and continuity of supplies, and, on the other, prices which reflect the costs of sustainable forest management and which are remunerative and equitable for members, and the improvement of market access;
- (f) to promote and support research and development with a view to improving forest management and efficiency of wood utilization as well as increasing the capacity to conserve and enhance other forest values in timber-producing tropical forests;
- (g) to develop and contribute towards mechanisms for the provision of new and additional financial resources and expertise needed to enhance the capacity of producing members to attain the objectives of this Agreement;
- (h) to improve market intelligence with a view to ensuring greater transparency in the international timber market, including the gathering, compilation, and dissemination of trade-related data, including data related to species being traded;
- (i) to promote increased and further processing of tropical timber from sustainable sources in producing member countries with a view to promoting their industrialization and thereby increasing their employment opportunities and export earnings;
- (j) to encourage members to support and develop industrial tropical timber reforestation and forest management activities as well as rehabilitation of degraded forest land, with due regard for the interests of local communities dependent on forest resources;
- (k) to improve marketing and distribution of tropical timber exports from sustainably managed sources;
- (l) to encourage members to develop national policies aimed at sustainable utilization and conservation of timber-producing forests and their genetic resources and at maintaining the ecological balance in the regions concerned, in the context of tropical timber trade;
- (m) to promote the access to, and transfer of, technologies and technical cooperation to implement the objectives of this Agreement, including on concessional and preferential terms and conditions, as mutually agreed;
- (n) to encourage information-sharing on the international timber market.

CHAPTER II

DEFINITIONS

Article 2

Definitions

For the purposes of this Agreement:

1. 'tropical timber' means non-coniferous tropical wood for industrial uses, which grows or is produced in the countries situated between the Tropic of Cancer and the Tropic of Capricorn. The term covers logs, sawn wood, veneer sheets and plywood. Plywood which includes in some measure conifers of tropical origin shall also be covered by this definition;
2. 'further processing' means the transformation of logs into primary wood products, semi-finished and finished products made wholly or almost wholly of tropical timber;
3. 'member' means a government or an intergovernmental organization referred to in Article 5 which has consented to be bound by this Agreement whether it is in force provisionally or definitively;
4. 'producing member' means any country with tropical forest resources and/or a net exporter of tropical timber in volume terms which is listed in Annex A and which becomes a Party to this Agreement, or any country with tropical forest resources and/or a net exporter of tropical timber in volume terms which is not so listed and which becomes a Party to this Agreement and which the Council, with the consent of that country, declares to be a producing member;
5. 'consuming member' means any country listed in Annex 3 which becomes a Party to this Agreement, or any country not so listed which becomes a Party

to this Agreement and which the Council, with the consent of that country, declares to be a consuming member;

6. 'organization' means the International Tropical Timber Organization established in accordance with Article 3;
7. 'Council' means the International Tropical Timber Council established in accordance with Article 6;
8. 'special vote' means a vote requiring at least two thirds of the votes cast by producing members present and voting and at least 60 % of the votes cast by consuming members present and voting, counted separately, on condition that these votes are cast by at least half of the producing members present and voting and at least half of the consuming members present and voting;
9. 'simple distributed majority vote' means a vote requiring more than half of the votes cast by producing members present and voting and more than half of the votes cast by consuming members present and voting, counted separately;
10. 'financial year' means the period from 1 January to 31 December inclusive;
11. 'freely usable currencies' means the German mark, the French Franc, the Japanese yen, the pound sterling, the United States dollar and any other currency which has been designated from time to time by a competent international monetary organization as being in fact widely used to make payments for international transactions and widely traded in the principal exchange markets.

CHAPTER III

ORGANIZATION AND ADMINISTRATION

Article 3

Headquarters and structure of the International Tropical Timber Organization

1. The International Tropical Timber Organization established by the International Tropical Timber Agreement, 1983 shall continue in being for the purposes of administering the provisions and supervising the operation of this Agreement.

2. The Organization shall function through the Council established under Article 6, the committees and other subsidiary bodies referred to in Article 26 and the Executive Director and staff.

3. The headquarters of the Organization shall be in Yokohama, unless the Council, by special vote, decides otherwise.

4. The headquarters of the Organization shall at all times be located in the territory of a member.

Article 4

Membership in the Organization

There shall be two categories of membership in the Organization, namely:

- (a) producing, and
- (b) consuming.

Article 5

Membership by intergovernmental organizations

1. Any reference in this Agreement to 'governments' shall be construed as including the European Community and any other intergovernmental organization having responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements. Accordingly, any reference in this Agreement to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession shall, in the case of such intergovernmental organizations, be construed as including a reference to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession, by such intergovernmental organizations.

2. In the case of voting on matters within their competence, such intergovernmental organizations shall vote with a number of votes equal to the total number of votes attributable to their Member States in accordance with Article 10. In such cases, the Member States of such intergovernmental organizations shall not be entitled to exercise their individual voting rights.

CHAPTER IV

INTERNATIONAL TROPICAL TIMBER COUNCIL

Article 6

Composition of the International Tropical Timber Council

1. The highest authority of the Organization shall be the International Tropical Timber Council, which shall consist of all the members of the Organization.
2. Each member shall be represented in the Council by one representative and may designate alternates and advisers to attend sessions of the Council.
3. An alternate representative shall be empowered to act and vote on behalf of the representative during the latter's absence or in special circumstances.

Article 7

Powers and functions of the Council

1. The Council shall exercise all such powers and perform or arrange for the performance of all such functions as are necessary to carry out the provisions of this Agreement.
2. The Council shall, by special vote, adopt such rules and regulations as are necessary to carry out the provisions of this Agreement and as are consistent therewith, including its own rules of procedure and the financial rules and staff regulations of the Organization. Such financial rules shall, *inter alia*, govern the receipt and expenditure of funds under the administrative account, the special account and the Bali Partnership Fund. The Council may, in its rules of procedure, provide for a procedure whereby it may, without meeting, decide specific questions.
3. The Council shall keep such records as are required for the performance of its functions under this Agreement.

Article 8

Chairman and Vice-Chairman of the Council

1. The Council shall elect for each calendar year a Chairman and a Vice-Chairman, whose salaries shall not be paid by the Organization.
2. The Chairman and the Vice-Chairman shall be elected, one from among the representatives of producing members and the other from among the representatives of consuming members. These offices shall alternate each year between the two categories of members, provided, however, that this shall not prohibit the re-election of either or both, under exceptional circumstances, by special vote of the Council.

3. In the temporary absence of the Chairman, the Vice-Chairman shall act in his place. In the temporary absence of both the Chairman and the Vice-Chairman, or in the absence of one or both of them for the rest of the term for which they were elected, the Council may elect new officers from among the representatives of the producing members and/or from among the representatives of the consuming members, as the case may be, on a temporary basis or for the rest of the term for which the predecessor or predecessors were elected.

Article 9

Sessions of the Council

1. As a general rule, the Council shall hold at least one regular session a year.
2. The Council shall meet in special session whenever it so decides or at the request of:
 - (a) the executive Director, in agreement with the Chairman of the Council; or
 - (b) a majority of producing members or a majority of consuming members; or
 - (c) members holding at least 500 votes.
3. Sessions of the Council shall be held at the headquarters of the Organization unless the Council, by special vote, decides otherwise. If on the invitation of any member the Council meets elsewhere than at the headquarters of the Organization, that member shall pay the additional cost of holding the meeting away from headquarters.
4. Notice of any sessions and the agenda for such sessions shall be communicated to members by the Executive Director at least six weeks in advance, except in cases of emergency, when notice shall be communicated at least seven days in advance.

Article 10

Distribution of votes

1. The producing members shall together hold 1 000 votes and the consuming members shall together hold 1 000 votes.
2. The votes of the producing members shall be distributed as follows:

- (a) four hundred votes shall be distributed equally among the three producing regions of Africa, Asia-Pacific and Latin America. The votes thus allocated to each of these regions shall then be distributed equally among the producing members of that region;
- (b) three hundred votes shall be distributed among the producing members in accordance with their respective shares of the total tropical forest resources of all producing members; and
- (c) three hundred votes shall be distributed among the producing members in proportion to the average of the values of their respective net exports of tropical timber during the most recent three-year period for which definitive figures are available.

3. Notwithstanding the provisions of paragraph 2 of this Article, the total votes allocated to the producing members from the African region, calculated in accordance with paragraph 2 of this Article, shall be distributed equally among all producing members from the African region. If there are any remaining votes, each of these votes shall be allocated to a producing member from the African region: the first to the producing member which is allocated the highest number of votes calculated in accordance with paragraph 2 of this Article, the second to the producing member which is allocated the second highest number of votes, and so on, until all the remaining votes have been distributed.

4. For purposes of the calculation of the distribution of votes under paragraph 2 (b) of this Article, 'tropical forest resources' means productive closed broadleaved forests as defined by the Food and Agriculture Organization (FAO).

5. The votes of the consuming members shall be distributed as follows: each consuming member shall have 10 initial votes; the remaining votes shall be distributed among the consuming members in proportion to the average volume of their respective net imports of tropical timber during the three-year period commencing four calendar years prior to the distribution of votes.

6. The Council shall distribute the votes for each financial year at the beginning of its first session of that year in accordance with the provisions of this Article. Such distribution shall remain in effect for the rest of that year, except as provided for in paragraph 7 of this Article.

7. Whenever the membership of the Organization changes or when any member has its voting rights suspended or restored under any provision of this Agreement, the Council shall redistribute the votes within the affected category or categories of members in accordance with the provisions of this Article. The Council shall, in that event, decide when such redistribution shall become effective.

8. There shall be no fractional votes.

Article 11

Voting procedure of the Council

1. Each member shall be entitled to cast the number of votes it holds and no member shall be entitled to divide

its votes. A member may, however, cast differently from such votes any votes which it is authorized to cast under paragraph 2 of this Article.

2. By written notification to the Chairman of the Council, any producing member may authorize, under its own responsibility, any other producing member, and any consuming member may authorize, under its own responsibility, any other consuming member, to represent its interests and to cast its votes at any meeting of the Council.

3. When abstaining, a member shall be deemed not to have cast its votes.

Article 12

Decisions and recommendations of the Council

1. The Council shall endeavour to take all decisions and to make all recommendations by consensus. If consensus cannot be reached, the Council shall take all decisions and make all recommendations by a simple distributed majority vote, unless this Agreement provides for a special vote.

2. Where a member avails itself of the provisions of Article 11 (2), and its votes are cast at a meeting of the Council, such member shall, for the purposes of paragraph 1 of this Article, be considered as present and voting.

Article 13

Quorum for the Council

1. The quorum for any meeting of the Council shall be the presence of a majority of members of each category referred to in Article 4, provided that such members hold at least two thirds of the total votes in their respective categories.

2. If there is no quorum in accordance with paragraph 1 of this Article on the day fixed for the meeting and on the following day, the quorum on the subsequent days of the session shall be the presence of a majority of members of each category referred to in Article 4, provided that such members hold a majority of the total votes in their respective categories.

3. Representation in accordance with Article 11 (2) shall be considered as presence.

Article 14

Cooperation and coordination with other organizations

1. The Council shall make arrangements as appropriate for consultations and cooperation with the

United Nations and its organs, including the United Nations Conference on Trade and Development (Unctad) and the Commission on Sustainable Development (CSD), intergovernmental organizations, including the General Agreement on Tariffs and Trade (GATT) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and non-governmental organizations.

2. The Organization shall, to the maximum extent possible, utilize the facilities, services and expertise of existing intergovernmental, governmental or non-governmental organizations, in order to avoid duplication of efforts in achieving the objectives of this Agreement and to enhance the complementarity and the efficiency of their activities.

Article 15

Admission of observers

The Council may invite any non-member government or any of the organizations referred to in Article 14, Article 20 and Article 29, interested in the activities of the Organization to attend as observers any of the meetings of the Council.

Article 16

Executive Director and staff

1. The Council shall, by special vote, appoint the Executive Director.

2. The terms and conditions of appointment of the Executive Director shall be determined by the Council.

3. The Executive Director shall be the chief administrative officer of the Organization and shall be responsible to the Council for the administration and operation of this Agreement in accordance with decisions of the Council.

4. The Executive Director shall appoint the staff in accordance with regulations to be established by the Council. The Council shall, by special vote, decide the number of executive and professional staff the Executive Director may appoint. Any changes in the number of executive and professional staff shall be decided by the Council by special vote. The staff shall be responsible to the Executive Director.

5. Neither the Executive Director nor any member of the staff shall have any financial interest in the timber industry or trade, or associated commercial activities.

6. In the performance of their duties, the Executive Director and staff shall not seek or receive instructions from any member or from any authority external to the Organization. They shall refrain from any action which might reflect adversely on their positions as international officials ultimately responsible to the Council. Each member shall respect the exclusively international character of the responsibilities of the Executive Director and staff and shall not seek to influence them in the discharge of their responsibilities.

CHAPTER V

PRIVILEGES AND IMMUNITIES

Article 17

Privileges and immunities

1. The Organization shall have legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable and immovable property, and to institute legal proceedings.

2. The status, privileges and immunities of the Organization, of its Executive Director, its staff and experts, and of representatives of members while in the territory of Japan shall continue to be governed by the Headquarters Agreement between the Government of Japan and the International Tropical Timber Organization signed at Tokyo on 27 February 1988, with such amendments as may be necessary for the proper functioning of this Agreement.

3. The Organization may conclude, with one or more countries, agreements to be approved by the Council relating to such capacity, privileges and immunities as

may be necessary for the proper functioning of this Agreement.

4. If the headquarters of the Organization is moved to another country, the member in question shall, as soon as possible, conclude with the Organization a headquarters agreement to be approved by the Council. Pending the conclusion of such an agreement, the Organization shall request the new host government to grant, within the limits of its national legislation, exemption from taxation on remuneration paid by the Organization to its employees, and on the assets, income and other property of the Organization.

5. The Headquarters Agreement shall be independent of this Agreement. It shall, however, terminate:

- (a) by agreement between the host government and the Organization;
- (b) in the event of the headquarters of the Organization being moved from the country of the host government; or
- (c) in the event of the Organization ceasing to exist.

CHAPTER VI

FINANCE

*Article 18***Financial accounts**

1. There shall be established:
 - (a) the administrative account;
 - (b) the special account;
 - (c) the Bali Partnership Fund; and
 - (d) such other accounts as the Council shall deem appropriate and necessary.
2. The Executive Director shall be responsible for the administration of these accounts and the Council shall make provision therefore in the financial rules of the Organization.

*Article 19***Administrative account**

1. The expenses necessary for the administration of this Agreement shall be brought into the administrative account and shall be met by annual contributions paid by members in accordance with their respective constitutional or institutional procedures and assessed in accordance with paragraphs 3, 4 and 5 of this Article.
2. The expenses of delegations to the Council, the committees and any other subsidiary bodies of the Council referred to in Article 26 shall be met by the members concerned. In cases where a member requests special services from the Organization, the Council shall require that member to pay the costs of such services.
3. Before the end of each financial year, the Council shall approve the administrative budget of the Organization for the following financial year and shall assess the contribution of each member to that budget.
4. The contribution of each member to the administrative budget for each financial year shall be in the proportion which the number of its votes at the time the administrative budget for that financial year is approved bears to the total votes of all the members. In assessing contributions, the votes of each member shall be calculated without regard to the suspension of any member's voting rights or any redistribution of votes resulting therefrom.
5. The initial contribution of any member joining the Organization after the entry into force of this Agreement

shall be assessed by the Council on the basis of the number of votes to be held by that member and the period remaining in the current financial year, but the assessment made upon other members from the current financial year shall not thereby be altered.

6. Contributions to administrative budgets shall become due on the first day of each financial year. Contributions of members in respect of the financial year in which they join the Organization shall be due on the date on which they become members.

7. If a member has not paid its full contribution to the administrative budget within four months after such contribution becomes due in accordance with paragraph 6 of this Article, the Executive Director shall request that member to make payment as quickly as possible. If that member has still not paid its contribution within two months after such request, that member shall be requested to state the reasons for its inability to make payment. If at the expiry of seven months from the due date of contribution, that member has still not paid its contribution, its voting rights shall be suspended until such time as it has paid its contribution in full, unless the Council, by special vote, decides otherwise. If, on the contrary, a member has paid its full contribution to the administrative budget within four months after such contribution becomes due in accordance with paragraph 6 of this Article, the member's contribution shall receive a discount as may be established by the Council in the financial rules of the Organization.

8. A member whose rights have been suspended under paragraph 7 of this Article shall remain liable to pay its contribution.

*Article 20***Special account**

1. There shall be established two subaccounts under the special account:
 - (a) the pre-project subaccount; and
 - (b) the project subaccount.
2. The possible sources of finance for the special account may be:
 - (a) the Common Fund for Commodities;
 - (b) regional and international financial institutions;
 - (c) voluntary contributions.

3. The resources of the special account shall be used only for approved pre-projects or projects.

4. All expenditures under the pre-project subaccount shall be reimbursed from the project subaccount if projects are subsequently approved and funded. If within six months of the entry into force of this Agreement the Council does not receive any funds for the pre-project subaccount, it shall review the situation and take appropriate action.

5. All receipts pertaining to specific identifiable pre-projects or projects under the special account shall be brought into that account. All expenditures incurred on such pre-projects or projects, including remuneration and travel expenses of consultants and experts, shall be charged to the same account.

6. The Council shall, by special vote, establish terms and conditions on which it would, when and where appropriate, sponsor projects for loan financing, where a member or members have voluntarily assumed full obligations and responsibilities for such loans. The Organization shall have no obligations for such loans.

7. The Council may nominate and sponsor any entity with the consent of that entity, including a member or members, to receive loans for the financing of approved projects and to undertake all the obligations involved, except that the organization shall reserve to itself the right to monitor the use of resources and to follow up on the implementation of projects so financed. However, the Organization shall not be responsible for guarantees voluntarily provided by individual members or other entities.

8. No member shall be responsible by reason of its membership in the Organization for any liability arising from borrowing or lending by any other member or entity in connection with projects.

9. In the event that voluntary unearmarked funds are offered to the Organization, the Council may accept such funds. Such funds may be utilized for approved pre-projects and projects.

10. The Executive Director shall endeavour to seek, on such terms and conditions as the Council may decide, adequate and assured finance for pre-projects and projects approved by the Council.

11. Contributions for specified approved projects shall be used only for the projects for which they were originally intended, unless otherwise decided by the Council in agreement with the contributor. After the completion of a project, the Organization shall return to

each contributor for specific projects the balance of any funds remaining pro rata to each contributor's share in the total of the contributions originally made available for financing that project, unless otherwise agreed to by the contributor.

Article 21

The Bali Partnership Fund

1. A Fund for sustainable management of tropical timber producing forests is hereby established to assist producing members to make the investments necessary to achieve the objective of Article 1 (d) of this Agreement.

2. The Fund shall be constituted:

- (a) by contributions from donor members;
- (b) by 50 % of income earned as a result of activities related to the special account;
- (c) by resources from other private and public sources which the Organization may accept consistent with its financial rules.

3. Resources of the Fund shall be allocated by the Council only for pre-projects and projects for the purpose set out in paragraph 1 of this Article and approved in accordance with Article 25.

4. In allocating resources of the Fund, the Council shall take into account:

- (a) the special needs of members whose forestry sectors' contribution to their economies is adversely affected by the implementation of the strategy for achieving the exports of tropical timber and timber products from sustainably managed sources by the year 2000;
- (b) the needs of members with significant forest areas who establish conservation programmes in timber-producing forests.

5. The Council shall examine annually the adequacy of the resources available to the Fund and endeavour to obtain additional resources needed by producing members to achieve the purpose of the Fund. The ability of members to implement the strategy referred to in paragraph 4 (a) of this Article will be influenced by the availability of resources.

6. The Council shall establish policies and financial rules for the operation of the Fund, including rules covering the settlement of accounts on termination or expiry of this Agreement.

*Article 22***Forms of payment**

1. Contributions to the administrative account shall be payable in freely usable currencies and shall be exempt from foreign-exchange restrictions.
2. Financial contributions to the special account and the Bali Partnership Fund shall be payable in freely usable currencies and shall be exempt from foreign-exchange restrictions.
3. The Council may also decide to accept other forms of contributions to the special account or the Bali Partnership Fund, including scientific and technical equipment or personnel, to meet the requirements of approved projects.

*Article 23***Audit and publication of accounts**

1. The Council shall appoint independent auditors for the purpose of auditing the accounts of the Organization.
2. Independently audited statements of the administrative account, of the special account and of the Bali Partnership Fund shall be made available to members as soon as possible after the close of each financial year, but not later than six months after that date, and be considered for approval by the Council at its next session, as appropriate. A summary of the audited accounts and balance sheet shall thereafter be published.

CHAPTER VII**OPERATIONAL ACTIVITIES***Article 24***Policy work of the Organization**

In order to achieve the objectives set out in Article 1, the Organization shall undertake policy work and project activities in the areas of economic information and market intelligence, reforestation and forest management and forest industry, in a balanced manner, to the extent possible integrating policy work and project activities.

*Article 25***Project activities of the Organization**

1. Bearing in mind the needs of developing countries, members may submit pre-project and project proposals to the Council in the fields of research and development, market intelligence, further and increased wood processing in producing member countries, and reforestation and forest management. Pre-projects and projects should contribute to the achievement of one or more of the objectives of this Agreement.
2. The Council, in approving pre-projects and projects, shall take into account:
 - (a) their relevance to the objectives of this Agreement;
 - (b) their environmental and social effects;
 - (c) the desirability of maintaining an appropriate geographical balance;
 - (d) the interests and characteristics of each of the developing producing regions;

- (e) the desirability of equitable distribution of resources among the fields referred to in paragraph 1 of this Article;
- (f) their cost-effectiveness;
- (g) the need to avoid duplication of efforts.

3. The Council shall establish a schedule and procedure for submitting, appraising, and prioritizing pre-projects and projects seeking funding from the Organization, as well as for their implementation, monitoring and evaluation. The Council shall decide on the approval of pre-projects and projects for financing or sponsorship in accordance with Article 20 or Article 21.

4. The Executive Director may suspend disbursement of the Organization's funds to a pre-project or project if they are being used contrary to the project document or in cases of fraud, waste, neglect or mismanagement. The Executive Director will provide to the Council at its next session a report for its consideration. The Council shall take appropriate action.

5. The Council may, by special vote, terminate its sponsorship of any pre-project or project.

*Article 26***Establishment of committees**

1. The following are hereby established as committees of the Organization:
 - (a) Committee on Economic Information and Market Intelligence;

- (b) Committee on Reforestation and Forest Management;
- (c) Committee on Forest Industry;
- (d) Committee on Finance and Administration.

2. The Council may, by special vote, establish such other committees and subsidiary bodies as it deems appropriate and necessary.

3. Participation in each of the committees shall be open to all members. The rules of procedure of the committees shall be decided by the Council.

4. The committees and subsidiary bodies referred to in paragraphs 1 and 2 of this Article shall be responsible to, and work under the general direction of, the Council. Meetings of the committees and subsidiary bodies shall be convened by the Council.

Article 27

Functions of the committees

1. The Committee on Economic Information and Market Intelligence shall:

- (a) keep under review the availability and quality of statistics and other information required by the Organization;
- (b) analyse the statistical data and specific indicators as decided by the Council for the monitoring of international timber trade;
- (c) Keep under continuous review the international timber market, its current situation and short-term prospects on the basis of the data mentioned in subparagraph (b) above and other relevant information, including information related to undocumented trade;
- (d) Make recommendations to the Council on the need for, and nature of, appropriate studies on tropical timber, including prices, market elasticity, market substitutability, marketing of new products, and long-term prospects of the international tropical timber market, and monitor and review any studies commissioned by the Council;
- (e) carry out any other tasks related to the economic, technical and statistical aspects of timber assigned to it by the Council;
- (f) assist in the provision of technical cooperation to developing member countries to improve their relevant statistical services.

2. The Committee on Reforestation and Forest Management shall:

- (a) promote cooperation between members as partners in development of forest activities in member countries, *inter alia*, in the following areas:
 - (i) reforestation;
 - (ii) rehabilitation;
 - (iii) forest management;
 - (b) encourage the increase of technical assistance and transfer of technology in the fields of reforestation and forest management to developing countries;
 - (c) follow up ongoing activities in this field, and identify and consider problems and possible solutions to them in cooperation with the competent organizations;
 - (d) review regularly the future needs of international trade in industrial tropical timber and, on this basis, identify and consider appropriate possible schemes and measures in the field of reforestation, rehabilitation and forest management;
 - (e) facilitate the transfer of knowledge in the field of reforestation and forest management with the assistance of competent organizations;
 - (f) coordinate and harmonize these activities for cooperation in the field of reforestation and forest management with relevant activities pursued elsewhere, such as those under the auspices of the Food and Agricultural Organization (FAO), the United Nations Environmental Programme (UNEP), the World Bank, the United Nations Development Programme (UNDP), regional development banks and other competent organizations.
3. The Committee on Forest Industry shall:
- (a) promote cooperation between member countries as partners in the development of processing activities in producing member countries, *inter alia*, in the following areas:
 - (i) product development through transfer of technology;
 - (ii) human resources development and training;
 - (iii) standardization of nomenclature of tropical timber;
 - (iv) harmonization of specifications of processed products;
 - (v) encouragement of investment and joint ventures;
 - (vi) marketing including the promotion of lesser known and lesser used species;
 - (b) promote the exchange of information in order to facilitate structural changes involved in increased and further processing in the interests of all member countries, in particular developing member countries;

(c) follow up ongoing activities in this field, and identify and consider problems and possible solutions to them in cooperation with the competent organizations;

(d) encourage the increase of technical cooperation for the processing of tropical timber for the benefit of producing member countries.

4. In order to promote the policy and project work of the Organization in a balanced manner, the Committee on Economic Information and Market Intelligence, the Committee on Reforestation and Forest Management and the Committee on Forest Industry shall each:

(a) be responsible for ensuring the effective appraisal, monitoring and evaluation of pre-projects and projects;

(b) make recommendations to the Council relating to pre-projects and projects;

(c) follow up the implementation of pre-projects and projects and provide for the collection and dissemination of their results as widely as possible for the benefit of all members;

(d) develop and advance policy ideas to the Council;

(e) review regularly the results of project and policy work and make recommendations to the Council on the future of the Organization's programme;

(f) review regularly the strategies, criteria and priority areas for programme development and project work contained the Organization's action plan and recommend revisions to the Council;

(g) take account of the need to strengthen capacity-building and human resource development in member countries;

(h) carry out any other task related to the objectives of this Agreement assigned to them by the Council.

5. Research and development shall be a common function of the Committees referred to in paragraphs 1, 2, and 3 of this Article.

6. The Committee on Finance and Administration shall:

(a) examine and make recommendations to the Council regarding the approval of the Organization's administrative budget proposals and the management operations of the Organization;

(b) review the assets of the Organization to ensure prudent asset management and that the Organization has sufficient reserves to carry out its work;

(c) examine and make recommendations to the Council on the budgetary implications of the Organization's annual work programme, and the actions that might be taken to secure the resources needed to implement it;

(d) recommend to the Council the choice of independent auditors and review the independent audited statements;

(e) recommend to the Council any modifications it may judge necessary to the Rules of Procedure or the Financial Rules;

(f) review the Organization's revenues and the extent to which they constrain the work of the Secretariat.

CHAPTER VIII

RELATIONSHIP WITH THE COMMON FUND FOR COMMODITIES

Article 28

Relationship with the Common Fund for Commodities

The Organization shall take full advantage of the facilities of the Common Fund for Commodities.

CHAPTER IX

STATISTICS, STUDIES AND INFORMATION

*Article 29***Statistics, studies and information**

1. The Council shall establish close relationships with relevant intergovernmental, governmental and non-governmental organizations, in order to help ensure the availability of recent reliable data and information on the trade in tropical timber, as well as relevant information on non-tropical timber and on the management of timber-producing forests. As deemed necessary for the operation of this Agreement, the Organization, in cooperation with such organizations, shall compile, collate and, where relevant, publish statistical information on production, supply, trade, stocks, consumption and market prices of timber, the extent of timber resources and the management of timber-producing forests.

2. Members shall, to the fullest extent possible not inconsistent with their national legislation, furnish, within a reasonable time, statistics and information on timber, its trade and the activities aimed at achieving sustainable management of timber-producing forests as well as other relevant information as requested by the Council. The Council shall decide on the type of information to be provided under this paragraph and on the format in which it is to be presented.

3. The Council shall arrange to have any relevant studies undertaken of the trends and of short- and long-term problems of the international timber markets and of the progress towards the achievement of sustainable management of timber-producing forests.

*Article 30***Annual report and review**

1. The Council shall, within six months after the close of each calendar year, publish an annual report on its activities and such other information as it considers appropriate.

2. The Council shall annually review and assess:

- (a) the international timber situation;
- (b) other factors, issues and developments considered relevant to achieve the objectives of this Agreement.

3. The review shall be carried out in the light of:

- (a) information supplied by members in relation to national production, trade, supply, stocks, consumption and prices of timber;
- (b) other statistical data and specific indicators provided by members as requested by the Council;
- (c) information supplied by members on their progress towards the sustainable management of their timber-producing forests;
- (d) such other relevant information as may be available to the Council either directly or through the organizations in the United Nations system and intergovernmental, governmental or non-governmental organizations.

4. The Council shall promote the exchange of views among member countries regarding:

- (a) the status of sustainable management of timber producing forests and related matters in member countries;
- (b) resource flows and requirements in relation to objectives, criteria and guidelines set by the Organization.

5. On request, the Council shall endeavour to enhance the technical capacity of member countries, in particular developing member countries, to obtain the data necessary for adequate information-sharing, including the provision of resources for training and facilities to members.

6. The results of the review shall be included in the reports of the Council's deliberations.

CHAPTER X

MISCELLANEOUS

*Article 31***Complaints and disputes**

Any complaint that a member has failed to fulfil its obligations under this Agreement and any dispute concerning the interpretation or application of this Agreement shall be referred to the Council for decision. Decisions of the Council on these matters shall be final and binding.

*Article 32***General obligations of members**

1. Members shall, for the duration of this Agreement, use their best endeavours and cooperate to promote the attainment of its objectives and to avoid any action contrary thereto.

2. Members undertake to accept and carry out the decisions of the Council under the provisions of this Agreement and shall refrain from implementing measures which would have the effect of limiting or running counter to them.

*Article 33***Relief from obligations**

1. Where it is necessary on account of exceptional circumstances or emergency or *force majeure* not expressly provided for in this Agreement, the Council may, by special vote, relieve a member of an obligation under this Agreement if it is satisfied by an explanation from that member regarding the reasons why the obligation cannot be met.

2. The Council, in granting relief to a member under paragraph 1 of this Article, shall state explicitly the terms and conditions on which, and the period for which, the member is relieved of such obligation, and the reasons for which the relief is granted.

*Article 34***Differential and remedial measures and special measures**

1. Developing importing members whose interests are adversely affected by measures taken under this Agreement may apply to the Council for appropriate differential and remedial measures. The Council shall consider taking appropriate measures in accordance with Section III, paragraphs 3 and 4, of resolution 93 (IV) of the United Nations Conference on Trade and Development.

2. Members in the category of least-developed countries as defined by the United Nations may apply to the Council for special measures in accordance with Section III, paragraph 4, of resolution 93 (IV) and with paragraphs 56 and 57 of the Paris Declaration and Programme of Action for the Least-Developed Countries for the 1990s.

*Article 35***Review**

The Council shall review the scope of this Agreement four years after its entry into force.

*Article 36***Non-discrimination**

Nothing in this Agreement authorizes the use of measures to restrict or ban international trade in, and in particular as they concern imports of and utilization of, timber and timber products.

CHAPTER XI

FINAL PROVISIONS

Article 37

Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Agreement.

Article 38

Signature, ratification, acceptance and approval

1. This Agreement shall be open for signature, at United Nations Headquarters from 1 April 1994 until one month after the date of its entry into force, by governments invited to the United Nations Conference for the Negotiation of a Successor Agreement to the International Tropical Timber Agreement, 1983.

2. Any government referred to in paragraph 1 of this Article may:

- (a) at the time of signing this Agreement, declare that by such signature it expresses its consent to be bound by this Agreement (definitive signature); or
- (b) after signing this Agreement, ratify, accept or approve it by the deposit of an instrument to that effect with the depositary.

Article 39

Accession

1. This Agreement shall be open for accession by the governments of all States upon conditions established by the Council, which shall include a time limit for the deposit of instruments of accession. The Council may, however, grant extensions of time to governments which are unable to accede by the time limit set in the conditions of accession.

2. Accession shall be effected by the deposit of an instrument of accession with the depositary.

Article 40

Notification of provisional application

A signatory government which intends to ratify, accept or approve this Agreement, or a government for which the Council has established conditions for accession but which has not yet been able to deposit its instrument, may, at any time, notify the depositary that it will apply this Agreement provisionally either when it enters into force in accordance with Article 41, or, if it is already in force, at a specified date.

Article 41

Entry into force

1. This Agreement shall enter into force definitively on 1 February 1995 or on any date thereafter, if 12 governments of producing countries holding at least 55 % of the total votes as set out in Annex A to this Agreement, and 16 governments of consuming countries holding at least 70 % of the total votes as set out in Annex B to this Agreement have signed this Agreement definitively or have ratified, accepted or approved it or acceded thereto pursuant to Article 38 (2) or Article 39.

2. If this Agreement has not entered into force definitively on 1 February 1995, it shall enter into force provisionally on that date or on any date within six months⁽¹⁾ thereafter, if 10 governments of producing countries holding at least 50 % of the total votes as set out in Annex A to this Agreement, and 14 governments of consuming countries holding at least 65 % of the total votes as set out in Annex B to this Agreement, have signed this Agreement definitively or have ratified, accepted or approved it pursuant to Article 38 (2) or have notified the depositary under Article 40 that they will apply this Agreement provisionally.

3. If the requirements for entry into force under paragraph 1 or paragraph 2 of this Article have not been met on 1 September 1995, the Secretary-General of the United Nations shall invite those governments which have signed this Agreement definitively or have ratified, accepted or approved it pursuant to Article 38 (2) or have notified the depositary that they will apply this Agreement provisionally, to meet at the earliest time practicable to decide whether to put this Agreement into force provisionally or definitively among themselves in whole, or in part. Governments which decide to put this Agreement into force provisionally among themselves may meet from time to time to review the situation and decide whether this Agreement shall enter into force definitively among themselves.

4. For any Government which has not notified the depositary under Article 40 that it will apply this Agreement provisionally and which deposits its instrument of ratification, acceptance, approval or accession after the entry into force of this Agreement, this Agreement shall enter into force on the date of such deposit.

5. The Executive Director of the Organization shall convene the Council as soon as possible after the entry into force of this Agreement.

⁽¹⁾ 'six months' shall be replaced by 'seven months' (see procès-verbal of rectification of the original of the Agreement, drawn up at the headquarters of the UN at New York on 12 April 1995).

*Article 42***Amendments**

1. The Council may, by special vote, recommend an amendment of this Agreement to members.
2. The Council shall fix a date by which members shall notify the depositary of their acceptance of the amendment.
3. An amendment shall enter into force 90 days after the depositary has received notifications of acceptance from members constituting at least two thirds of the producing members and accounting for at least 75 % of the votes of the producing members, and from members constituting at least two thirds of the consuming members and accounting for at least 75 % of the votes of the consuming members.
4. After the depositary informs the Council that the requirements for entry into force of the amendment have been met, and notwithstanding the provisions of paragraph 2 of this Article relating to the date fixed by the Council, a member may still notify the depositary of its acceptance of the amendment, provided that such notification is made before the entry into force of the amendment.
5. Any member which has not notified its acceptance of an amendment by the date on which such amendment enters into force shall cease to be a party to this Agreement as from that date, unless such member has satisfied the Council that its acceptance could not be obtained in time owing to difficulties in completing its constitutional or institutional procedures, and the Council decides to extend for that member the period for acceptance of the amendment. Such member shall not be bound by the amendment before it has notified its acceptance thereof.
6. If the requirements for the entry into force of the amendment have not been met by the date fixed by the Council in accordance with paragraph 2 of this Article, the amendment shall be considered withdrawn.

*Article 43***Withdrawal**

1. A member may withdraw from this Agreement at any time after the entry into force of this Agreement by giving written notice of withdrawal to the depositary. That member shall simultaneously inform the Council of the action it has taken.
2. Withdrawal shall become effective 90 days after the notice is received by the depositary.
3. Financial obligations to the Organization incurred by a member under this Agreement shall not be terminated by its withdrawal.

*Article 44***Exclusion**

If the Council decides that any member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may, by special vote, exclude that member from this Agreement. The Council shall immediately so notify the depositary. Six months after the date of the Council's decision, that member shall cease to be a party to this Agreement.

*Article 45***Settlement of accounts with withdrawing or excluded members or members unable to accept an amendment**

1. The Council shall determine any settlement of accounts with a member which ceases to be a party to this Agreement owing to:
 - (a) non-acceptance of an amendment to this Agreement under Article 42;
 - (b) withdrawal from this Agreement under Article 43; or
 - (c) exclusion from this Agreement under Article 44.
2. The Council shall retain any contribution paid to the administrative account, to the special account or to the Bali Partnership Fund by a member which ceases to be a party to this Agreement.
3. A member which has ceased to be a party to this Agreement shall not be entitled to any share of the proceeds of liquidation or the other assets of the Organization. Nor shall such member be liable for payment of any part of the deficit, if any, of the Organization upon termination of this Agreement.

*Article 46***Duration, extension and termination**

1. This Agreement shall remain in force for a period of four years after its entry into force unless the Council, by special vote, decides to extend, renegotiate or terminate it in accordance with the provisions of this Article.
2. The Council may, by special vote, decide to extend this Agreement for two periods of three years each.
3. If, before the expiry of the four-year period referred to in paragraph 1 of this Article, or before the expiry of

an extension period referred to in paragraph 2 of this Article, as the case may be, a new agreement to replace this Agreement has been negotiated but has not yet entered into force either definitively or provisionally, the Council may, by special vote, extend this Agreement until the provisional or definitive entry into force of the new agreement.

4. If a new agreement is negotiate and enters into force during any period of extension of this Agreement under paragraph 2 or paragraph 3 of this Article, this Agreement, as extended, shall terminate upon the entry into force of the new agreement.

5. The Council may at any time, by special vote, decide to terminate this Agreement with effect from such date as it may determine.

6. Notwithstanding the termination of this Agreement, the Council shall continue in being for a period not exceeding 18 months to carry out the liquidation of the Organization, including the settlement of accounts, and, subject to relevant decisions to be taken by special vote, shall have during that period such powers and functions as may be necessary for these purposes.

7. The Council shall notify the depositary of any decision taken under this Article.

Article 47

Reservations

Reservations may not be made with respect to any of the provisions of this Agreement.

Article 48

Supplementary and transitional provisions

1. This Agreement shall be the successor to the International Tropical Timber Agreement, 1983.

2. All acts by or on behalf of the Organization or any of its organs under the International Tropical Timber Agreement, 1983, which are in effect on the date of entry into force of this Agreement and the terms of which do not provide for expiry on that date shall remain in effect unless changed under the provisions of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have affixed their signatures under this Agreement on the dates indicated.

DONE at Geneva, on twenty-six January, one thousand nine hundred and ninety-four, the text of this Agreement in the Arabic, Chinese, English, French, Russian and Spanish languages being equally authentic.

ANNEX A

**LIST OF PRODUCING COUNTRIES WITH TROPICAL FOREST RESOURCES AND/OR NET
EXPORTERS OF TROPICAL TIMBER IN VOLUME TERMS, AND ALLOCATION OF VOTES FOR
THE PURPOSES OF ARTICLE 41**

Bolivia	21	Indonesia	170
Brazil	133	Liberia	23
Cameroon	23	Malaysia	139
Colombia	24	Mexico	14
Congo	23	Myanmar	33
Costa Rica	9	Panama	10
Côte d'Ivoire	23	Papua New Guinea	28
Dominican Republic	9	Paraguay	11
Ecuador	14	Peru	25
El Salvador	9	Philippines	25
Equatorial Guinea	23	Thailand	20
Gabon	23	Togo	23
Ghana	23	Trinidad and Tobago	9
Guyana	14	United Republic of Tanzania	23
Honduras	9	Venezuela	10
India	34	Zaire	23
			TOTAL 1 000

ANNEX B

**LIST OF CONSUMING COUNTRIES AND ALLOCATION OF VOTES FOR THE PURPOSES OF
ARTICLE 41**

Afghanistan	10	Italy	35
Algeria	13	Netherlands	40
Australia	18	Portugal	18
Austria	11	Spain	25
Bahrain	11	United Kingdom	42
Bulgaria	10	Finland	10
Canada	12	Japan	320
Chile	10	Nepal	10
China	36	New Zealand	10
Egypt	14	Norway	10
European Community	(302)	Republic of Korea	97
Belgium/Luxembourg	26	Russian Federation	13
Denmark	11	Slovakia	11
France	44	Sweden	10
Germany	35	Switzerland	11
Greece	13	United States of America	51
Ireland	13		
			TOTAL 1 000

DECISION No 1/96 OF THE ASSOCIATION COUNCIL

between the European Communities and their Member States of the one part, and the Republic of Poland, of the other part

of 16 July 1996

adopting the implementing rules necessary for the application of Article 63 (1) (i), (1) (ii) and (2) of the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, and the rules implementing Article 8 (1) (i), (1) (ii) and (2) of Protocol 2 on ECSC products to that Agreement

(96/494/Euratom, ECSC, EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part⁽¹⁾, and in particular Article 63 (3) thereof,

Having regard to Protocol 2 on ECSC products to that Europe Agreement, and in particular Article 8 (3) thereof,

Whereas, as from the entry into force of the Europe Agreement, Article 63 of the Europe Agreement replaced Article 33 of the Interim Agreement between the European Economic Community and the European Coal and Steel Community, of the one part, and the Republic of Poland, of the other part;

Whereas the rules implementing Article 33 (1) (i) and (ii) and Article 33 (2) of the Interim Agreement have been adopted by the Joint Committee referred to in that Agreement;

Whereas in order to ensure continuity between the Interim Agreement and the Europe Agreement those rules, as adopted by the Joint Committee referred to in that Interim Agreement should be confirmed for the purposes of the Europe Agreement;

Whereas the Association Committee set up by the Europe Agreement recommended at a meeting on 23 and 24 June 1994 that the Association Council confirm the said rules by written procedure,

HAS DECIDED AS FOLLOWS:

Sole Article

The implementing rules necessary for the application of the competition provisions referred to in Article 63 (1) (i), (1) (ii) and (2) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, and the rules implementing Article 8 (1) (i), (1) (ii) and (2) of Protocol 2 on ECSC products to that Agreement, as set out in the Annex to this Decision are hereby adopted.

Done at Brussels, 16 July 1996.

For the Association Council
The President
D. SPRING

⁽¹⁾ OJ No L 348, 31. 12. 1993, p. 1.

ANNEX

**IMPLEMENTING RULES FOR THE APPLICATION OF THE COMPETITION PROVISIONS
APPLICABLE TO UNDERTAKINGS PROVIDED FOR IN ARTICLE 63 (1) (i), (1) (ii) AND (2) OF THE
EUROPE AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND THEIR MEMBER
STATES, OF THE ONE PART, AND THE REPUBLIC OF POLAND, OF THE OTHER PART**

*Article 1***General Principle**

Cases relating to agreements between undertakings, decisions by association of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition as well as to abuses of a dominant position in the territories of the Community or of Poland as a whole or in a substantial part thereof, which may affect trade between the Community and Poland, shall be settled according to the principles contained in Article 63 (1) and (2) of the Europe Agreement.

For this purpose, these cases are dealt with by the Commission of the European Communities (DG IV) on the Community side and the Polish Antimonopoly Office (AMO) on the Polish side.

The competences of the Commission and the AMO to deal with these cases shall flow from the existing rules of the respective legislation of the Community and Poland, including where these rules are applied to undertakings located outside the respective territory.

Both authorities shall settle the cases in accordance with their own substantive rules, and having regard to the provisions set out below. The relevant substantive rules of the authorities are the competition rules of the Treaty establishing the European Community as well as the Treaty establishing the European Coal and Steel Community, including the competition-related secondary legislation, for the Commission, and the Polish Antimonopoly Law for the AMO.

ECONOMIC ACTIVITIES UNDER THE EC TREATY*Article 2***Competence of both competition authorities**

Cases under Article 63 of the Europe Agreement which may affect both the Community and the Polish market and which may fall under the competence of both competition authorities shall be dealt with by the Commission and the AMO, according to the rules under this Article.

2.1. Notification

2.1.1. The competition authorities shall notify to each other those cases they are dealing with, which, according to the general principle laid down in Article 1, appear also to fall under the competence of the other authority.

2.1.2. This situation may arise in particular in cases concerning activities that:

- involve anticompetitive activities carried out in the other authority's territory,
- are relevant to enforcement activities of the other competition authority,
- involve remedies that would require or prohibit particular conduct in the other authority's territory.

2.1.3. Notification under this Article shall include sufficient information to permit an initial evaluation by the recipient party of any effects on its interests. Copies of the notifications shall be submitted on a regular basis to the Association Council.

2.1.4. Notification shall be made in advance, as soon as possible and at the latest at the stage of an investigation still far enough in advance of the adoption of a settlement or decision, so as to facilitate comments or consultations and to enable the proceeding authority to take into account the other authority's views, as well as to take such remedial action it may find feasible under its own laws, in order to deal with the case in question.

2.2. Consultation and comity

Whenever the Commission or the AMO consider that anticompetitive activities carried out on the territory of the other authority are substantially affecting important interests of the respective Party, it may request consultation with the other authority, or it may request that the other Party's competition authority initiate any appropriate procedures with a view to taking remedial action under its legislation on anticompetitive activities. This is without prejudice to any action under the requesting Party's competition law and does not hamper the full freedom of ultimate decision of the authority so addressed.

2.3. Finding of an understanding

The competition authority so addressed shall give full and sympathetic consideration to such views and factual materials as may be provided by the requesting authority and, in particular, to the nature of the anticompetitive activities in question, the enterprises involved and the alleged harmful effects on the important interests of the requesting Party.

Without prejudice to any of their rights or obligations, the competition authorities involved in consultations under this Article shall endeavour to find a mutually acceptable solution in the light of the respective important interests involved.

*Article 3***Competence of one competition authority only**

- 3.1. Cases falling under the exclusive competence of one competition authority, in accordance with the principle laid down in Article 1, and which may affect important interests of the other Party, shall be handled having regard to the provisions set out in Article 2, and taking account of the principles set out below.
- 3.2. In particular, whenever one of the competition authorities undertakes an investigation or proceeding in a case which is found to affect important interests of the other Party, the proceeding authority shall notify this case to the other authority, without formal request by the latter.

*Article 4***Request for information**

Whenever the competition authority of a Party becomes aware of the fact that a case, falling also or only under the competence of the other authority, appears to affect important interests of the first Party, it may request information about this case from the proceeding authority.

The proceeding authority shall give sufficient information to the extent possible and at a stage of its proceedings far enough in advance of the adoption of a decision or settlement to enable the requesting authority's views to be taken into account.

*Article 5***Secrecy and confidentiality of information**

- 5.1. Having regard to Article 63 (7) of the Europe Agreement, neither competition authority is required to provide information to the other authority if disclosure of that information to the requesting authority is prohibited by the law of the authority possessing the information, or would be incompatible with important interests of the Party whose authority is in possession of the information.
- 5.2. Each authority agrees to maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other authority.

*Article 6***Block exemptions**

In the application of Article 63 of the Europe Agreement as provided for in Articles 2 and 3 of these Implementing Rules, the competition authorities shall ensure that the principles contained in the block exemption regulations in force in the Community are applied in full. The AMO shall be informed of any procedure related to the adoption, abolition or modification of block exemptions by the Community.

Where such block exemption regulations encounter serious objections on the Polish side, and having regard to the approximation of legislation as provided for in the Europe Agreement, consultations shall take place in the Association Council, in accordance with the provisions contained in Article 9 of these Implementing Rules.

The same principles shall apply regarding other significant changes in the Community or Polish competition policies.

*Article 7***Merger control**

With regard to mergers which fall within Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings⁽¹⁾ and have significant impact on the Polish economy, the AMO shall be entitled to express its view in the course of the procedure taking into account the time limits as provided for in the abovementioned Regulation. The Commission shall give due consideration to that view.

*Article 8***Activities of minor importance**

- 8.1. Anticompetitive activities whose effects on trade between the Parties or on competition are negligible do not fall under Article 63 (1) of the Europe Agreement and therefore are not to be treated under the Articles 2 to 6 of these Implementing Rules.
- 8.2. Negligible effects within the meaning of paragraph 8 (1) are generally presumed to exist when
- the aggregate annual turnover of the participating undertakings does not exceed ECU 200 million, and
 - the goods or services which are the subject of the Agreement together with the participating undertakings' other goods or services which are considered by users to be equivalent in view of their characteristics, price and intended use, do not represent more than 5 % of the total market for such goods or services in the area of the common market affected by the Agreement, and the Polish market affected by the Agreement, respectively.

*Article 9***Association Council**

- 9.1. Whenever the procedures provided for in Articles 2 and 3 above do not lead to a mutually acceptable solution, as well as in other cases explicitly mentioned in these Implementing Rules, an exchange of views shall take place in the Association Council at the request of one Party within three months following the request.
- 9.2. Following this exchange of views, or after expiry of the period referred to in paragraph 9.1, the Association Council may make appropriate recommendations for the settlement of these cases, without prejudice to Article 63 (6) of the Europe Agreement. In these recommendations, the Association Council may take into account eventual failure of the requested authority to give its point of view to the requesting authority within the period referred to in paragraph 9.1.

⁽¹⁾ OJ No L 395, 30. 12. 1989, p. 1. Regulation as last amended by Regulation (EEC) No 2367/90 (OJ No L 219, 14. 8. 1990, p. 5).

- 9.3. These procedures in the Association Council are without prejudice to any action under the respective competition laws in force in the territory of the Parties.

Article 10

Negative conflict of competence

When both the Commission and the AMO consider that neither of them is competent to handle a case on the basis of their respective legislation, an exchange of views shall take place on request in the Association Council. The Community and Poland shall endeavour to find a mutually acceptable solution in the light of the respective important interests involved with the support of the Association Council, which may make appropriate recommendations, without prejudice to Article 63 (6) of the Europe Agreement, and the rights of individual Member States of the European Communities on the basis of their competition rules.

ECONOMIC ACTIVITIES UNDER THE ECSC TREATY

Article 11

Treaty establishing the European Coal and Steel Community (ECSC)

The provisions contained in Articles 1 to 6 and 8 to 10 above shall also apply with respect to the coal and steel sector as referred to in Protocol 2 to the Europe Agreement.

Article 12

Administrative assistance (languages)

The Commission and the AMO shall provide for practical arrangements for mutual assistance or any other appropriate solution concerning in particular the question of translations.

DECISION No 2/96 OF THE ASSOCIATION COUNCIL

between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part,

of 16 July 1996

on the determination of the duties applicable to imports into Poland of goods originating in the Community and listed in Annex III to Protocol 3 of the Europe Agreement

(96/495/Euratom, ECSC, EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part⁽¹⁾, and in particular to Articles 1 and 4 of Protocol 3 thereof,

Whereas, under the provisions of the said Protocol, the Republic of Poland has undertaken to determine both the agricultural part and the non-agricultural part of the levies applied on the import of goods covered by this Protocol, originating in the Community, and to complete the elimination of the non-agricultural component by 1 January 1999,

HAS DECIDED AS FOLLOWS:

Sole Article

The duties applicable on import into the Republic of Poland of processed agricultural products listed in Annex III to Protocol 3 and originating in the Community are set out in the Annex to this Decision.

Done at Brussels, 16 July 1996.

For the Association Council
The President
D. SPRING

⁽¹⁾ OJ No L 348, 31. 12. 1993, p. 2.

ANNEX

(in %)

PCN code	Ad valorem duty from 1. 7. 1995	Non-agricultural component					Ad valorem duty with the reduction of non-agricultural component				
		1995	1996	1997	1998	1999	1995	1996	1997	1998	1999
1	2	3	4	5	6	7	8	9	10	11	12
0403	.										
0403 10 510	34	12	10	7	4	0	34	32	29	26	22
0403 10 530	34	12	10	7	4	0	34	32	29	26	22
0403 10 590	34	12	10	7	4	0	34	32	29	26	22
0403 10 910	34	22	18	13	8	0	34	30	25	20	12
0403 10 930	34	25	21	16	11	0	34	30	25	20	9
0403 10 990	34	23	19	14	9	0	34	30	25	20	11
0403 90 710	34	12	10	7	4	0	34	32	29	26	22
0403 90 730	34	12	10	7	4	0	34	32	29	26	22
0403 90 790	34	14	10	7	4	0	34	30	27	24	20
0403 90 910	34	21	17	14	11	0	34	30	27	24	13
0403 90 930	34	26	22	19	16	0	34	30	27	24	8
0403 90 990	34	21	17	14	11	0	34	30	27	24	13
0710											
0710 40 000	17	11	8	5	0	0	17	14	11	6	6
0711											
0711 90 300	12	8	6	4	0	0	12	10	8	4	4
1302											
1302 31 000	12	12	10	5	0	0	12	10	5	0	0
1704											
1704 10 110	25	19	14	9	5	0	25	20	15	11	6
1704 10 190	25	17	13	8	4	0	25	21	16	12	8
1704 10 910	24	20	15	10	5	0	24	19	14	9	4
1704 10 990	25	17	13	8	4	0	25	21	16	12	8
1704 90 300	33	20	15	10	5	0	33	28	23	18	13
1704 90 550	29	23	17	11	5	0	29	23	17	11	6
1803											
1803 10 000	14	8	6	3	0	0	14	12	9	6	6
1803 20 000	14	8	6	3	0	0	14	12	9	6	6
1804 00 000	14	8	6	3	0	0	14	12	9	6	6
1805 00 000	23	7	5	3	0	0	23	21	19	16	16
1902											
1902 11 000	39	11	10	6	3	0	39	38	34	31	28
1902 19 100	39	27	26	14	7	0	39	38	26	19	12
1902 19 900	39	27	26	14	7	0	39	38	26	19	12
1902 20 910	39	36	35	18	9	0	39	38	21	12	3
1902 20 990	39	33	32	17	8	0	39	38	23	14	6
1902 30 100	39	25	24	13	6	0	39	38	27	20	14
1902 30 900	39	36	35	18	9	0	39	38	21	12	3
1902 40 100	33	25	19	12	6	0	33	27	20	14	8
1902 40 900	32	28	21	14	7	0	32	25	18	11	4
1903 00 000	17	8	6	4	2	0	17	15	13	11	9

PCN code	<i>Ad valorem</i> duty from 1. 7. 1995	Non-agricultural component					<i>Ad valorem</i> duty with the reduction of non-agricultural component				
		1995	1996	1997	1998	1999	1995	1996	1997	1998	1999
1	2	3	4	5	6	7	8	9	10	11	12
2001											
2001 90 300	23	15	10	5	0	0	23	18	13	8	8
2001 90 400	24	20	15	10	5	0	24	19	14	9	4
2004											
2004 90 100	24	15	10	5	0	0	24	19	14	9	9
2008											
2008 11 100	31	16	12	8	4	0	31	27	23	19	15
2008 91 000	29	24	18	12	6	0	29	23	17	11	5
2008 99 850	31	13	8	4	0	0	31	26	22	18	18
2008 99 910	28	24	18	12	6	0	28	22	16	10	4
2101											
2101 11 110	23	16	12	8	4	0	23	19	17	12	7
2101 11 190	23	16	12	8	4	0	23	19	17	12	7
2101 12 920	23	16	12	8	4	0	23	19	17	12	7
2101 12 980	23	11	9	6	3	0	23	21	18	15	12
2101 20 200	23	4	2	0	0	0	23	21	19	19	19
2101 20 920	23	11	9	6	3	0	23	21	18	15	12
2101 20 980	23	11	9	6	3	0	23	21	18	15	12
2101 30 110	24	24	18	12	6	0	24	18	12	6	0
2101 30 190	24	24	18	12	6	0	24	18	12	6	0
2101 30 910	24	24	18	12	6	0	24	18	12	6	0
2101 30 990	28	24	18	12	6	0	28	22	16	10	4
2102											
2102 10 100	39	14	12	7	3	0	39	37	32	28	25
2102 10 310	39	7	6	4	2	0	39	38	36	34	32
2102 10 390	39	7	6	4	2	0	39	38	36	34	32
2102 10 900	39	11	10	6	3	0	39	38	34	31	28
2102 20 110	19	3	2	1	0	0	19	18	17	16	16
2102 20 190	19	1	0	0	0	0	19	18	18	18	18
2102 20 900	19	1	0	0	0	0	19	18	18	18	18
2102 30 000	29	4	3	2	1	0	29	28	27	26	25
2103											
2103 10 000	19	8	7	5	2	0	19	18	16	13	11
2106											
2106 90 100	19	9	7	5	2	0	19	17	15	12	10
2203 00 (y)											
2203 00 010	29	23	22	17	11	0	29	28	23	17	6
2203 00 090	29	23	22	17	11	0	29	28	23	17	6
2203 00 100	29	22	21	16	10	0	29	28	23	17	7
2205 (y)											
2205 10 100	29	12	11	6	3	0	29	28	23	20	17

DECISION No 3/96 OF THE ASSOCIATION COUNCIL

between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part

of 16 July 1996

settling the dispute between the European Communities and the Republic of Poland concerning skins and hides in accordance with Article 105 (1) and (2) of the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part

(96/496/Euratom, ECSC, EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part (hereinafter 'the Europe Agreement'), and in particular Article 105 thereof,

Whereas it is laid down in Article 105 (1) and (2) of the Europe Agreement that the Association Council may settle by means of a decision any dispute relating to the application or interpretation of the Europe Agreement;

Considering that in view of a critical shortage of raw material in the form of skins and hides the Republic of Poland introduced on 1 January 1994 a quota for the export of skins and hides set at 1 400 tonnes for 1994 and 1995 and 3 000 tonnes for 1996, invoking Article 31 of the Europe Agreement;

Recognizing that, at the first meeting of the Association Council held in Warsaw on 23 and 24 June 1994, the Community requested Poland to increase the quota to 15 000 tonnes for 1994 and 20 000 tonnes for 1995 in order to maintain a balance, in accordance with the Europe Agreement, between the measures taken by Poland and the real shortage of the raw material existing;

Considering that Poland informed the Community that the restriction had been introduced temporarily, was the result of the existing shortage and would be withdrawn as soon as the causes of its implementation disappeared;

Considering that both sides have not reached a common understanding;

Recognizing that in its letter of 28 July the Community referred the matter to the Association Council in accordance with Article 105 (1) of the Europe Agreement in order that it might settle the dispute;

Considering that at the second meeting of the Association Council held in Brussels on 17 July 1995 the Community

proposed that the quota for 1995 be raised to 13 500 tonnes;

Recognizing that, as Poland could not accept the Community's proposal and as various proposals by Poland to increase the quota had not been accepted by the Community, both sides agreed to the application of Article 105 (4) of the Europe Agreement;

Considering that the Republic of Poland and the Community have both notified their arbiters;

Considering that, in the meantime the Republic of Poland in its letter of 18 March 1996 submitted a compromise proposal concerning the establishment of a timetable for liberalization of the export of skins and hides which envisages the final withdrawal of restrictions on 1 January 1999 at the latest and provides for another investigation of the matter in 1997 in order to hasten the process of full liberalization by one year;

Recognizing that in such circumstances both sides have decided to stop the arbitration procedure provided for in Article 105 (4) and finish it according to Article 105 (2) of the Europe Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The amount of the annual quota for exports from Poland of skins and hides, set by Poland at 3 000 tonnes for 1996 shall be increased for the same products to 10 000 tonnes for 1996, 12 000 tonnes for 1997 and 15 000 tonnes for 1998. The Republic of Poland will eliminate the restriction in export of skins and hides with effect from 1 January 1999.

Article 2

10 000 tonnes for 1996 shall apply with effect from 1 January 1996.

The Association Committee will re-examine the situation in the first quarter of 1997 in order to evaluate the possibility of eliminating the restriction in export of skins and hides with effect from 1 January 1998.

Done at Brussels, 16 July 1996.

Article 3

This Decision shall enter into force on the day of its adoption. However, the quota for skins and hides set at

For the Association Council

The President

D. SPRING

DECISION No 4/96 OF THE ASSOCIATION COUNCIL

between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part

of 16 July 1996

amending Protocol 4 concerning the definition of the concept of 'originating products' and methods of administrative cooperation

(96/497/Euratom, ECSC, EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part⁽¹⁾, signed in Brussels on 16 December 1991, and in particular Article 32 of Protocol 4 thereto,

Whereas a number of technical difficulties arose in the interpretation of the opening Articles of Protocol 4 on cumulation following the entry into force of the Europe Agreement;

Whereas it has proved necessary to amend the format of the said provisions; whereas, for these reasons of presentation and ease of reading, it appears appropriate to replace the whole text of the Protocol with a new text,

HAS DECIDED AS FOLLOWS:

Article 1

Articles 1 to 38 and Annex I to Protocol 4 of the Europe Agreement of 16 December 1991 shall be replaced by the text attached hereto.

Article 2

This Decision shall enter into force on the first day of the second month following the date of its adoption.

Done at Brussels, 16 July 1996.

For the Association Council

The President

D. SPRING

⁽¹⁾ OJ No L 348, 31. 12. 1993, p. 2.

PROTOCOL No 4**concerning the definition of the concept of 'originating products' and methods of administrative cooperation****TITLE I****DEFINITION OF THE CONCEPT OF 'ORIGINATING PRODUCTS'**

Protocol shall be considered as materials originating in Poland and it shall not be necessary that such materials have undergone working or processing going beyond that referred to in Article 5 (3) of this Protocol.

*Article 1***Origin criteria**

For the purpose of implementing this Agreement and without prejudice to the provisions of Articles 2 and 3 of this Protocol, the following product shall be considered as:

1. products originating in the Community:
 - (a) products wholly obtained in the Community within the meaning of Article 4 of this Protocol;
 - (b) products obtained in the Community incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the Community within the meaning of Article 5 of this Protocol;
2. products originating in Poland:
 - (a) products wholly obtained in Poland within the meaning of Article 4 of this Protocol;
 - (b) products obtained in Poland incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in Poland within the meaning of Article 5 of this Protocol.

*Article 2***Bilateral cumulation**

1. Notwithstanding Article 1 (1) (b), materials originating in Poland within the meaning of this Protocol shall be considered as materials originating in the Community and it shall not be necessary that such materials have undergone sufficient working or processing there, provided however that they have undergone working or processing going beyond that referred to in Article 5 (3) of this Protocol.
2. Notwithstanding Article 1 (2) (b), materials originating in the Community within the meaning of this

*Article 3***Cumulation with materials originating in Hungary, the Czech Republic or in the Slovak Republic**

1. (a) Notwithstanding Article 1 (1) (b) and subject to the provisions of paragraphs 2 and 4, materials originating in Hungary, the Czech Republic or in the Slovak Republic within the meaning of Protocol 4 annexed to the Agreements between the Community and these countries shall be considered as originating in the Community and it shall not be necessary that such materials have undergone sufficient working or processing there, provided however that they have undergone working or processing going beyond that referred to in Article 5 (3) of this Protocol.

(b) Notwithstanding Article 1 (2) (b) and subject to the provisions of paragraphs 2 and 4, materials originating in Hungary, the Czech Republic or in the Slovak Republic within the meaning of Protocol 4 annexed to the Agreements between the Community and these countries shall be considered as originating in Poland and it shall not be necessary that such materials have undergone sufficient working or processing there, provided however that they have undergone working or processing going beyond that referred to in Article 5 (3) of this Protocol.
2. Products which have acquired originating status by virtue of paragraph 1 shall only continue to be considered as products originating in the Community or in Poland respectively when the value added there exceeds the value of the materials used originating in Hungary, the Czech Republic or in the Slovak Republic. If this is not so, the products concerned shall be considered, for the purpose of implementing this Agreement or the Agreements between the Community and Hungary and the Czech Republic and the Slovak Republic as originating in Hungary, or in the Czech Republic and the Slovak Republic, according to which of these countries accounts for the highest value of originating materials used.

No account shall be taken in this allocation of materials originating in Hungary, the Czech Republic or in the

Slovak Republic which have undergone sufficient working or processing in the Community or in Poland.

3. 'Value added' shall be taken to be the ex-works price of the products minus the customs value of all the materials used which do not originate in the country or the group of countries where these products are obtained.

4. For the purpose of this Article identical rules of origin to those in this Protocol shall be applied in trade between the Community and Hungary, and the Czech Republic and the Slovak Republic, and between Poland and these three countries, and also between each of these three countries themselves.

Article 4

Wholly obtained products

1. Within the meaning of Article 1 (1) (a) and (2) (a), the following shall be considered as wholly obtained either in the Community or in Poland:

- (a) mineral products extracted from their soil or from their seabed;
- (b) vegetable products harvested there;
- (c) live animals born and raised there;
- (d) products from live animals raised there;
- (e) products obtained by hunting or fishing conducted there;
- (f) products of sea fishing and other products taken from the sea by their vessels;
- (g) products made aboard their factory ships exclusively from products referred to in subparagraph (f);
- (h) used articles collected there fit only for the recovery of raw materials;
- (i) waste and scrap resulting from manufacturing operations conducted there;
- (j) goods produced there exclusively from the products specified in subparagraphs (a) to (i).

2. The term 'their vessels' in paragraph 1 (f) shall apply only to vessels:

- which are registered or recorded in Poland or in a Member State of the Community,
- which sail under the flag of Poland or of a Member State of the Community,

— which are owned to an extent of at least 50 % by nationals of Poland or of Member States of the Community, or by a company with its head office in one of these States or in Poland, of which the manager or managers, chairman of the board of directors or the supervisory board, and the majority of the members of such boards are nationals of Poland or of Member States of the Community and of which, in addition, in the case of partnerships or limited companies, at least half the capital belongs to these States, to Poland, to their public bodies or to their nationals,

— of which the master and officers are nationals of Poland or of Member States of the Community,

— of which at least 75 % of the crew are nationals of Poland or of Member States of the Community.

3. The terms 'Poland' and 'the Community' shall also cover the territorial waters which surround Poland and the Member States of the Community.

Sea-going vessels, including factory ships on which the fish caught is worked or processed, shall be considered as part of the territory of the Community or of Poland provided that they satisfy the conditions set out in paragraph 2.

Article 5

Sufficiently processed products

1. For the purposes of Article 1, non-originating materials are considered to be sufficiently worked or processed when the product obtained is classified in a heading which is different from that in which all the non-originating materials used in its manufacture are classified, subject to paragraphs 2 and 3.

The expressions 'chapters' and 'headings' used in this Protocol shall mean the chapters and the headings (four-digit codes) used in the nomenclature which makes up the Harmonized Commodity Description and Coding System (hereinafter referred to as 'the Harmonized System' or HS).

The expression 'classified' shall refer to the classification of a product or material under a particular heading.

2. For a product mentioned in columns 1 and 2 of the list in Annex II, the conditions set out in column 3 for the product concerned must be fulfilled instead of the rule in paragraph 1.

- (a) Where in the list in Annex II a percentage rule is applied in determining the originating status of a

product obtained in the Community or in Poland, the value added by the working or processing shall correspond to the ex-works price of the product obtained, less the value of third-country materials imported into the Community or Poland.

- (b) The term 'value' in the list in Annex II shall mean the customs value at the time of the import of the non-originating materials used or, if this is not known and cannot be ascertained, the first ascertainable price paid for these materials in the territory concerned.

Where the value of the originating materials used needs to be established, the provisions of the above subparagraph shall be applied *mutatis mutandis*.

- (c) The term 'ex-works price' in the list in Annex II shall mean the price paid for the product obtained to the manufacturer in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used in manufacture, minus any internal taxes which are, or may be repaid when the product obtained is exported.

- (d) 'Customs value' shall be understood as the value determined in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, established in Geneva on 12 April 1979.

3. For the purpose of implementing paragraphs 1 and 2 the following shall be considered as insufficient working or processing to confer the status of originating products, whether or not there is a change of heading:

- (a) operations to ensure the preservation of products in good condition during transport and storage (ventilation, spreading out, drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations);
- (b) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting up;
- (c)
 - (i) changes of packaging and breaking up and assembly of consignments;
 - (ii) simple placing in bottles, flasks, bags, cases, boxes, fixing on cards or boards etc., and all other simple packaging operations;
- (d) affixing marks, labels and other like distinguishing signs on products or their packaging;
- (e) simple mixing of products, whether or not of different kinds, where one or more components of the mixture do not meet the conditions laid down in this Protocol to enable them to be considered as originating either in the Community or in Poland;

- (f) simple assembly of parts of articles to constitute a complete article;
- (g) a combination of two or more operations specified in subparagraphs (a) to (f);
- (h) slaughter of animals.

Article 6

Neutral elements

In order to determine whether a product originates in the Community or in Poland it shall not be necessary to establish the origin of the electrical power, fuel, plant and equipment and machines and tools used to obtain such product nor of materials which do not enter into their final composition.

Article 7

Accessories, spare parts and tools

Accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle which are part of the normal equipment and included in the price thereof or are not separately invoiced are regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

Article 8

Sets

Sets, as defined in General Rule 3 of the Harmonized System, shall be regarded as originating when all component articles are originating products. Nevertheless, when a set is composed of originating and non-originating articles, the set as a whole shall be regarded as originating provided that the value of the non-originating articles does not exceed 15% of ex-works price of the set.

Article 9

Direct transport

1. The preferential treatment provided for under this Agreement or, when the provisions of Article 3 (2) are applied, under the Agreements between the Community and Hungary and the Czech Republic and the Slovak Republic, applies only to products or materials which are transported between the territories of the Community and Poland without entering any other territory. However, originating goods constituting one single consignment which is not split up may be transported through territory other than that of the Community or Poland with, should the occasion arise, transshipment or

temporary warehousing in such territory, provided that the goods have remained under the surveillance of the customs authorities in the country of transit or of warehousing and that they have not undergone operations other than unloading, reloading or any operation designed to preserve them in good condition.

2. Evidence that the conditions referred to in paragraph 1 have been fulfilled shall be supplied to the responsible customs authorities by the production of:

- (a) a single transport document issued in the exporting country covering the passage through the country of transit;
- (b) or a certificate issued by the customs authorities of the country of transit:
 - giving an exact description of the goods,
 - stating the dates of unloading and reloading of the goods or of the embarkation or disembarkation, identifying the ships or other means of transport used, and
 - certifying the conditions under which the goods remained in the transit country;
- (c) or failing these, any substantiating documents.

Article 10

Territorial equipment

The conditions set out in this Title relative to the acquisition of originating status must be fulfilled without interruption in the Community or in Poland except as provided for in Articles 2 and 3.

If originating products exported from the Community or Poland to another country are returned, except insofar as provided for in Articles 2 and 3, they must be considered as non-originating unless it can be demonstrated to the satisfaction of the customs authorities that:

- the goods returned are the same goods as those exported, and
- they have not undergone any operation beyond that necessary to preserve them in good condition while in that country.

TITLE II

PROOF OF ORIGIN

Article 11

Movement certificate EUR.1

Evidence of originating status of products, within the meaning of this Protocol, shall be given by a movement

certificate EUR.1, a specimen of which appears in Annex III to this Protocol.

Article 12

Normal procedure for the issue of certificates

1. A movement certificate EUR.1 shall be issued only on application having been made in writing by the exporter or, under the exporter's responsibility, by his authorized representative. Such application shall be made on a form, a specimen of which appears in Annex III to this Protocol, which shall be completed in accordance with this Protocol.

Applications for movement certificates EUR.1 must be preserved for at least two years by the customs authorities of the exporting State.

2. The exporter or his representative shall submit with his request any appropriate supporting document proving that the products to be exported are such as to qualify for the issue of a movement certificate EUR.1.

He shall undertake to submit, at the request of the appropriate authorities, any supplementary evidence they may require for the purpose of establishing the correctness of the originating status of the products eligible for preferential treatment and shall undertake to agree to any inspection of his accounts and to any check on the processes of the obtaining of the above products carried out by the said authorities.

Exporters must keep for at least two years the supporting documents referred to in this paragraph.

3. A movement certificate EUR.1 may be issued only where it can serve as the documentary evidence required for the purpose of implementing this Agreement or the Agreements between the Community and Hungary and the Czech Republic and the Slovak Republic.

4. The movement certificate EUR.1 shall be issued by the customs authorities of a Member State of the European Community if the goods to be exported can be considered as products originating in the Community within the meaning of Article 1 (1) or as products originating in Hungary, the Czech Republic or in the Slovak Republic within the meaning of Article 3 (2) of this Protocol. The movement certificate EUR.1 shall be issued by the customs authorities of Poland if the goods to be exported can be considered as products originating in Poland within the meaning of Article 1 (2) or as products originating in Hungary, the Czech Republic or the Slovak Republic within the meaning of Article 3 (2) of this Protocol.

5. Where the cumulation provisions of Articles 2 or 3 are applied, the customs authorities of the Member States of the Community or of Poland may issue movement

certificates EUR.1 under the conditions laid down in this Protocol if the goods to be exported can be considered as originating products within the meaning of this Protocol and provided that the goods covered by the movement certificate EUR.1 are in the Community or in Poland.

In these cases movement certificates EUR.1 shall be issued subject to the presentation of the proof of origin previously issued or made out. This proof of origin must be kept for at least two years by the customs authorities of the exporting State.

6. Since the movement certificate EUR.1 constitutes the documentary evidence for the application of the preferential tariff arrangements laid down in the Agreement, it shall be the responsibility of the customs authorities of the exporting country to take any steps necessary to verify the origin of the goods and to check the other statements on the certificate.

7. For the purpose of verifying whether the conditions for issuing EUR.1 certificates have been met, the customs authorities shall have the right to call for any documentary evidence or to carry out any check which they consider appropriate.

8. It shall be the responsibility of the customs authorities of the exporting State to ensure that the forms referred to in paragraph 1 are duly completed. In particular, they shall check whether the space reserved for the description of the products has been completed in such a manner as to exclude all possibility of fraudulent additions. To this end, the description of the products must be indicated without leaving any blank lines. Where the space is not completely filled a horizontal line must be drawn below the last line of the description, the empty space being crossed through.

9. The date of issue of the movement certificate must be indicated in the part of the certificate reserved for the customs authorities.

10. A movement certificate EUR.1 shall be issued by the customs authorities of the exporting State when the products to which it relates are exported. It shall be made available to the exporter as soon as actual export has been effected or ensured.

Article 13

Long-term certificates EUR.1

1. Notwithstanding the provisions of Article 12 (10), a movement certificate EUR.1 may be issued by the customs authorities of the exporting State when only part of the products to which it relates is exported, in the case of a certificate covering a series of exportations of the same products from the same exporter to the same importer over a maximum period of one year from the date of issue, hereinafter referred to as an 'LT certificate'.

2. LT certificate shall be issued, in accordance with the provisions of Article 12, at the discretion of the customs authorities of the exporting State and according to their own judgment of the need for this procedure, only where the originating status of the goods to be exported is expected to remain unchanged for the period of validity of the LT certificate. If any goods are no longer covered by the LT certificate, the exporter shall immediately inform the customs authorities who issued the certificate.

3. Where the LT certificate procedure applies, the customs authorities of the exporting State may prescribe the use of EUR.1 certificates bearing a distinctive sign by which they may be identified.

4. Box 11 'Customs endorsement' of the EUR.1 certificate must be endorsed as usual by the customs authorities of the exporting State.

5. One of the following phrases shall be entered in box 7 of the EUR.1 certificate:

'CERTIFICADO LT VÁLIDO HASTA EL ...'

'LT-CERTIFIKAT GYLDIGT INDIL ...'

'LT-CERTIFICATE GÜLTIG BIS ...'

'ΠΙΣΤΟΠΟΙΗΤΙΚΟ LT ΙΣΧΥΟΝ ΜΕΧΡΙ ...'

'LT-CERTIFICATE VALID UNTIL ...'

'CERTIFICAT LT VALABLE JUSQU'AU ...'

'CERTIFICATO LT VALIDO FINO AL ...'

'LT-CERTIFICAAT GELDIG TOT EN MET ...'

'CERTIFICADO LT VÁLIDO ATÉ ...'

'LT-TODISTUS VOIMASSA ... ASTI'

'LT-CERTIFIKAT GILTIGT TILL ...'

'LT-SWIADECTWO WAZNE DO ...'

'LT-BIZONYITVANY ÉRVÉNYES ... IG'

'LT-OSVĚDČENÍ PLATNÉ DO ...'

'LT-OSVĚDČENIE PLATNÉ DO ...'

(date indicated in Arabic numerals).

6. Reference is not required in box 8 and box 9 of the LT certificate to the marks and numbers and number and kind of packages and the gross weight (kg) or other measures (litres, m³, etc.). Box 8 must, however, contain a description and designation of the goods which is sufficiently precise to allow for their identification.

7. Notwithstanding Article 18, the LT certificate must be submitted to the customs office of import at or before the first importation of any goods to which it relates. When the importer carries out the customs clearance at several customs offices in the State of importation, the customs authorities may require him to produce a copy of the LT certificate to all of those offices.

8. Where an LT certificate has been submitted to the customs authorities, the evidence of the originating status of the imported goods shall, during the validity of the LT certificate, be given by invoices which satisfy the following conditions:

- (a) when an invoice includes both originating goods and non-originating goods, the exporter shall distinguish clearly between these two categories;
- (b) the exporter shall state on each invoice the number of the LT certificate which covers the goods and the date of expiry of the certificate and the names of the country or countries in which the goods originate.

The statement on the invoice, made by the exporter, of the number of the LT certificate with the indication of the country of origin shall constitute a declaration that the goods fulfil the conditions laid down in this Protocol for the acquisition of preferential origin status.

The customs authorities of the exporting State may require that the entries which, under the above provisions, must appear on the invoice, be supported by the manuscript signature followed by the name of the signatory in clear script;

- (c) the description and the designation of the goods in the invoice shall be in sufficient detail to show clearly that the goods are also listed on the LT certificate to which the invoice refers;
- (d) the invoices can be made out only for the goods exported during the period of validity of the relevant LT certificate. They may, however, be produced at the customs office of importation within four months of their being made out by the exporter.

9. In the framework of the LT certificate procedure, invoices which satisfy the conditions of this Article may be made out and/or transmitted using telecommunications or electronic data-processing methods. Such invoices shall be accepted by the customs authorities of the importing State as evidence of the originating status of the goods imported in accordance with the procedures laid down by the customs authorities there.

10. Should the customs authorities of the exporting State identify that a certificate and/or invoice issued under the provisions of this Article is invalid in relation to any goods supplied, they shall immediately notify the customs authorities of the importing State of the facts.

11. The provisions of this Article shall not prejudice application of the rules of the Community, the Member States and Poland on customs formalities and the use of customs documents.

Article 14

Issue of EUR.1 retrospectively

1. In exceptional circumstances a movement certificate EUR.1 may also be issued after export of the products to which it relates if it was not issued at the time of export because of errors or involuntary omissions or special circumstances.

2. For the implementation of paragraph 1, the exporter must in the written application:

- indicate the place and date of export of the products to which the certificate relates,
- certify that no movement certificate EUR.1 was issued at the time of export of the products in question, and state the reasons.

3. The customs authorities may issue a movement certificate EUR.1 retrospectively only after verifying that the information supplied in the exporter's application agrees with that in the corresponding file.

Certificates issued retrospectively must be endorsed with one of the following phrases:

- 'NACHTRÄGLICH AUSGESTELLT', 'DÉLIVRÉ A POSTERIORI', 'RILASCIATO A POSTERIORI', 'AFGEGEVEN A POSTERIORI', 'ISSUED RETROSPECTIVELY', 'UDSTEDT EFTERFØLGENDE', 'ΕΚΔΟΘΕΝ ΕΚ ΤΩΝ ΥΣΤΕΡΩΝ', 'EXPEDIDO A POSTERIORI', 'EMITIDO A POSTERIORI', 'AN-NETTU JÄLKIKÄTEEN', 'UTFÄRDAT I EFTERHAND', 'WYSTAWIONE RETROSPEKTYWNIÉ', 'KIADVA VISSZAMENŐLEGES HATÁLLYAL', 'VYSTAVENO DODATEČNÉ', 'VYSTAVENÉ DODATOČNE'.

4. The endorsement referred to in paragraph 3 shall be inserted in the 'Remarks' box on the movement certificate EUR.1.

Article 15

Issue of a duplicate EUR.1

1. In the event of the theft, loss or destruction of a movement certificate EUR.1, the exporter may apply in writing to the customs authorities which issued it for a duplicate made out on the basis of the export documents in their possession.

2. The duplicate issued in this way must be endorsed with one of the following words:

- 'DUPLIKAT', 'DUPLICATA', 'DUPLICATO', 'DUPLICAT', 'DUPLICATE', 'ΑΝΤΙΓΡΑΦΟ', 'DUPLICADO', 'SEGUNDA VIA', 'KAKSOISKAPPALE', 'DUPLIKAT', 'DUPLIKÁT', 'MÁSOLAT'.

3. The endorsement referred to in paragraph 2 shall be inserted in the 'Remarks' box on the movement certificate EUR.1.

4. The duplicate, which must bear the date of issue of the original movement certificate EUR.1, shall take effect as from that date.

Article 16

Simplified procedure for the issue of certificates

1. By way of derogation from Articles 12, 14 and 15 of this Protocol, a simplified procedure for the issue of EUR.1 movement certificates can be used in accordance with the following provisions.

2. The customs authorities in the exporting State may authorize any exporter, hereinafter referred to as 'approved exporter', making frequent shipments for which EUR.1 movement certificates may be issued and who offers, to the satisfaction of the competent authorities, all guarantees necessary to verify the originating status of the products, not to submit to the customs office of the exporting State at the time of export either the goods or the application for an EUR.1 certificate relating to those goods, for the purpose of obtaining an EUR.1 certificate under the conditions laid down in Article 12 of this Protocol.

3. The authorization referred to in paragraph 2 shall stipulate, at the choice of the competent authorities, that box No 11 'Customs endorsement' of the EUR.1 movement certificate must either:

(a) be endorsed beforehand with the stamp of the competent customs office of the exporting State and the signature, which may be a facsimile, of an official of that office;

or

(b) be endorsed by the approved exporter with a special stamp which has been approved by the customs authorities of the exporting State and corresponds to the specimen given in Annex V of this Protocol. Such stamp may be pre-printed on the forms.

4. In the cases referred to in paragraph 3 (a), one of the following phrases shall be entered in box No 7 'Remarks' of the EUR.1 movement certificate:

'PROCEDIMIENTO SIMPLIFICADO', 'FORENKLET PROCEDURE', 'VEREINFACHTES VERFAHREN', 'ΑΠΛΟΥΣΤΕΥΜΕΝΗ ΔΙΑΔΙΚΑΣΙΑ', 'SIMPLIFIED PROCEDURE', 'PROCÉDURE SIMPLIFIÉE', 'PROCEDURA SEMPLIFICATA', 'VEREENVOUDIGDE PROCEDURE', 'PROCEDIMENTO SIMPLIFICADO', 'YKSINKERTAISTETTU MENETTELY', 'FÖRENKLAD PROCEDUR', 'UPROSZCZONA PROCEDURA', 'EGYSZERUSÍTETT ELJÁRÁS', 'ZJEDNODUŠENÉ ŘÍZENÍ', 'ZJEDNODUŠENÉ KONANIE'.

5. Box No 11 'Customs endorsement' of the EUR.1 certificate shall be completed if necessary by the approved exporter.

6. The approved exporter shall, if necessary, indicate in box No 13 'Request for verification' of the EUR.1 certificate the name and address of the authority competent to verify such certificate.

7. Where the simplified procedure is applied, the customs authorities of the exporting State may prescribe the use of EUR.1 certificates bearing a distinctive sign by which they may be identified.

8. In the authorization referred to in paragraph 2 the competent authorities shall specify in particular:

(a) the conditions under which the applications for EUR.1 certificates are to be made;

(b) the conditions under which these applications are to be kept for at least two years;

(c) in the cases referred to in paragraph 3 (b) the authority competent to carry out the subsequent verification referred to in Article 28 of this Protocol.

9. The customs authorities of the exporting State may declare certain categories of goods ineligible for the special treatment provided for in paragraph 2.

10. The customs authorities shall refuse the authorization referred to in paragraph 2 to exporters who do not offer all the guarantees which they consider necessary. The competent authorities may withdraw the authorization at any time. They must do so where the approved exporter no longer satisfies the conditions or no longer offers these guarantees.

11. The approved exporter may be required to inform the competent authorities, in accordance with the rules which they lay down, of the goods to be dispatched by him, so that such authorities may make any verification they think necessary before the departure of the goods.

12. The customs authorities of the exporting State may carry out any check on approved exporters which they consider necessary. Such exporters must allow this to be done.

13. The provisions of this Article shall be without prejudice to the application of the rules of the Community, the Member States and Poland, concerning customs formalities and the use of customs documents.

Article 17

Replacement of certificates

1. It shall at any time be possible to replace one or more movement certificates EUR.1 by one or more other

certificates provided that this is done by the customs office or other competent authorities responsible for controlling the goods.

2. When products originating in the Community, Poland, Hungary, the Czech Republic or the Slovak Republic, and imported into a free zone under cover of an EUR.1 certificate undergo treatment or processing, the authorities concerned must issue a new EUR.1 certificate at the exporter's request if the treatment or processing undergone is in conformity with the provisions of this Protocol.

3. The replacement certificate shall be regarded as a definite movement EUR.1 certificate for the purposes of the application of this Protocol, including the provisions of this Article.

4. The replacement certificate shall be issued on the basis of a written request from the re-exporter, after the authorities concerned have verified the information supplied in the applicant's request. The date and serial number of the original movement certificate EUR.1 shall be given in box 7.

Article 18

Validity of certificates

1. A movement certificate EUR.1 must be submitted, within 4 months of the date of issue by the customs authorities of the exporting State, to the customs office of the importing State where the products are entered.

2. Movement certificates EUR.1 which are submitted to the customs authorities of the importing State after the final date of presentation specified in paragraph 1 may be accepted for the purpose of applying preferential treatment, where the failure to submit the certificates by the final date set is due to reasons of *force majeure* or exceptional circumstances.

3. In other cases of belated presentation, the customs authorities of the importing State may accept the certificates where the products have been submitted to them before the said final date.

Article 19

Exhibitions

1. Products sent from the Community or Poland for exhibition in a country other than Poland or a Member State of the Community and sold after the exhibition for importation into Poland or the Community shall benefit on importation from the provisions of the Agreement on condition that the products meet the requirements of this Protocol entitling them to be recognized as originating in

the Community or Poland provided that it is shown to the satisfaction of the customs authorities that:

- (a) an exporter has consigned these products from the Community or Poland to the country in which the exhibition is held and has exhibited them there;
- (b) the products have been sold or otherwise disposed of by that exporter to someone in the Community or Poland;
- (c) the products have been consigned during the exhibition or immediately thereafter to the Community or Poland in the state in which they were sent for exhibition;
- (d) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition.

2. A movement certificate EUR.1 must be produced to the customs authorities in the normal manner. The name and address of the exhibition must be indicated thereon. Where necessary, additional documentary evidence of the nature of the products and the conditions under which they have been exhibited may be required.

3. Paragraph 1 shall apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display which is not organized for private purposes in shops or business premises with a view to the sale of foreign products, and during which the products remain under customs control.

Article 20

Submission of certificates

Movement certificates EUR.1 shall be submitted to the customs authorities in the importing State in accordance with the procedures laid down by that State. The said authorities may require a translation of a certificate. They may also require the import declaration to be accompanied by a statement from the importer to the effect that the products meet the conditions required for the implementation of the Agreement.

Article 21

Importation by instalments

Without prejudice to Article 5 (3) of this Protocol, where, at the request of the person declaring the goods at the customs, a dismantled or non-assembled article falling within Chapter 84 or 85 of the Harmonized System is imported by instalments on the conditions laid down by the competent authorities, it shall be considered to be a single article and a movement certificate may be submitted for the whole article upon import of the first instalment.

Article 22

Preservation of certificates

Movement certificates EUR.1 shall be preserved by the customs authorities of the importing State in accordance with the rules in force in that State.

Article 23

Form EUR.2

1. Notwithstanding Article 11, the evidence of originating status, within the meaning of this Protocol, for consignments containing only originating products and whose value does not exceed ECU 5 110 per consignment, may be given by a form EUR.2, a specimen of which appears in Annex IV to this Protocol.

2. The form EUR.2 shall be completed and signed by the exporter or, under the exporter's responsibility, by his authorized representative in accordance with this Protocol.

3. A form EUR.2 shall be completed for each consignment.

4. The exporter who has issued the form EUR.2 shall submit at the request of the customs authorities of the exporting State all supporting documents concerning the use of this form.

5. Articles 18, 20 and 22 shall apply *mutatis mutandis* to forms EUR.2.

Article 24

Discrepancies

The discovery of slight discrepancies between the statements made in the movement certificate EUR.1 or in the form EUR.2 and those made in the documents submitted to the customs office for the purpose of carrying out the formalities for importing the products shall not *ipso facto* render the document null and void if it is duly established that it corresponds to the products submitted.

Article 25

Exemptions from proof of origin

1. Products sent as small packages from private persons to private persons or forming part of travellers' personal luggage shall be admitted as originating products without requiring the production of a movement certificate EUR.1 or the completion of form EUR.2, provided that such products are not imported by way of trade and have been declared as meeting the conditions required for the application of the agreement, and where there is no doubt as to the veracity of such declaration.

2. Imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is in view.

Furthermore, the total value of these products must not exceed ECU 365 in the case of small packages or ECU 1 025 in the case of the contents of travellers' personal luggage.

Article 26

Amounts expressed in ecu

1. Amounts in the national currency of the exporting State equivalent to the amounts expressed in ecu shall be fixed by the exporting State and communicated to the other parties to this Agreement and to the Agreements between the Community and Hungary and the Czech Republic and the Slovak Republic. When the amounts are more than the corresponding amounts fixed by the importing State, the latter shall accept them if the goods are invoiced in the currency of the exporting State.

If the goods are invoiced in the currency of another Member State of the Community or in that of Poland, Hungary, the Czech Republic or the Slovak Republic, the importing State shall recognize the amount notified by the country concerned.

2. Up to and including 30 April 1993, the ecu, to be used in any given national currency shall be the equivalent in that national currency of the ecu as at 3 October 1990. For each successive period of two years, it shall be the equivalent in that national currency of the ecu as at the first working day in October in the year immediately preceding that two-year period.

TITLE III

ARRANGEMENTS FOR ADMINISTRATIVE COOPERATION

Article 27

Communication of stamps and addresses

The customs authorities of the Member States and of Poland shall provide each other, through the Commission of the European Communities, with specimen impressions of stamps used in their customs offices for the issue of EUR.1 certificates and with the addresses of the customs authorities responsible for issuing movement certificates EUR.1 and for verifying those certificates and forms EUR.2.

*Article 28***Verification of movement certificates EUR.1 and of forms EUR.2**

1. Subsequent verification of movement certificates EUR.1 and of forms EUR.2 shall be carried out at random or whenever the customs authorities of the importing State have reasonable doubts as to the authenticity of the document or the accuracy of the information regarding the true origin of the products in question.

2. For the purpose of the subsequent verification of movement certificates EUR.1, the customs authorities of the exporting State must keep copies of the certificates, as well as any export documents referring to them, for at least two years.

3. In order to ensure the proper application of this Protocol, Poland and the Member States of the Community shall assist each other, through their respective customs administrations, in checking the authenticity of movement certificates EUR.1, including those issued under Article 12 (5), and the forms EUR.2 and the accuracy of the information concerning the actual origin of the products concerned.

4. For the purpose of implementing paragraph 1, the customs authorities of the importing State shall return the movement certificate EUR.1 or form EUR.2, or a photocopy thereof, to the customs authorities of the exporting State, giving, where appropriate, the reasons of form or substance for an enquiry.

The relevant commercial documents or a copy thereof, shall be attached to the certificate EUR.1 or form EUR.2 and the customs authorities shall forward any information that has been obtained suggesting that the particulars given on the said certificate or the said form are inaccurate.

5. If the customs authorities of the importing State decide to suspend execution of the provisions of the agreement while awaiting the results of the verification, they shall offer to release the products to the importer subject to any precautionary measures judged necessary.

6. The customs authorities of the importing State shall be informed of the results of the verification as soon as possible. These results must be such as to make it possible to determine whether the disputed movement certificate EUR.1 or form EUR.2 apply to the products in question and whether those products can, in fact, qualify for the application of the preferential arrangements.

If in cases of reasonable doubt there is no reply within 10 months of the date of the verification request, or if the reply does not contain sufficient information to determine the authenticity of the document in question or the real origin of the products, the requesting authorities

shall refuse, except in the case of *force majeure* or exceptional circumstances, any benefit from the preferential treatment laid down in the Agreement concerned.

7. Disputes which cannot be settled between the customs authorities of the importing State and those of the exporting State, or which raise a question as to the interpretation of this Protocol, shall be submitted to the Customs Cooperation Committee.

8. In all cases the settlement of disputes between the importer and the customs authorities of the importing State shall be under the legislation of the said State.

9. Where the verification procedure or any other available information appears to indicate that the provisions of this Protocol are being contravened, the Community or Poland shall on its own initiative or at the request of the other party carry out appropriate enquiries or arrange for such enquiries to be carried out with due urgency to identify and prevent such contraventions, and for this purpose the Community or Poland may invite the participation of the other party in these enquiries.

10. Where the verification procedure or any other available information appears to indicate that the provisions of this Protocol are being contravened, the products would be accepted as originating products under this Protocol only after completion of such aspects of administrative cooperation set down in this Protocol which may have been activated, including in particular the verification procedure.

Likewise, products would be refused treatment as originating products only after the completion of the verification procedure.

*Article 29***Penalties**

Penalties shall be imposed on any person who draws up, or causes to be drawn up, a document which contains incorrect particulars for the purpose of obtaining preferential treatment for products.

*Article 30***Free zones**

The Member States and Poland shall take all necessary steps to ensure that products traded under cover of a movement certificate EUR.1, which in the course of transport use a free zone situated in their territory, are not substituted by other goods and that they do not undergo handling other than normal operations designed to prevent their deterioration.

TITLE IV

CEUTA AND MELILLA

Article 31

Application of the Protocol

1. The term 'Community' used in this Protocol does not cover Ceuta or Melilla. The term 'products originating in the Community' does not cover products originating in these zones.

2. This Protocol shall apply *mutatis mutandis* to products originating in Ceuta and Melilla, subject to particular conditions set out in Article 32.

Article 32

Special conditions

1. The following provisions shall apply instead of Article 1 and references to that Article shall apply *mutatis mutandis* to this Article.

2. Providing they have been transported directly in accordance with the provisions of Article 9, the following shall be considered as:

1. products originating in Ceuta and Melilla:

- (a) products wholly obtained in Ceuta and Melilla;
- (b) products obtained in Ceuta and Melilla incorporating materials which have not been wholly obtained there, provided that:
 - (i) such materials have undergone sufficient working or processing within the meaning of Article 5 of this Protocol; or that
 - (ii) such materials originate in Poland or the Community within the meaning of this Protocol provided, however, that they have undergone working or processing going beyond that referred to in Article 5 (3) of this Protocol;

2. products originating in Poland:

- (a) products wholly obtained in Poland;
- (b) products obtained in Poland incorporating materials which have not been wholly obtained there, provided that:
 - (i) such materials have undergone sufficient working or processing within the meaning of Article 5 of this Protocol; or that
 - (ii) such materials originate in Ceuta and Melilla or the Community within the meaning of this Protocol provided, however, that they

have undergone working or processing going beyond that referred to in Article 5 (3) of this Protocol.

3. Ceuta and Melilla shall be considered as a single territory.

4. The exporter or his authorized representative shall enter 'Poland' and 'Ceuta and Melilla' in box 2 of movement certificates EUR.1. In addition, in the case of products originating in Ceuta and Melilla, this shall be indicated in box 4 of movement certificates EUR.1.

5. The Spanish customs authorities shall be responsible for the application of this Protocol in Ceuta and Melilla.

TITLE V

FINAL PROVISIONS

Article 33

Amendments to the Protocol

The Association Council shall examine at two-yearly intervals, or whenever Poland or the Community so request, the application of the provisions of this Protocol, with a view to making any necessary amendments or adaptations.

Such examination shall take into account in particular the participation of the Contracting Parties in free trade zones or customs unions with third countries.

Article 34

Customs Cooperation Committee

1. A Customs Cooperation Committee shall be set up, charged with carrying out administrative cooperation with a view to the correct and uniform application of this Protocol and with carrying out any other task in the customs field which may be entrusted to it.

2. The Committee shall be composed, on the one hand, of experts of the Member States and of officials of the departments of the Commission of the European Communities who are responsible for customs questions and, on the other hand, of experts nominated by Poland.

Article 35

Petroleum products

The products set out in Annex VI shall be temporarily excluded from the scope of this Protocol. Nevertheless, the arrangements regarding administrative cooperation shall apply, *mutatis mutandis*, to these products.

*Article 36***Annexes**

The Annexes to this Protocol shall form an integral part thereof.

*Article 37***Implementation of the Protocol**

The Community and Poland shall each take the steps necessary to implement this Protocol.

*Article 38***Arrangements with Hungary and the Czech Republic and the Slovak Republic**

The Contracting Parties shall take any measures necessary for the conclusion of arrangements with

Hungary and the Czech Republic and the Slovak Republic enabling this Protocol to be applied. The Contracting Parties shall notify each other of measures taken to this effect.

*Article 39***Goods in transit or storage**

The provisions of the Agreement may be applied to goods which comply with the provisions of this Protocol and which on the date of entry into force of the Agreement are either in transit or are in the Community or in Poland, in temporary storage in bonded warehouses or in free zones, subject to the submission to the customs authorities of the importing State, within four months of that date, of a certificate EUR.1 endorsed retrospectively by the competent authorities of the exporting State together with the documents showing that the goods have been transported directly.

ANNEX I

Notes

Foreword

These notes shall apply, where appropriate, to all manufactured products using non-originating materials, even if they are not subject to specific conditions contained in the list in Annex II but are subject instead to the change of heading rule set out in Article 5 (1).

Note 1

- 1.1. The first two columns in the list describe the product obtained. The first column gives the heading number or chapter number used in the Harmonized System and the second column gives the description of goods used in that system for that heading or chapter. For each entry in the first two columns a rule is specified in column 3. Where, in some cases, the entry in the first column is preceded by an 'ex', this signifies that the rule in column 3 applies only to the part of that heading or chapter as described in column 2.
- 1.2. Where several heading numbers are grouped together in column 1 or a chapter number is given and the description of products in column 2 is therefore given in general terms, the adjacent rule in column 3 applies to all products which, under the Harmonized System, are classified in headings of the chapter or in any of the headings grouped together in column 1.
- 1.3. Where there are different rules in the list applying to different products within a heading, each indent contains the description of that part of the heading covered by the adjacent rule in column 3.

Note 2

- 2.1. The term 'manufacture' covers any kind of working or processing including 'assembly' or specific operations. However, see Note 3.5 below.
- 2.2. The term 'material' covers any ingredient, raw material, component or part, etc., used in the manufacture of the product.
- 2.3. The term 'product' refers to the product being manufactured, even if it is intended for later use in another manufacturing operation.
- 2.4. The term 'goods' covers both materials and products.

Note 3

- 3.1. In the case of any heading not in the list or any part of a heading that is not in the list, the 'change of heading' rule set out in Article 5 (1) applies. If a 'change of heading' condition applies to any entry in the list, then it is contained in the rule in column 3.
- 3.2. The working or processing required by a rule in column 3 has to be carried out only in relation to the non-originating materials used. The restrictions contained in a rule in column 3 likewise apply only to the non-originating materials used.
- 3.3. Where a rule states that 'materials of any heading' may be used, materials of the same heading as the product may also be used, subject, however, to any specific limitations which may also be contained in the rule. However, the expression 'manufacture from materials of any heading, including other materials of heading No ...' means that only materials classified in the same heading as the product of a different description than that of the product as given in column 2 of the list may be used.
- 3.4. If a product made from non-originating materials which has acquired originating status during manufacture by virtue of the change of heading rule or its own list rule is used as a material in the process of manufacture of another product, then the rule applicable to the product in which it is incorporated does not apply to it.

For example:

An engine of heading No 8407, for which the rule states that the value of the non-originating materials which may be incorporated may not exceed 40 % of the ex-works price, is made from 'other alloy steel roughly shaped by forging' of heading No 7224.

If this forging has been forged in the country concerned from a non-originating ingot then the forging has already acquired origin by virtue of the rule for heading No ex 7224 in the list. It can then count as originating in the value calculation for the engine regardless of whether it was produced in the same factory or another. The value of the non-originating ingot is thus not taken into account when adding up the value of the non-originating materials used.

- 3.5. Even if the change of heading rule or the other rules contained in the list are satisfied, a product shall not acquire originating status if the processing carried out, taken as a whole, is insufficient within the meaning of Article 5 (3).
- 3.6. The unit of qualification for the application of the origin rules shall be the particular product which is considered as the basic unit when determining classification using the nomenclature of the Harmonized System. In the case of sets of products which are classified by virtue of General Rule 3 for the interpretation of the Harmonized System, the unit of qualification shall be determined in respect of each item in the set: this provision is equally applicable to sets of headings Nos 6308, 8206 and 9605.

Accordingly, it follows that:

- when a product composed of a group or assembly of articles is classified under the terms of the Harmonized System in a single heading, the whole constitutes the unit of qualification,
- when a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each product must be taken individually when applying the origin rules,
- where, under General Rule 5 of the Harmonized System, packing is included with the product for classification purposes, it shall be included for the purposes of determining origin.

Note 4

- 4.1. The rule in the list represents the minimum amount of working or processing required and the carrying out of more working or processing also confers originating status; conversely, the carrying out of less working or processing cannot confer origin. Thus if a rule says that non-originating material at a certain level of manufacture may be used, the use of such material at an earlier stage of manufacture is allowed and the use of such material at a later stage is not.
- 4.2. When a rule in the list specifies that a product may be manufactured from more than one material, this means that any one or more materials may be used. It does not require that all be used.

For example:

The rule for fabrics says that natural fibres may be used and that chemical materials, among other materials, may also be used. This does not mean that both have to be used; one can use one or the other or both.

If, however, a restriction applies to one material and other restrictions apply to other materials in the same rule, then the restrictions only apply to the materials actually used.

For example:

The rule for sewing machines specifies that both the thread tension mechanism used and the zigzag mechanism used must originate; these two restrictions only apply if the mechanisms concerned are actually incorporated into the sewing machine.

- 4.3. When a rule in the list specifies that a product must be manufactured from a particular material, the condition obviously does not prevent the use of other materials which, because of their inherent nature, cannot satisfy the rule.

For example:

The rule for heading No 1904 which specifically excludes the use of cereals or their derivatives does not prevent the use of mineral salts, chemicals and other additives which are not produced from cereals.

For example:

In the case of an article made from non-woven materials, if the use of only non-originating yarn is allowed for this class of article, it is not possible to start from non-woven cloth — even if non-woven

cloths cannot normally be made from yarn. In such cases, the starting material would normally be at the stage before yarn — that is the fibre stage.

See also Note 7.3 in relation to textiles.

- 4.4. If in a rule in the list two or more percentages are given for the maximum value of non-originating materials that can be used, then these percentages may not be added together. The maximum value of all the non-originating materials used may never exceed the highest of the percentages given. Furthermore, the individual percentages must not be exceeded in relation to the particular materials they apply to.

Note 5

- 5.1. The term 'natural fibres' is used in the list to refer to fibres other than artificial or synthetic fibres and is restricted to the stages before spinning takes place, including waste, and, unless otherwise specified, the term 'natural fibres' includes fibres that have been carded, combed or otherwise processed but not spun.
- 5.2. The term 'natural fibres' includes horsehair of heading No 0503, silk of heading Nos 5002 and 5003 as well as the wool fibres, fine or coarse animal hair of headings Nos 5101 to 5105, the cotton fibres of heading Nos 5201 to 5203 and the other vegetable fibres of heading Nos 5301 to 5305.
- 5.3. The terms 'textile pulp', 'chemical materials' and 'paper-making materials' are used in the list to describe the materials not classified in Chapters 50 to 63, which can be used to manufacture artificial, synthetic or paper fibres or yarns.
- 5.4. The term 'man-made staple fibres' is used in the list to refer to synthetic or artificial filament tow, staple fibres or waste, of heading Nos 5501 to 5507.

Note 6

- 6.1. In the case of the products classified within those headings in the list to which a reference is made to this Note, the conditions set out in column 3 of the list shall not be applied to any basic textile materials used in their manufacture which, taken together, represent 10% or less of the total weight of all the basic textile materials used (but see also Notes 6.3 and 6.4 below).
- 6.2. However, this tolerance may only be applied to mixed products which have been made from two or more basic textile materials.

The following are the basic textile materials:

- silk,
- wool,
- coarse animal hair,
- fine animal hair,
- horsehair,
- cotton,
- paper-making materials and paper,
- flax,
- true hemp,
- jute and other textile bast fibres,
- sisal and other textile fibres of the genus *Agave*,
- coconut, abaca, ramie and other vegetable textile fibres,
- synthetic man-made filaments,
- artificial man-made filaments,
- synthetic man-made staple fibres,
- artificial man-made staple fibres.

For example:

A yarn of heading No 5205 made from cotton fibres of heading No 5203 and synthetic staple fibres of heading No 5506 is a mixed yarn. Therefore, non-originating synthetic staple fibres that do not satisfy the origin rules (which require manufacture from chemical materials or textile pulp) may be used up to a weight of 10% of the yarn.

For example:

A woollen fabric of heading No 5112 made from woollen yarn of heading No 5107 and synthetic yarn of staple fibres of heading No 5509 is a mixed fabric. Therefore synthetic yarn which does not satisfy the origin rules (which require manufacture from chemical materials or textile pulp) or woollen yarn that does not satisfy the origin rules (which require manufacture from natural fibres, not carded or combed or otherwise prepared for spinning) or a combination of the two may be used up to a weight of 10 % of the fabric.

For example:

Tufted textile fabric of heading No 5802 made from cotton yarn of heading No 5205 and cotton fabric of heading No 5210 is only a mixed product if the cotton fabric is itself a mixed fabric being made from yarns classified in two separate headings or if the cotton yarns used are themselves mixtures.

For example:

If the tufted textile fabric concerned had been made from cotton yarn of heading No 5205 and synthetic fabric of heading No 5407, then, obviously, the yarns used are two separate basic textile materials and the tufted textile fabric is accordingly a mixed product.

For example:

A carpet with tufts made from both artificial yarns and cotton yarns and with a jute backing is a mixed product because three basic textile materials are used. Thus, any non-originating materials that are at a later stage of manufacture than the rule allows may be used, provided their total weight taken together does not exceed 10 % of the weight of the textile materials in the carpet. Thus, both the jute backing and/or the artificial yarns could be imported at that stage of manufacture, provided the weight conditions are met.

- 6.3. In the case of fabrics incorporating 'yarn made of polyurethane segmented with flexible segments of polyether whether or not gimped' this tolerance is 20 % in respect of this yarn.
- 6.4. In the case of fabrics incorporating strip consisting of a core of aluminium foil or of a core of plastic film whether or not coated with aluminium powder, of a width not exceeding 5 mm, sandwiched by means of an adhesive between two films of plastic film, this tolerance is 30 % in respect of this strip.

Note 7

- 7.1. In the case of those textile products which are marked in the list by a footnote referring to this note, textile materials with the exception of linings and interlinings which do not satisfy the rule set out in the list in column 3 for the made up products concerned may be used provided that they are classified in a heading other than that of the product and that their value does not exceed 8 % of the ex-works price of the product.
- 7.2. Any non-textile trimmings and accessories or other materials used which contain textiles do not have to satisfy the conditions set out in column 3 even though they fall outside the scope of Note 4.3.
- 7.3. In accordance with Note 4.3, any non-originating non-textile trimmings and accessories or other product, which do not contain any textiles, may, anyway, be used freely where they cannot be made from the materials listed in column 3.

For example:

If a rule in the list says that for a particular textile item, such as a blouse, yarn must be used, this does not prevent the use of metal items, such as buttons, because they cannot be made from textile materials.

- 7.4. Where a percentage rule applies, the value of trimmings and accessories must be taken into account when calculating the value of the non-originating materials incorporated.
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