This document presents further rectifications proposed by the Secretariat to the 15 December 1993 English-language version of the Final Act, taking into account proposals received from delegations. The rectifications in this text have been presented as computer-generated "redline-strikeout" texts, in which any text added is shaded, and any text deleted is struck out.

Certain of the rectifications proposed herein result from decisions made on a horizontal basis across all texts, such as incorporation of MTN/FA/Corr. 1, adopted on 15 December 1993, which provided for a change of all Final Act references to "Multilateral Trade Organization" and "MTO" to "World Trade Organization" and "WTO". A list of points of a horizontal nature was included in MTN/FA/Corr. 2 of 18 February 1994, and applies to the present corrigendum as well. Rectifications which simply implement these horizontal points, or correct typographical errors, have not necessarily been specially explained. Explanations of other rectifications appear in notes following each text.

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1. Agreement on Anti-Dumping Measures

AGREEMENT ON ANTI-DUMPING MEASURES
IMPLEMENTATION OF ARTICLE VI OF GATT 1994

PART I

Article 1

Principles

An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.

Article 2

Determination of Dumping

2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and other general costs and for profits.

2.2.1 Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus

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1 The term "initiated" as used hereinafter means the procedural action by which a Member formally commences an investigation as provided in Article 5.

2 Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing country Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.
arômaustrative selling, and general and administrative costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

2.2.1.1 For the purpose of paragraph 2 of this Article, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.

2.2.2 For the purpose of paragraph 2 of this Article, the amounts for administrative, selling and any other general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

(i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;

3When in this Agreement the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate senior level.

4The extended period of time should normally be one year but shall in no case be less than six months.

5Sales below per unit costs are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit cost costs, or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.

6The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities during the investigation.
(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;

(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3 of Article 2, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

2.4.1 When the price comparison under this paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

2.4.2 Subject to the provisions governing fair comparison in paragraph 4 of this Article, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export

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7 It is understood that some of the above factors may overlap, and authorities shall ensure that they do not duplicate adjustments that have been already made under this provision.

8 Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.
transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

2.5 In the case where products are not imported directly from the country of origin but are exported to the country of importation importing Member from an intermediate country, the price at which the products are sold from the country of export to the country of importation importing Member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

2.6 Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.

Article 3

Determination of Injury

3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3.3 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that (1) the margin of dumping established in relation to the imports from each country is more than de minimis as defined in paragraph 8 of Article 5 and that the volume

*Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.
of imports from each country is not negligible and (2) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

3.4 The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4 of this Article, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

3.6 The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased imports;

(ii) sufficient freely disposable, or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing country's Member's market, taking into account the availability of other export markets to absorb any additional exports;

(iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further

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10One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased imports of the product at dumped prices.
imports; and

(iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

3.8 With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

Article 4

Definition of Domestic Industry

4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that

(i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;

(ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

4.2 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e., a market as defined in paragraph 1(ii), anti-dumping duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing country Member does not permit the levying of anti-dumping duties on such a basis, the importing Member may levy the anti-dumping duties without limitation only if (1) the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give

11For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

12As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.
assurances pursuant to Article 8 of this Agreement, and adequate assurances in this regard have not been promptly given, and (2) such duties cannot be levied only on products of specific producers which supply the area in question.

4.3 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 1 above.

4.4 The provisions of paragraph 6 of Article 3 shall be applicable to this Article.

Article 5

Initiation and Subsequent Investigation

5.1 Except as provided for in paragraph 6 of Article 5, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.

5.2 An application under paragraph 1 shall include evidence of (a) dumping, (b) injury within the meaning of Article VI of the GATT 1994 as interpreted by this Agreement and (c) a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing country Member;

(iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent
impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 3.

5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed\(^{13}\) by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.\(^{14}\) The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting country Member concerned.

5.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.

5.7 The evidence of both dumping and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation, and (b) thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is \textit{de minimis}, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be \textit{de minimis} if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing country Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing country Member collectively account for more than 7 per cent of imports of the like product in the importing country Member.

\(^{13}\)In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

\(^{14}\)Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.
5.9 An anti-dumping proceeding shall not hinder the procedures of customs clearance.

5.10 Investigations shall, except in special circumstances, be concluded within one year after their initiation, and in no case more than 18 months, after their initiation.

Article 6

Evidence

6.1 All interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

6.1.1 Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least thirty 30 days for reply.\textsuperscript{15} Due consideration should be given to any request for an extension of the thirty 30-day period and, upon cause shown, such an extension should be granted whenever practicable.

6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters\textsuperscript{16} and to the authorities of the exporting country Member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5 below.

6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.

6.3 Oral information provided under paragraph 2 shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in sub paragraph 1.2.

\textsuperscript{15}As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaires, which for this purpose shall be deemed to have been received one week from the day date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting country Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.

\textsuperscript{16}It being understood that, where the number of exporters involved is particularly high, the full text of the written application should instead be provided only to the authorities of the exporting country Member or to the relevant trade association.
6.4 The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5 and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.\textsuperscript{17}

6.5.1 The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.\textsuperscript{18}

6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.

6.7 In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other countries Members as required, provided they obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question, and unless the latter object that Member objects to the investigation. The procedures described in Annex I shall apply to verifications investigations carried out in exporting countries. The authorities shall, subject to the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any verifications investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

6.8 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

\textsuperscript{17}Members are aware that in the territory of certain Members disclosure pursuant to a narrowly-drawn protective order may be required.

\textsuperscript{18}Members agree that requests for confidentiality should not be arbitrarily rejected.
6.9 The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

6.10 The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

6.10.1 Any selection of exporters, producers, importers or types of products made under this paragraph shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

6.10.2 In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.

6.11 For the purposes of this Agreement, "interested parties" shall include:

(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;

(ii) the government of the exporting country Member; and

(iii) a producer of the like product in the importing country Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing country Member.

This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

6.12 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.

6.13 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

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

Article 7

Provisional Measures

7.1 Provisional measures may be applied only if:

(i) an investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;

(ii) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and

(iii) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.

7.2 Provisional measures may take the form of a provisional duty or, preferably, a security - by cash deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure, provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

7.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

7.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months. When authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months, respectively.

7.5 The relevant provisions of Article 9 shall be followed in the application of provisional measures.
Article 8
Price Undertakings

8.1 Proceedings may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.

8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing country Member have made a preliminary affirmative determination of dumping and injury caused by such dumping.

8.3 Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

8.4 If the undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. In such cases, the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

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

8.6 Authorities of an importing country Member may require any exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. In case of violation of undertakings, the authorities of the importing country Member may take, under this Agreement in conformity with its provisions, expedient actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on goods entered for consumption not more

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19 The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 4.
than ninety 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

**Article 9**

_Imposition and Collection of Anti-Dumping Duties_

9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory Member. It is desirable that the imposition be permissive in the territory of all countries or customs territories Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2.

9.3.1 When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of anti-dumping duty has been made. Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested.

9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The refund authorized should normally be made within 90 days of the above-noted decision.

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20It is understood that the observance of the time-limits mentioned in this sub-paragraph and in paragraph 3, may not be possible where the product in question is subject to judicial review proceedings.
9.3.3 In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change of costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided.

9.4 When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

(a)(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

(b)(ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined,

provided that the authorities shall disregard for the purpose of this paragraph any zero and de minimis margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in sub paragraph subparagraph 10.2 of Article 6.

9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing country Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

Article 10

Retroactivity

10.1 Provisional measures and anti-dumping duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 7 and paragraph 1 of Article 9, respectively, enters into force, subject to the exceptions set out in this Article.
10.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

10.3 If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

10.4 Except as provided in paragraph 2 above, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.6 A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:

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

(ii) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

10.7 The authorities may, after initiating an investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in paragraph 6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.

10.8 No duties shall be levied retroactively pursuant to paragraph 6 on products entered for consumption prior to the date of initiation of the investigation.
Article 11

Duration and Review of Anti-Dumping Duties and Price Undertakings

11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.

11.4 The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.

11.5 The provisions of this Article shall apply to price undertakings accepted under Article 8.

Article 12

Public Notice and Explanation of Determinations

12.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Article 5, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.

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21 A determination of final liability for payment of anti-dumping duties, as provided for in paragraph 3 of Article 9, does not by itself constitute a review within the meaning of this Article.

22 When the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under sub-paragraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.
12.1.1 A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report, adequate information on the following:

(i) the name of the exporting country or countries and the product involved;
(ii) the date of initiation of the investigation;
(iii) the basis on which dumping is alleged in the application;
(iv) a summary of the factors on which the allegation of injury is based;
(v) the address to which representations by interested parties should be directed;
(vi) the time-limits allowed to interested parties for making their views known.

12.2 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the revocation of a determination. Each such notice shall set forth or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

12.2.1 A public notice of the imposition of provisional measures shall set forth or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;
(ii) a description of the product which is sufficient for customs purposes;
(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;
(iv) considerations relevant to the injury determination as set out in Article 3;
(v) the main reasons leading to the determination.

12.2.2 A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the

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Where authorities provide information and explanations under the provisions of this Article in a separate report, they shall ensure that such report is readily available to the public.
acceptance of a price undertaking shall contain or otherwise make available through a separate report all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information. The in particular, the notice or report shall in particular contain the information described in sub-paragraph 2.1 of Article 12 in subparagraph 2.1, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers, and the basis for any decision made under sub-paragraph 10.2 of Article 6.

12.2.3 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 8 shall include or otherwise make available through a separate report the non-confidential part of this undertaking.

12.3 The provisions of this Article shall apply mutatis mutandis to the initiation and completion of reviews pursuant to Article 11 and to decisions under Article 10 to apply duties retroactively.

**Article 13**

**Judicial Review**

Each Member, whose national legislation contains provisions on anti-dumping measures, shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.

**Article 14**

*Anti-dumping action Dumping Action on behalf Behalf of a third-country Third Member*

14.1 An application for anti-dumping action on behalf of a third country Member shall be made by the authorities of the third-country Member requesting action.

14.2 Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country Member. The government of the third country Member shall afford all assistance to the authorities of the importing country Member to obtain any further information which the latter may require.

14.3 The in considering such an application, the authorities of the importing country in considering such an application Member shall consider the effects of the alleged dumping on the domestic industry concerned as a whole in the third country Member, that is to say, the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country Member or even on the domestic industry's total exports.
14.4 The decision whether or not to proceed with a case shall rest with the importing country Member. If the importing country Member decides that it is prepared to take action, the initiation of the approach to the Council for Trade in Goods seeking its approval for such action shall rest with the importing country Member.

Article 15

Developing country Country Members

It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.

PART II

Article 16

Committee on Anti-Dumping Practices

16.1 There shall be established under this Agreement a Committee on Anti-Dumping Practices (hereinafter referred to as the "Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

16.2 The Committee may set up subsidiary bodies as appropriate.

16.3 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member, it shall inform the Member involved. It shall obtain the consent of the Member and any firm to be consulted.

16.4 Each Member shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports shall be available in the WTO Secretariat for inspection by government representatives. The other Members, Each Member shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months.

16.5 Each Member shall notify the Committee (a) which of its authorities are competent to initiate and conduct investigations referred to in Article 5 and (b) its domestic procedures governing the initiation and conduct of such investigations.
Article 17

Consultation and Dispute Settlement

17.1 Except as otherwise provided herein, the Understanding on Rules and Procedures Governing the Settlement of Disputes is applicable to consultations and the settlement of disputes under this Agreement.

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

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

17.4 If the Member that requested consultations considers that the consultations pursuant to paragraph 3 of Article 17 have failed to achieve a mutually agreed solution, and if final action has been taken by the administering authorities of the importing Member to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body (DSB). When a provisional measure has a significant impact and the Member that requested consultations considers that the measure was taken contrary to the provisions of paragraph 1 of Article 7 of this Agreement, that Member may also refer such matter to the DSB.

17.5 The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon:

(a) a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that how the achieving of the objectives of the Agreement is being impeded, and

(b) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.

17.6 In examining the matter referred to in paragraph 5:

(i) in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned;

(ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible
interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.

17.7 Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person, body or authority providing the information, shall be provided.

PART III

Article 18

Final Provisions

18.1 No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.\(^{24}\)

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

18.3 Subject to sub paragraphs 1, sub paragraphs 3.1 and 3.2, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement Establishing the MTO.

18.3.1 With respect to the calculation of margins of dumping in refund procedures under paragraph 3 of Article 11-3, the rules used in the most recent determination or review of dumping shall apply.

18.3.2 For the purposes of paragraph 3 of Article 11, existing anti-dumping measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement Establishing the MTO, except in cases in which the domestic legislation of a Member in force at that date already included a clause of the type provided for in that paragraph.

18.4 (a) Each government accepting or acceding to the MTO Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement Establishing the MTO for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Member in question.

(b) 18.5 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

18.5 18.6 The Committee shall review annually the implementation and operation of this Agreement

\(^{24}\)This is not intended to preclude action under other relevant provisions of GATT 1994, as appropriate.
taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

The Annexes to this Agreement constitute an integral part thereof.
ANNEX I

Procedures for On-The-Spot Investigations Pursuant to paragraph Paragraph 7 of Article 6

1. Upon initiation of an investigation, the authorities of the exporting country Member and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.

2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting country Member should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.

3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting country Member before the visit is finally scheduled.

4. As soon as the agreement of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting country Member of the names and addresses of the firms to be visited and the dates agreed.

5. Sufficient advance notice should be given to the firms in question before the visit is made.

6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if (a) the authorities of the importing country Member notify the representatives of the government of the country Member in question and unless (b) the latter do not object to the visit.

7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting country Member is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

8. Enquiries or questions put by the authorities or firms of the exporting countries Members and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.
ANNEX II

Best Information Available in Terms of paragraph 8 of Article 6

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the way manner in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the request application for the initiation of the investigation by the domestic industry.

2. The authorities may also request that an interested party provide its response in a particular medium (e.g., computer tape) or computer language. Where such a request is made, the authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the company to use for its response a computer system other than that used by the firm. The authority should not maintain a request for a computerized response if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g., it would entail unreasonable additional cost and trouble. The authorities should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g., it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties and, where applicable, which is supplied in a timely fashion, and, where necessary, which is supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, the failure to respond in the preferred medium or computer language should not be considered to significantly impede the investigation.

4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g., computer tape), the information should be supplied in the form of written material or any other form acceptable to the authorities.

5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it provided the interested party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons thereof, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published findings.
7. If the authorities have to base their determinations, including those with respect to normal value, on information from a secondary source, including the information supplied in the request application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.
NOTES ON THE RECTIFIED TEXT:

1. **GENERAL**

(i) The **title of the Agreement** has been changed from "Agreement on Implementation of Article VI of GATT 1994" to "Agreement on Anti-Dumping Measures".

(ii) References to "the GATT 1994" have been replaced with references to "GATT 1994".

(iii) References to "country" have generally been replaced with references to "Member". (Article 2.5, Article 3.2 and 3.7(ii), Article 4.2, Article 5.2 (iii), Article 5.5 and 5.8, Article 6.1.3, 6.7 and 6.11(ii) and (iii), Article 8.2, 8.5 and 8.6, Article 9.1 and 9.5, Article 14 (title) and 14.1-4, Annex I, paragraphs 1-8, and footnotes 2, 15 and 16. The term "country" has not been replaced with "Member" in those places where this substitution might create ambiguity as to the interpretation of a provision. (Article 2.1, 2.2, 2.2.1.1, 2.2.2, 2.5, Article 3.3, Article 4.3, Article 5.2 (ii) and (iii), 5.8, Article 9.2 and 9.5, Article 12.1.1 and 12.2.1)

(iv) The text has been rectified to ensure consistency with regard to references to paragraphs within the same Article and references to paragraphs in other Articles. (Articles 2.2.1.1, 2.2.2, 2.4.1, 2.4.2, Article 3.5, Article 4.3, Article 5.1, Article 6.13, Article 10.4, Article 12.2.2, Article 13, Article 17.4, and footnotes 20, 21 and 22).

(v) References to "the date of entry into force of the Agreement Establishing the MTO" have been rectified to read: "the date of entry into force of the WTO Agreement". (Articles 18.3 and 18.4)

(vi) A number of rectifications have been made to clarify that obligations are addressed to individual Members (cf. Article 16.4 and 16.5).

(vii) Words in titles of Articles are capitalized.

2. Article 2.1, first line: a comma has been inserted after "Agreement" to correct the punctuation.

3. Article 2.1, first line: the comma after "i.e." has been deleted throughout the Final Act.

4. Article 2.2, fifth line: a comma has been inserted after "country" to correct the punctuation.

5. Article 2.2, 2.2.1 and 2.2.2: changes have been made to ensure consistent references to "administrative, selling and general costs".

6. Article 2.2.1, footnote 5 and last sentence: rectifications have been made to ensure consistent reference to "per unit costs".

7. Article 2.2.2, first line: a comma has been added after "administrative" to clarify that reference is made to a separate category of costs.
8. Article 2.4, eighth line: the comma after "cases" has been deleted to correct the punctuation.
9. Article 2.4, tenth line: the word "shall" has been added after "or" to improve the grammar.
10. Article 2.4.1, first line: the word "price" has been deleted before "comparison" to clarify the scope of application of this subparagraph.
11. Article 2.4.1, last line: the words "in exchange rates" have been inserted to clarify the meaning of the term "movements.
12. Article 2.4.1, fifth line: the comma after "and" has been deleted to correct the punctuation.
13. Article 2.4.2, fifth line: the spelling of "transaction to transaction" has been corrected.
14. Article 2.4.2, eight line: a comma has been inserted after "periods" to improve the punctuation of the sentence.
15. Article 2.4.2, ninth line: the words "as to" have been added before "why" to improve the grammar.
16. Article 2.5, sixth line: the spelling of "trans shipped" has been corrected.
17. Article 3.3, second line: the word "the" has been inserted before "effects" to ensure consistency with "the effects" in the fifth line.
18. Article 3.3, fourth line: the word "that" has been deleted in view of the use of "that" after "determine" in the third line.
19. Article 3.3, sixth line: the word "the" has been inserted before "imported products" in order to ensure consistency with "the imported products" in the last line of the paragraph.
20. Article 3.7, footnote 10 and paragraph (i), second line: the word "importations" has been corrected to read "importation".
21. Article 3.7(ii), first line: commas have been inserted after "disposable" and "in" to improve the punctuation.
22. Article 5.2(i), first line: the word "the" has been inserted before "identity" to improve style and to ensure consistency with "the identity..." in Article 5.2 (ii), second line.
23. Article 5.2(iii), fourth line: a comma has been inserted after "countries" to improve the punctuation.
24. Article 5.2 (iii), sixth line: the words "territory of the" have been inserted before "importing Member" for stylistic reasons.
25. Article 5.4, footnote 14: the commas have been deleted to correct the punctuation.
26. Article 5.6, first line: a comma has been inserted after "If" to correct the punctuation.
27. Article 5.10: the words "after their initiation" have been moved to the end of the sentence to clarify the meaning of the provision.

28. Article 6.1.1, second and third line: "thirty days" and "thirty day period" have been corrected to read "30 days" and "30-day period," respectively.

29. Article 6.1.1, footnote 15, second line: "day" has been replaced with "date" to ensure consistency with use of that word in the first line. A comma has been added after "or" in the third line to correct the punctuation.

30. Article 6.1.3, third line: the word "shall" has been inserted before "make" to improve the grammar.

31. Article 6.3, second line: the spelling of "insofar" has been corrected.

32. Article 6.3, third line: the spelling of "sub paragraph" has been corrected.

33. Article 6.4, third line: a comma has been inserted after "paragraph 5" to correct the punctuation.

34. Article 6.5, first line: the comma after "confidential" has been deleted and a comma has been inserted after the end of the parenthetical to correct the punctuation.

35. Article 6.7, second line: the use of the term "the territory of other Members" corresponds to the wording of Article 12.6 of the SCM text.

36. Article 6.7, third line: the words "provided they" have been deleted in the third line because already appear in the second line.

37. Article 6.7, fourth line: a comma has been inserted after "question" to improve the punctuation.

38. Article 6.7, fourth line: "the latter" has been replaced with "that Member" for greater clarity.

39. Article 6.7, fifth line: "verifications" has been replaced with "investigations" to ensure consistency with the use of that term in the second line.

40. Article 6.7, sixth line: the insertion of "the territory of other Members" to replace "exporting countries" follows from the change in the second line.

41. Article 6.7, last sentence: for grammatical reasons the words "the authorities" have been moved to after "Subject to the requirement to protect confidential information" and "shall" has been inserted after "or".

42. Article 6.7, seventh and eighth line: "verifications" has been replaced with "such investigations" to ensure consistency with the use of "investigations" in the second line.

43. Article 6.7, eighth line: a comma has been inserted after "available" to correct the punctuation.

44. Article 6.13, second line: a comma has been inserted after "requested" and the word "shall"
inserted before "provide" to correct punctuation and grammar.

45. Article 8.4, first line: "undertakings" has been replaced with "undertaking" to ensure consistency with the use of "undertaking" throughout the paragraph.

46. Article 8.4, third line: a comma has been inserted after "lapse" to improve the punctuation.

47. Article 8.4, fifth line: a comma has been inserted after "cases" to improve punctuation.

48. Article 8.5, second line: "an undertaking" has been replaced with "undertakings" to ensure consistency with the use of the term "undertakings" at the beginning of the sentence.

49. Article 8.6, first two sentences: "undertakings" has been replaced with "undertaking" to ensure consistency with the reference to "any exporter" in the first line and to "the undertaking" at the end of the paragraph.

50. Article 8.6, sixth line: a comma has been inserted after "cases" to improve the punctuation.

51. Article 8.6, seventh line: "goods" has been replaced with "products" because the Agreement consistently refers to "product" or "products," rather than "goods."

52. Article 9.1, second line: a comma has been inserted after "fulfilled" to correct the punctuation.

53. Article 9.1, fifth line: the insertion of "the territory of" before "all Members" is consistent with SCM Article 19.2, second sentence.

54. Article 9.3.1, seventh line: a comma has been inserted after "days" to correct punctuation.

55. Article 9.3.1, fourth line: "the" has been inserted before "anti-dumping duty" in order to ensure consistency with the text at the beginning of the subparagraph.

56. Article 9.3.1, footnote 20: the spelling of "sub paragraph" has been corrected.

57. Article 9.3.3, third line: "of" after "change" has been replaced with "in" as a grammatical correction.

58. Article 9.4: for reasons of consistent serialization "(a)" and "(b)" have been replaced with "(i)" and "(ii)" (cf. Article 3.7, Article 4.1, Article 5.2, Article 6.11, Article 7.1, Article 10.6, Article 12.1.1 and 12.2.1, and Article 17.6).

59. Article 9.4, last line: the spelling of "sub paragraph" has been corrected.

60. Article 10.4, third line: a comma has been inserted after "retardation" to correct the punctuation.

61. Article 10.7, second line: a comma has been inserted after "retroactively" to correct the punctuation.

62. Article 10.8, first line: the comma after "paragraph 6" has been deleted to correct the punctuation.
63. Article 11.2, footnote 21: commas have been inserted after "duties" and after "Article 9" to correct the punctuation.

64. Article 11.3, footnote 22: the spelling of "sub paragraph" has been corrected.

65. Article 11.4, third line: "twelve" before "months" has been corrected to "12".

66. Article 11.5, first line: the words "mutatis mutandis" have been moved to after "apply" to correct the grammar.

67. Article 12.1.1, first two lines: commas have been inserted after "contain" and after "report" to improve the punctuation.

68. Article 12.2, third line: "revocation of a determination" has been replaced with "termination of a definitive anti-dumping duty" to ensure consistency with terminology used elsewhere in the Agreement (e.g. Article 11.2 and 11.3).

69. Article 12.2, fourth line: commas have been inserted after "forth" and after "report" to correct the punctuation.

70. Article 12.2.1, first two lines: commas have been inserted after "forth" and "report" to correct the punctuation.

71. Article 12.2.2, third and fourth line: commas have been inserted after "contain" and after "report" to correct the punctuation.

72. Article 12.2.2, last sentence: the words "in particular" have been moved to the beginning of the sentence to correct the grammar.

73. Article 12.2.2, last sentence: the spelling of "sub paragraph" has been corrected.

74. Article 12.2.3, second and third line: commas have been added after "include" and "report" to correct punctuation.

75. Article 13: commas have been deleted after "Member" and "measures" to correct the punctuation.

76. Article 14.3: the word "domestic" has been inserted before "industry" to ensure consistency with the use of the term "domestic industry" in Article 14.2

77. Article 14.3, first line: the words "in considering such an application" have been moved to the beginning of the sentence to correct the grammar.

78. Article 16.4, second line: "report" has been replaced with "reports" to correct the grammar.

79. Article 16.4, second line: "will" has been replaced with "shall" to clarify the meaning of the provision.

80. Article 16.4, third line: "government representatives" has been replaced with "other Members"
to clarify the meaning of the provision.

81. Article 17.4, second line: a comma has been inserted after "solution" to correct the punctuation.

82. Article 17.4, second line: the word "if" has been inserted before "final action" to improve the grammar.

83. Article 17.4, fifth line: the words "that requested consultations" have been inserted after "Member," consistent with the formulation at the beginning of the paragraph.

84. Article 17.4, sixth line: the word "that" has been added after "considers" to correct the grammar.

85. Article 17.5: "(a)" and "(b)" have been replaced with "(i)" and "(ii)" to ensure consistent serialization throughout the text.

86. Article 17.5(a), third line: "that" has been replaced with "how" to ensure consistency with the use of "how" after "indicating".

87. Article 17.6, first line: the words "referred to" have been inserted after "matter" for greater clarity.

88. Article 18.3, first line: the spelling of "sub paragraphs" has been corrected.

89. Article 18.3.2, fourth line: "at" before "date" has been corrected to "on".

90. Articles 18.4 and 18.5: previous subparagraphs 4 (a) and 4 (b) have been redesignated as paragraphs 4 and 5 for reasons of consistency in the numbering scheme used in the text.

91. Article 18.6, second line: "inform" has been moved to before "annually" to correct grammar.

92. Annex I, paragraph 4, first line: a comma has been inserted after "obtained" to correct the punctuation.

93. Annex I, paragraph 6, third line: the word "unless" has been deleted to clarify the meaning of the provision.

94. Annex I, paragraph 6, second and third line: "(a)" and "(b)" have been inserted to clarify the provision.

95. Annex I, paragraph 7, sixth line: correction of typographical error.

96. Annex II, paragraph 1, second line: substitution of "manner" for "way" to correct grammar.

97. Annex II, paragraph 1, sixth line: substitution of "application" for "request," consistent with the use of the term "application" throughout the Agreement.

98. Annex II, paragraph 2, fourth and fifth line: use of "party" instead of "company" and "firm",
consistent with the use of the term "interested party" at the beginning of the paragraph.

99. Annex II, paragraph 3, first sentence: insertion of a comma to replace "and" after "difficulties" and insertion of "which is" before "supplied" to correct the grammar.

100. Annex II, paragraph 3, last sentence: substitution of "the failure to respond in the preferred medium or computer language" for "this" to clarify the meaning of the sentence.

101. Annex II, paragraph 4, second line: insertion of a comma after the parenthetical to correct punctuation.

102. Annex II, paragraph 5, second line: a comma has been inserted after "it" to correct the punctuation.

103. Annex II, paragraph 6, second line: for grammatical reasons, "thereof", has been substituted by "therefor" and "should" has been inserted before "have".

104. Annex II, paragraph 6, fifth line: the word "the" has been inserted before "rejection" to correct the grammar.

105. Annex II, paragraph 6, sixth line: the word "findings" has been replaced with "determinations", because of the difference in meaning between the terms "finding" and "determination" as used elsewhere in the Agreement.

106. Annex II, paragraph 7, first line: the word "determinations" has been replaced with "findings" because, unlike in the preceding paragraph, the reference in this paragraph is not to the formal, published determination but to specific findings of fact upon which that determination is based.

107. Annex II, paragraph 7, third line: "request" has been replaced with "application", consistent with the use of that term throughout the Agreement to refer to a petition for initiation of an investigation.

108. Annex II, paragraph 7, last sentence: the spelling of "co-operate" has been corrected.
2. Agreement on Customs Valuation

AGREEMENT ON CUSTOMS VALUATION
IMPLEMENTATION OF ARTICLE VII
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

GENERAL INTRODUCTORY COMMENTARY

1. The primary basis for customs value under this Agreement is "transaction value" as defined in Article 1. Article 1 is to be read together with Article 8 which provides, inter alia, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Articles 2 to 7, inclusive, provide methods of determining the customs value whenever it cannot be determined under the provisions of Article 1.

2. Where the customs value cannot be determined under the provisions of Article 1 there should normally be a process of consultation between the customs administration and importer with a view to arriving at a basis of value under the provisions of Articles 2 or 3. It may occur, for example, that the importer has information about the customs value of identical or similar imported goods which is not immediately available to the customs administration in the port of importation. On the other hand, the customs administration may have information about the customs value of identical or similar imported goods which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for customs purposes.

3. Articles 5 and 6 provide two bases for determining the customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar imported goods. Under paragraph 1 of Article 5 the customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if he the importer so requests. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods.

4. Article 7 sets out how to determine the customs value in cases where it cannot be determined under the provisions of any of the preceding Articles.
Members,

Having regard to the Multilateral Trade Negotiations;

Desiring to further the objectives of the GATT 1994 and to secure additional benefits for the international trade of developing countries;

Recognizing the importance of the provisions of Article VII of the GATT 1994 and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Recognizing the need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values;

Recognizing that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;

Recognizing that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

Recognizing that valuation procedures should not be used to combat dumping;

Hereby agree as follows:

PART I

RULES ON CUSTOMS VALUATION

Article 1

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8, provided:

(a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:

(i) are imposed or required by law or by the public authorities in the country of importation;

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) that the sale or price is not subject to some condition or consideration for which a value
cannot be determined with respect to the goods being valued;

(c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8; and

(d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2 of this Article.

2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1 of this Article, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and he the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 of this Article whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

(i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;

(ii) the customs value of identical or similar goods as determined under the provisions of Article 5;

(iii) the customs value of identical or similar goods as determined under the provisions of Article 6;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which he the seller and the buyer are not related that are not incurred by the seller in sales in which he the seller and the buyer are related.

(c) The tests set forth in paragraph 2(b) of this Article are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b) of this Article.
Article 2

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 3

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.
Article 4

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3, the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

Article 5

1. (a) If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

(i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within the country of importation;

(iii) where appropriate, the costs and charges referred to in paragraph 2 of Article 8; and

(iv) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1(a) of this Article, be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of ninety days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1(a) of this Article.
Article 6

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation;

(c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Member under paragraph 2 of Article 8.

2. No Member may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 to 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of the GATT 1994 and on the basis of data available in the country of importation.

2. No customs value shall be determined under the provisions of this Article on the basis of:

(a) the selling price in the country of importation of goods produced in such country;

(b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;

(c) the price of goods on the domestic market of the country of exportation;

(d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;

(e) the price of the goods for export to a country other than the country of importation;

(f) minimum customs values; or

(g) arbitrary or fictitious values.
3. If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 8

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:

(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials;

(b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

2. In framing its legislation, each Member shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:

(a) the cost of transport of the imported goods to the port or place of importation;

(b) loading, unloading and handling charges associated with the transport of the imported
goods to the port or place of importation; and

(c) the cost of insurance.

3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 9

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.

2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Member.

Article 10

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 11

1. The legislation of each Member shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.

2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without penalty to a judicial authority.

3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. He The appellant shall also be informed of his any rights of any further appeal.
Article 12

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of the GATT 1994 by the country of importation concerned.

Article 13

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw his goods from customs if, where so required, he provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.

Article 14

The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement.

Article 15

1. In this Agreement:

(a) "customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

(b) "country of importation" means country or customs territory of importation; and

(c) "produced" includes grown, manufactured and mined.

2. (a) In this Agreement:

(a) "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical;

(b) "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;

(c) The terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work,
and plans and sketches for which no adjustment has been made under paragraph 1(b)(iv) of Article 8 because such elements were undertaken in the country of importation.

(d) Goods goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued.

(e) Goods goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

3. In this Agreement "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.

4. For the purposes of this Agreement, persons shall be deemed to be related only if:

(a) they are officers or directors of one another’s businesses;

(b) they are legally recognized partners in business;

(c) they are employer and employee;

(d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person;

(g) together they directly or indirectly control a third person; or

(h) they are members of the same family.

5. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4 of this Article.

Article 16

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of his imported goods was determined.

Article 17

Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document
or declaration presented for customs valuation purposes.

PART II

ADMINISTRATION, CONSULTATIONS AND DISPUTE SETTLEMENT

Article 18

Institutions

There shall be established under this Agreement:

(a) A Committee on Customs Valuation (hereinafter referred to as "the Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording Members the opportunity to consult on matters relating to the administration of the customs valuation system by any Member as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Members. The WTO Secretariat shall act as the secretariat to the Committee.

(b) A Technical Committee on Customs Valuation (hereinafter referred to as "the Technical Committee") under the auspices of the Customs Co-operation Council (hereinafter referred to as "the CCC"), which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Article 19

Consultations and Dispute Settlement

1. Except as otherwise provided herein, the Dispute Settlement Understanding on Rules and Procedures Governing the Settlement of Disputes is applicable to consultations and the settlement of disputes under this Agreement.

2. If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Member or of other Members, it may, with a view to reaching a mutually satisfactory solution of this matter, request consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultations.

3. The Technical Committee shall provide, upon request, advice and assistance to Members engaged in consultations.

4. At the request of a party to the dispute, or on its own initiative, a panel established to examine a dispute relating to the provisions of this Agreement may request the Technical Committee to carry out an examination of any questions requiring technical consideration. The panel shall determine the terms of reference of the Technical Committee for the particular dispute and set a time period for receipt of the report of the Technical Committee. The panel shall take into consideration the report of the
Technical Committee. In the event that the Technical Committee is unable to reach consensus on a matter referred to it pursuant to this paragraph, the panel should afford the parties to the dispute with an opportunity to present their views on the matter to the panel.

5. Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of this information, authorized by the person, body or authority providing the information, shall be provided.

PART III

SPECIAL AND DIFFERENTIAL TREATMENT

Article 20

1. Developing country Members not party to the Agreement (1979) on Implementation of Article VII of the General Agreement on Tariffs and Trade, done on 12 April 1979 may delay application of the provisions of this Agreement for a period not exceeding five years from the date of entry into force of the WTO Agreement Establishing the MTO for such Members. Developing country Members who choose to delay application of this Agreement shall notify the Director-General of the MTO WTO accordingly.

2. In addition to paragraph 1 above, developing country Members not party to the Agreement (1979) on Implementation of Article VII of the General Agreement on Tariffs and Trade, done on 12 April 1979 may delay application of paragraph 2(b)(iii) of Article 1 and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement. Developing country Members that choose to delay application of the provisions specified in this paragraph shall notify the Director-General of the MTO WTO accordingly.

3. Developed country Members shall furnish, on mutually agreed terms, technical assistance to developing country Members that so request. On this basis developed country Members shall draw up programmes of technical assistance which may include, inter alia, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.
PART IV

FINAL PROVISIONS

Article 21

Reservations

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

Article 22

National Legislation

1. Each Member shall ensure, not later than the date of application of the provisions of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

2. Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Article 23

Review

The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the Council for Trade in Goods of developments during the period covered by such reviews.

Article 24

Secretariat

This Agreement shall be serviced by the WTO Secretariat except in regard to those responsibilities specifically assigned to the Technical Committee, which will be serviced by the CCC Secretariat of the CCC.
ANNEX I

INTERPRETATIVE NOTES

General Note

Sequential Application of Valuation Methods

1. Articles 1 to 7, inclusive, define how the customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 1 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of Article 1, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 4, it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.

3. If the importer does not request that the order of Articles 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 6, the customs value is to be determined under the provisions of Article 5, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of Articles 1 to 6, inclusive, it is to be determined under the provisions of Article 7.

Use of Generally Accepted Accounting Principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Agreement, the customs administration of each Member shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in paragraph 1(b)(ii) of Article 8 undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.
Note to Article 1

Price Actually Paid or Payable

1. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

2. Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

3. The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

   (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

   (b) the cost of transport after importation;

   (c) duties and taxes of the country of importation.

4. The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1(a)(iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1(b)

1. If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

   (a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;

   (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
(c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Paragraph 2

1. Paragraphs 2(a) and 2(b) provide different means of establishing the acceptability of a transaction value.

2. Paragraph 2(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him the seller, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Paragraph 2(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 1. Where a test under paragraph 2(b) is met, it is not necessary to examine the question of influence under paragraph 2(a). If the customs
administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2(b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In paragraph 2(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

**Paragraph 2(b)**

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in paragraph 2(b) of Article 1.

**Note to Article 2**

1. In applying Article 2, the customs administration shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

   (a) a sale at the same commercial level but in different quantities;

   (b) a sale at a different commercial level but in substantially the same quantities; or

   (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

   (a) quantity factors only;

   (b) commercial level factors only; or

   (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 2, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments,
e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller’s price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 is not appropriate.

Note to Article 3

1. In applying Article 3, the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

   (a) a sale at the same commercial level but in different quantities;
   (b) a sale at a different commercial level but in substantially the same quantities; or
   (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

   (a) quantity factors only;
   (b) commercial level factors only; or
   (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of Article 3, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller’s price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the
determination of a customs value under the provisions of Article 3 is not appropriate.

**Note to Article 5**

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

<table>
<thead>
<tr>
<th>Sale quantity</th>
<th>Unit price</th>
<th>Number of sales</th>
<th>Total quantity sold at each price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-10 units</td>
<td>100</td>
<td>10 sales of 5 units</td>
<td>65</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5 sales of 3 units</td>
<td></td>
</tr>
<tr>
<td>11-25 units</td>
<td>95</td>
<td>5 sales of 11 units</td>
<td>55</td>
</tr>
<tr>
<td>over 25 units</td>
<td>90</td>
<td>1 sale of 30 units</td>
<td>80</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 sale of 50 units</td>
<td></td>
</tr>
</tbody>
</table>

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) **Sales**

<table>
<thead>
<tr>
<th>Sale quantity</th>
<th>Unit price</th>
</tr>
</thead>
<tbody>
<tr>
<td>40 units</td>
<td>100</td>
</tr>
<tr>
<td>30 units</td>
<td>90</td>
</tr>
<tr>
<td>15 units</td>
<td>100</td>
</tr>
<tr>
<td>50 units</td>
<td>95</td>
</tr>
<tr>
<td>25 units</td>
<td>105</td>
</tr>
<tr>
<td>35 units</td>
<td>90</td>
</tr>
<tr>
<td>5 units</td>
<td>100</td>
</tr>
</tbody>
</table>
### (b) Totals

<table>
<thead>
<tr>
<th>Total quantity sold</th>
<th>Unit price</th>
</tr>
</thead>
<tbody>
<tr>
<td>65</td>
<td>90</td>
</tr>
<tr>
<td>50</td>
<td>95</td>
</tr>
<tr>
<td>60</td>
<td>100</td>
</tr>
<tr>
<td>25</td>
<td>105</td>
</tr>
</tbody>
</table>

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in paragraph 1(b) of Article 8, should not be taken into account in establishing the unit price for the purposes of Article 5.

6. It should be noted that "profit and general expenses" referred to in paragraph 1 of Article 5 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtained in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of paragraph 1(a)(iv) of Article 5 shall be deducted under the provisions of paragraph 1(a)(i) of Article 5.

9. In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 1 of Article 5, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 5, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of paragraph 1(b) of Article 5, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in paragraph 2 of Article 5 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.
12. It is recognized that the method of valuation provided for in paragraph 2 of Article 5 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to Article 6

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in paragraph 1(a) of Article 6 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in paragraphs 1(a)(ii) and (iii) of Article 8. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 8, of any element specified in paragraph 1(b) of Article 8 which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in paragraph 1(b)(iv) of Article 8 which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "amount for profit and general expenses" referred to in paragraph 1(b) of Article 6 is to be determined on the basis of information supplied by or on behalf of the producer unless his producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and his producer's general expenses are high, his the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods
because of particular commercial circumstances, his producer's actual profit figures should be taken into account provided that he the producer has valid commercial reasons to justify them and his the producer's pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10.

7. The "general expenses" referred to in paragraph 1(b) of Article 6 covers the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1(a) of Article 6.

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 6, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 6, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Article 7

1. Customs values determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 7 should be those laid down in Articles 1 to 6, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 7.

3. Some examples of reasonable flexibility are as follows:

   (a) Identical goods - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 5 and 6 could be used.

   (b) Similar goods - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being
valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 5 and 6 could be used.

(c) **Deductive method** - the requirement that the goods shall have been sold in the "condition as imported" in paragraph 1(a) of Article 5 could be flexibly interpreted; the "ninety 90 days" requirement could be administered flexibly.

**Note to Article 8**

**Paragraph 1(a)(i)**

The term "buying commissions" means fees paid by an importer to his the importer's agent for the service of representing him the importer abroad in the purchase of the goods being valued.

**Paragraph 1(b)(ii)**

1. There are two factors involved in the apportionment of the elements specified in paragraph 1(b)(ii) of Article 8 to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him the importer at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him the importer, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he the importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him the producer to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

**Paragraph 1(b)(iv)**

1. Additions for the elements specified in paragraph 1(b)(iv) of Article 8 should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs
administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Paragraph 1(c)

1. The royalties and licence fees referred to in paragraph 1(c) of Article 8 may include, among other things, payments in respect to patents, trade marks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be
inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Note to Article 9

For the purposes of Article 9, "time of importation" may include the time of entry for customs purposes.

Note to Article 11

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

2. "Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because he the importer chose to exercise his the right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.

3. However, nothing in Article 11 shall prevent a Member from requiring full payment of assessed customs duties prior to an appeal.

Note to Article 15

Paragraph 4

For the purposes of this Article 15, the term "persons" includes a legal person, where appropriate.

Paragraph 4(e)

For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.
ANNEX II

TECHNICAL COMMITTEE ON CUSTOMS VALUATION

1. In accordance with Article 18 of this Agreement, the Technical Committee shall be established under the auspices of the CCC with a view to ensuring, at the technical level, uniformity in interpretation and application of this Agreement.

2. The responsibilities of the Technical Committee shall include the following:

(a) to examine specific technical problems arising in the day-to-day administration of the customs valuation system of Members and to give advisory opinions on appropriate solutions based upon the facts presented;

(b) to study, as requested, valuation laws, procedures and practices as they relate to this Agreement and to prepare reports on the results of such studies;

(c) to prepare and circulate annual reports on the technical aspects of the operation and status of this Agreement;

(d) to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Member or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;

(e) to facilitate, as requested, technical assistance to Members with a view to furthering the international acceptance of this Agreement;

(f) to carry out an examination of a matter referred to it by a panel under Article 19 of this Agreement; and

(g) to exercise such other responsibilities as the Committee may assign to it.

General

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Members, the Committee or a panel, in a reasonably short period of time. As provided in paragraph 4 of Article 19, a panel shall set a specific time period for receipt of a report of the Technical Committee and the Technical Committee shall provide its report within that period.

4. The Technical Committee shall be assisted as appropriate in its activities by the CCC Secretariat of the CCC.

Representation

5. Each Member shall have the right to be represented on the Technical Committee. Each Member may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a Member so represented on the Technical Committee is hereinafter referred to as a member of the Technical Committee. Representatives of members of the Technical Committee
may be assisted by advisers. The WTO Secretariat may also attend such meetings with observer status.

6. Members of the CCC which are not Members of the WTO may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

7. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the CCC (hereinafter referred to as "the Secretary-General") may invite representatives of governments which are neither Members of the WTO nor members of the CCC and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

8. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

**Technical Committee Meetings**

9. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session. The date of the meeting may be varied either at the request of any member of the Technical Committee concurred in by a simple majority of the members of the Technical Committee or, in cases requiring urgent attention, at the request of the Chairman. Notwithstanding the provisions in sentence 1 of this paragraph, the Technical Committee shall meet as necessary to consider matters referred to it by a panel under the provisions of Article 19 of this Agreement.

10. The meetings of the Technical Committee shall be held at the headquarters of the CCC unless otherwise decided.

11. The Secretary-General shall inform all members of the Technical Committee and those included under paragraphs 6 and 7 at least thirty days in advance, except in urgent cases, of the opening date of each session of the Technical Committee.

**Agenda**

12. A provisional agenda for each session shall be drawn up by the Secretary-General and circulated to the members of the Technical Committee and to those included under paragraphs 6 and 7 at least thirty days in advance of the session, except in urgent cases. This agenda shall comprise all items whose inclusion has been approved by the Technical Committee during its preceding session, all items included by the Chairman on his own initiative, and all items whose inclusion has been requested by the Secretary-General, by the Committee or by any member of the Technical Committee.

13. The Technical Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the Technical Committee.

**Officers and Conduct of Business**

14. The Technical Committee shall elect from among the delegates of its members a Chairman and one or more Vice-Chairmen. The Chairman and Vice-Chairmen shall each hold office for a period
of one year. The retiring Chairman and Vice-Chairmen are eligible for re-election. A Chairman or Vice-Chairman who ceases to represent a member of the Technical Committee shall terminate automatically lose his mandate.

15. If the Chairman is absent from any meeting or part thereof, a Vice-Chairman shall preside. In that event, the latter shall have the same powers and duties as the Chairman.

16. The Chairman of the meeting shall participate in the proceedings of the Technical Committee as such and not as the representative of a member of the Technical Committee.

17. In addition to exercising the powers conferred upon him elsewhere the Chairman by these rules, the Chairman shall declare the opening and closing of each meeting, direct the discussion, accord the right to speak, and, pursuant to these rules, have control of the proceedings. The Chairman may also call a speaker to order if his remarks are not relevant.

18. During discussion of any matter a delegation may raise a point of order. In this event, the Chairman shall immediately state his ruling. If this ruling is challenged, the Chairman shall submit it to the meeting for decision and it shall stand unless overruled.

19. The Secretary-General, or officers of the Secretariat designated by him, shall perform the secretarial work of meetings of the Technical Committee.

Quorum and Voting

20. Representatives of a simple majority of the members of the Technical Committee shall constitute a quorum.

21. Each member of the Technical Committee shall have one vote. A decision of the Technical Committee shall be taken by a majority comprising at least two thirds of the members present. Regardless of the outcome of the vote on a particular matter, the Technical Committee shall be free to make a full report to the Committee and to the CCC on that matter indicating the different views expressed in the relevant discussions. Notwithstanding the above provisions of this paragraph, on matters referred to it by a panel, the Technical Committee shall take decisions by consensus. Where no agreement is reached in the Technical Committee on the question referred to it by a panel, the Technical Committee shall provide a report detailing the facts of the matter and indicating the views of the members.

Languages and Records

22. The official languages of the Technical Committee shall be English, French and Spanish. Speeches or statements made in any of these three languages shall be immediately translated into the other official languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French and Spanish, subject to the same conditions, but in that event the delegation concerned shall provide the translation into English, French or Spanish. Only English, French and Spanish shall be used for the official documents of the Technical Committee. Memoranda and correspondence for the consideration of the Technical Committee must be presented in one of the official languages.

23. The Technical Committee shall draw up a report of all its sessions and, if the Chairman considers
it necessary, minutes or summary records of its meetings. The Chairman or his designee of the Chairman shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the CCC.

ANNEX III

1. The five-year delay in the application of the provisions of the Agreement by developing country Members provided for in paragraph 1 of Article 20 may, in practice, be insufficient for certain developing country Members. In such cases a developing country Member may request before the end of the period referred to in paragraph 1 of Article 20 an extension of such period, it being understood that the Members will give sympathetic consideration to such a request in cases where the developing country Member in question can show good cause.

2. Developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Members.

3. Developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make a reservation to Article 4 in the following terms:

"The Government of ............. reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6."

If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.

4. Developing countries may wish to make a reservation with respect to paragraph 2 of Article 5 of the Agreement in the following terms:

"The Government of ............. reserves the right to provide that paragraph 2 of Article 5 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests."

If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.

5. Certain developing country Members have expressed concern that there may be problems in the implementation of Article 1 of the Agreement insofar as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. If such problems arise in practice in developing country Members applying the Agreement, a study of this question shall be made, at the request of such Members, with a view to finding appropriate solutions.

6. Article 17 recognizes that in applying the Agreement, customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented
to them for customs valuation purposes. The Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. Members, subject to their national laws and procedures, have the right to expect the full cooperation of importers in these enquiries.

7. The price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.
1. It is proposed to rectify the title of this Agreement to one that is more immediately communicative of the subject-matter dealt with.

2. Rectifications in paragraph 2 of Article 15 are proposed for reasons of consistency of form with paragraph 1 of Article 15.

3. In Article 20, the date references for the Agreement on Implementation of Article VII have been made more precise.

4. In Article 1 of Annex II, "shall be" is rectified to "is" to reflect the fact that the Technical Committee already exists.

5. The rectification in paragraph 6 of Annex III brings a reference to concerns expressed in the Tokyo Round into line with standard treaty language.

6. Rectifications have been proposed to eliminate gender-specific references in the following provisions: General introductory commentary para. 3; Articles 1:2(a), 1:2(b), 7:3, 11:3, 13, 16; Annex I (Interpretative notes): Note 2 to "Price actually paid or payable" under Article 1, Notes 1 and 2 to paragraph 1(b) of Article 1, Note 3 to paragraph 2 of Article 1, Note 6 to Article 5, Notes 4 and 5 to Article 6, Note to paragraph 1(a)(i) of Article 8, Notes 2, 3 and 4 to paragraph 1(b)(ii) of Article 8, Note 2 to Article 11; Annex II, paragraphs 12, 14, 17, 18, 19 and 23.
3. Agreement on Preshipment Inspection

AGREEMENT ON PRESHIPMENT INSPECTION

Members,

Noting that Ministers on 20 September 1986 agreed that "the Uruguay Round of Multilateral Trade Negotiations shall aim to "bring about further liberalization and expansion of world trade," "strengthen the role of GATT" and "increase the responsiveness of the GATT system to the evolving international economic environment";

Noting that a number of developing country Members have recourse to preshipment inspection;

Recognizing the need of developing countries to do so for as long and insofar in so far as it is necessary to verify the quality, quantity or price of imported goods;

Mindful that such programmes must be carried out without giving rise to unnecessary delays or unequal treatment;

Noting that this inspection is by definition carried out on the territory of exporter Members;

Recognizing the need to establish an agreed international framework of rights and obligations of both user Members and exporter Members;

Recognizing that the principles and obligations of the GATT 1994 apply to those activities of preshipment inspection entities that are mandated by governments that are Members of the WTO;

Recognizing that it is desirable to provide transparency of the operation of preshipment inspection entities and of laws and regulations relating to preshipment inspection;

Desiring to provide for the speedy, effective and equitable resolution of disputes between exporters and preshipment inspection entities arising under this Agreement;

Hereby agree as follows:

Article 1

Coverage - Definitions

1. This Agreement shall apply to all preshipment inspection activities carried out on the territory of Members, whether such activities are contracted or mandated by the government, or any government body, of a Member (hereinafter referred to as "user Member").

2. Preshipment inspection activities are all activities relating to the verification of the quality, the quantity, the price, including currency exchange rate and financial terms, and/or the customs classification of goods to be exported to the territory of the user Member.
3. The term "preshipment inspection entity" is any entity contracted or mandated by a Member to carry out preshipment inspection activities.¹

Article 2

Obligations of User Members

Non-discrimination

1. User Members shall ensure that preshipment inspection activities are carried out in a non-discriminatory manner, and that the procedures and criteria employed in the conduct of these activities are objective and are applied on an equal basis to all exporters affected by such activities. They shall ensure uniform performance of inspection by all the inspectors of the preshipment inspection entities contracted or mandated by them.

Governmental Requirements

2. User Members shall ensure that in the course of preshipment inspection activities relating to their laws, regulations and requirements, the provisions of paragraph 4 of Article III-4 of the GATT 1994 are respected to the extent that these are relevant.

Site of Inspection

3. User Members shall ensure that all preshipment inspection activities, including the issuance of a Clean Report of Findings or a note of non-issuance, are performed in the customs territory from which the goods are exported or, if the inspection cannot be carried out in that customs territory given the complex nature of the products involved, or if both parties agree, in the customs territory in which the goods are manufactured.

Standards

4. User Members shall ensure that quantity and quality inspections are performed in accordance with the standards defined by the seller and the buyer in the purchase agreement and that, in the absence of such standards, relevant international standards² apply.

Transparency

5. User Members shall ensure that preshipment inspection activities are conducted in a transparent manner.

6. User Members shall ensure that, when initially contacted by exporters, preshipment inspection entities provide to the exporters a list of all the information which is necessary for the exporters to

¹It is understood that this provision does not obligate Members to allow government entities of other Members to conduct preshipment inspection activities on their territory.

²An international standard is a standard adopted by a governmental or non-governmental body whose membership is open to all Members, one of whose recognized activities is in the field of standardization.
comply with inspection requirements. The preshipment inspection entities shall provide the actual information when so requested by exporters. This information shall include a reference to the laws and regulations of the user Members relating to preshipment inspection activities, and shall also include the procedures and criteria used for inspection and for price and currency exchange rate verification purposes, the exporters' rights vis-à-vis the inspection entities, and the appeals procedures set up under paragraph 21 of this Article. Additional procedural requirements or changes in existing procedures shall not be applied to a shipment unless the exporter concerned is informed of these changes at the time the inspection date is arranged. However, in emergency situations of the types addressed by Articles XX and XXI of the GATT 1994, such additional requirements or changes may be applied to a shipment before the exporter has been informed. This assistance shall not, however, relieve exporters from their obligations in respect of compliance with the import regulations of the user Members.

7. User Members shall ensure that the information referred to in paragraph 6 of this Article is made available to exporters in a convenient manner, and that the preshipment inspection offices maintained by preshipment inspection entities serve as information points where this information is available.

8. User Members shall publish promptly all applicable laws and regulations relating to preshipment inspection activities in such a manner as to enable other governments and traders to become acquainted with them.

Protection of Confidential Business Information

9. User Members shall ensure that preshipment inspection entities treat all information received in the course of the preshipment inspection as business confidential to the extent that such information is not already published, generally available to third parties, or otherwise in the public domain. User Members shall ensure that preshipment inspection entities maintain procedures to this end.

10. User Members shall provide information to Members on request on the measures they are taking to give effect to paragraph 9 of this Article. The provisions of this paragraph shall not require any Member to disclose confidential information the disclosure of which would jeopardize the effectiveness of the preshipment inspection programmes or would prejudice the legitimate commercial interest of particular enterprises, public or private.

11. User Members shall ensure that preshipment inspection entities do not divulge confidential business information to any third party, except that preshipment inspection entities may share this information with the government entities that have contracted or mandated them. User Members shall ensure that confidential business information which they receive from preshipment inspection entities contracted or mandated by them is adequately safeguarded. Preshipment inspection entities shall share confidential business information with the governments contracting or mandating them only to the extent that such information is customarily required for letters of credit or other forms of payment or for customs, import licensing or exchange control purposes.

12. User Members shall ensure that preshipment inspection entities do not request exporters to provide information regarding:

(a) manufacturing data related to patented, licensed or undisclosed processes, or to processes for which a patent is pending;
(b) unpublished technical data other than data necessary to demonstrate compliance with technical regulations or standards;

(c) internal pricing, including manufacturing costs;

(d) profit levels;

(e) the terms of contracts between exporters and their suppliers unless it is not otherwise possible for the entity to conduct the inspection in question. In such cases, the entity shall only request the information necessary for this purpose.

13. The information referred to in paragraph 12 of this Article, which preshipment inspection entities shall not otherwise request, may be released voluntarily by the exporter to illustrate a specific case.

Conflicts of Interest

14. User Members shall ensure that preshipment inspection entities, bearing in mind also the provisions on protection of confidential business information in paragraphs 9-13 of this Article to 13, maintain procedures to avoid conflicts of interest:

(a) between preshipment inspection entities and any related entities of the preshipment inspection entities in question, including any entities in which the latter have a financial or commercial interest or any entities which have a financial interest in the preshipment inspection entities in question, and whose shipments the preshipment inspection entities are to inspect;

(b) between preshipment inspection entities and any other entities, including other entities subject to preshipment inspection, with the exception of the government entities contracting or mandating the inspections;

(c) with divisions of preshipment inspection entities engaged in activities other than those required to carry out the inspection process.

Delays

15. User Members shall ensure that preshipment inspection entities avoid unreasonable delays in inspection of shipments. User Members shall ensure that, once a preshipment inspection entity and an exporter agree on an inspection date, the preshipment inspection entity conducts the inspection on that date unless it is rescheduled on a mutually-agreed basis between the exporter and the preshipment inspection entity, or the preshipment inspection entity is prevented from doing so by the exporter or by force majeure.3

16. User Members shall ensure that, following receipt of the final documents and completion of the inspection, preshipment inspection entities, within five working days, either issue a Clean Report of Findings or provide a detailed written explanation specifying the reasons for non-issuance. User

3It is understood that, for the purposes of this Agreement, "force majeure" shall mean "irresistible compulsion or coercion, unforeseeable course of events excusing from fulfilment of contract".
Members shall ensure that, in the latter case, preshipment inspection entities give exporters the opportunity to present their views in writing and, if exporters so request, arrange for re-inspection at the earliest mutually convenient date.

17. User Members shall ensure that, whenever so requested by the exporters, preshipment inspection entities undertake, prior to the date of physical inspection, a preliminary verification of price and, where applicable, of currency exchange rate, on the basis of the contract between exporter and importer, the pro forma invoice and, where applicable, the application for import authorization. User Members shall ensure that a price or currency exchange rate that has been accepted by a preshipment inspection entity on the basis of such preliminary verification is not withdrawn, providing the goods conform to the import documentation and/or import licence. They shall ensure that, after a preliminary verification has taken place, preshipment inspection entities immediately inform exporters in writing either of their acceptance or of their detailed reasons for non-acceptance of the price and/or currency exchange rate.

18. User Members shall ensure that, in order to avoid delays in payment, preshipment inspection entities send to exporters or to designated representatives of the exporters a Clean Report of Findings as expeditiously as possible.

19. User Members shall ensure that, in the event of a clerical error in the Clean Report of Findings, preshipment inspection entities correct the error and forward the corrected information to the appropriate parties as expeditiously as possible.

**Price Verification**

20. User Members shall ensure that, in order to prevent over- and under-invoicing and fraud, preshipment inspection entities conduct price verification according to the following guidelines:

(a) preshipment inspection entities shall only reject a contract price agreed between an exporter and an importer if they can demonstrate that their findings of an unsatisfactory price are based on a verification process which is in conformity with the criteria set out in subparagraphs (b) - (e) below;

(b) the preshipment inspection entity shall base its price comparison for the verification of the export price on the price(s) of identical or similar goods offered for export from the same country of exportation at or about the same time, under competitive and comparable conditions of sale, in conformity with customary commercial practices and net of any applicable standard discounts. Such comparison shall be based on the following:

- (i) only prices providing a valid basis of comparison shall be used, taking into account the relevant economic factors pertaining to the country of importation and a country or countries used for price comparison;

- (ii) the preshipment inspection entity shall not rely upon the price of goods offered

*The obligations of user Members with respect to the services of preshipment inspection entities in connection with customs valuation shall be the obligations which they have accepted in the GATT 1994 and the other Multilateral Trade Agreements included in Annex 1A of the WTO Agreement Establishing the Multilateral Trade Organization.*
for export to different countries of importation to arbitrarily impose the lowest price upon the shipment;

- (iii) the preshipment inspection entity shall take into account the specific elements listed in paragraph 20(e) of this Article; subparagraph (c);

- (iv) at any stage in the process described above, the preshipment inspection entity shall provide the exporter with an opportunity to explain his price;

(c) when conducting price verification, preshipment inspection entities shall make appropriate allowances for the terms of the sales contract and generally applicable adjusting factors pertaining to the transaction; these factors shall include but not be limited to the commercial level and quantity of the sale, delivery periods and conditions, price escalation clauses, quality specifications, special design features, special shipping or packing specifications, order size, spot sales, seasonal influences, licence or other intellectual property fees, and services rendered as part of the contract if these are not customarily invoiced separately; they shall also include certain elements relating to the exporter’s price, such as the contractual relationship between the exporter and importer;

(d) the verification of transportation charges shall relate only to the agreed price of the mode of transport in the country of exportation as indicated in the sales contract;

(e) the following shall not be used for price verification purposes:

(i) the selling price in the country of importation of goods produced in such country;

(ii) the price of goods for export from a country other than the country of exportation;

(iii) the cost of production;

(iv) arbitrary or fictitious prices or values.

 Appeals Procedures

21. User Members shall ensure that preshipment inspection entities establish procedures to receive, consider and render decisions concerning grievances raised by exporters, and that information concerning such procedures is made available to exporters in accordance with the provisions of paragraphs 6 -7 of this Article and 7. User Members shall ensure that the procedures are developed and maintained in accordance with the following guidelines:

(a) preshipment inspection entities shall designate one or more officials who shall be available during normal business hours in each city or port in which they maintain a preshipment inspection administrative office to receive, consider and render decisions on exporters' appeals or grievances;

(b) exporters shall provide in writing to the designated official(s) the facts concerning the
specific transaction in question, the nature of the grievance and a suggested solution;

(c) the designated official(s) shall afford sympathetic consideration to exporters’ grievances and shall render a decision as soon as possible after receipt of the documentation referred to in subparagraph (b) above.

**Derogation**

22. By derogation to the provisions of Article 2, user Members shall provide that, with the exception of part shipments, shipments whose value is less than a minimum value applicable to such shipments as defined by the user Member shall not be inspected, except in exceptional circumstances. This minimum value shall form part of the information furnished to exporters under the provisions of paragraph 6 of this Article.

**Article 3**

**Obligations of Exporter Members**

**Non-discrimination**

1. Exporter Members shall ensure that their laws and regulations relating to preshipment inspection activities are applied in a non-discriminatory manner.

**Transparency**

2. Exporter Members shall publish promptly all applicable laws and regulations relating to preshipment inspection activities in such a manner as to enable other governments and traders to become acquainted with them.

**Technical Assistance**

3. Exporter Members shall offer to provide to user Members, if requested, technical assistance directed towards the achievement of the objectives of this Agreement on mutually agreed terms.³

**Article 4**

**Independent Review Procedures**

Members shall encourage preshipment inspection entities and exporters mutually to resolve their disputes. However, two working days after submission of the grievance in accordance with the provisions of paragraph 21 of Article 2, either party may refer the dispute to independent review. Members shall take such reasonable measures as may be available to them to ensure that the following procedures are established and maintained to this end:

(a) these procedures shall be administered by an independent entity constituted jointly by an organization representing preshipment inspection entities and an organization

³It is understood that such technical assistance may be given on a bilateral, plurilateral or multilateral basis.
representing exporters for the purposes of this Agreement;

(b) the independent entity referred to in sub-paragraph (a) of this Article shall establish a list of experts as follows:

(i) a section of members nominated by an organization representing preshipment inspection entities;

(ii) a section of members nominated by an organization representing exporters;

(iii) a section of independent trade experts, nominated by the independent entity referred to in sub-paragraph (a) of this Article.

The geographical distribution of the experts on this list shall be such as to enable any disputes raised under these procedures to be dealt with expeditiously. This list shall be drawn up within two months of the entry into force of the WTO Agreement Establishing the MTO and shall be updated annually. The list shall be publicly available. It shall be notified to the MTO WTO Secretariat and circulated to all Members;

(c) an exporter or preshipment inspection entity wishing to raise a dispute shall contact the independent entity referred to in sub-paragraph (a) of this Article and request the formation of a panel. The independent entity shall be responsible for establishing a panel. This panel shall consist of three members. The members of the panel shall be chosen so as to avoid unnecessary costs and delays. The first member shall be chosen from section (i) of the above list by the preshipment inspection entity concerned, provided that this member is not affiliated to that entity. The second member shall be chosen from section (ii) of the above list by the exporter concerned, provided that this member is not affiliated to that exporter. The third member shall be chosen from section (iii) of the above list by the independent entity referred to in sub-paragraph (a) of this Article. No objections shall be made to any independent trade expert drawn from section (iii) of the above list;

(d) the independent trade expert drawn from section (iii) of the above list shall serve as the chairman of the panel. He shall take the necessary decisions to ensure an expeditious settlement of the dispute by the panel, for instance, whether the facts of the case require the panelists to meet and, if so, where such a meeting shall take place, taking into account the site of the inspection in question;

(e) if the parties to the dispute so agree, one independent trade expert could be selected from section (iii) of the above list by the independent entity referred to in sub-paragraph (a) to review the dispute in question. This expert shall take the necessary decisions to ensure an expeditious settlement of the dispute, for instance taking into account the site of the inspection in question;

(f) the object of the review shall be to establish whether, in the course of the inspection in dispute, the parties to the dispute have complied with the provisions of this Agreement. The procedures shall be expeditious and provide the opportunity for both parties to present their views in person or in writing;
(g) decisions by a three-member panel shall be taken by majority vote. The decision on
the dispute shall be rendered within eight working days of the request for independent
review and be communicated to the parties to the dispute. This time-limit could be
extended upon agreement by the parties to the dispute. The panel or independent trade
expert shall apportion the costs, based on the merits of the case;

(h) the decision of the panel shall be binding upon the preshipment inspection entity and
the exporter which are parties to the dispute.

Article 5

Notification

Members Each Member shall submit to the WTO Secretariat copies of their laws
and regulations by which they put into force, as well as copies of any other
laws and regulations relating to preshipment inspection, when the WTO Agreement enters
force for the with respect to that Member concerned. No changes in the laws and regulations relating
to preshipment inspection shall be enforced before such changes have been officially published. They
shall be notified to the WTO Secretariat immediately after their publication. The WTO
Secretariat shall inform the Members of the availability of this information.

Article 6

Review

At the end of the second year from the date of entry into force of the WTO Agreement
Establishing the WTO and every three years thereafter, the Ministerial Conference shall review the
provisions, implementation and operation of this Agreement, taking into account the objectives thereof
and experience gained in its operation. As a result of such review, the Ministerial Conference may
amend the provisions of the Agreement.

Article 7

Consultation

Members A Member shall consult with any other Members upon request with respect to
any matter affecting the operation of this Agreement. In such cases, the provisions of Article XXII
of the GATT 1994, as elaborated and applied by the Dispute Settlement Understanding on Rules and
Procedures Governing the Settlement of Disputes, are applicable to this Agreement.
Article 8

Dispute Settlement

Any disputes among Members regarding the operation of this Agreement shall be subject to the provisions of Article XXIII of the GATT 1994, as elaborated and applied by the Dispute Settlement Understanding on Rules and Procedures Governing the Settlement of Disputes.

Article 9

Final Provisions

1. Members shall take the necessary measures for the implementation of the present Agreement.

2. Members shall ensure that their laws and regulations shall not be contrary to the provisions of this Agreement.

NOTE TO THE RECTIFIED TEXT:

Rectifications have been proposed to eliminate gender-specific references in Article 4(d).
4. Agreement on Rules of Origin

AGREEMENT ON RULES OF ORIGIN

Members,

Noting that Ministers on 20 September 1986 agreed that "the Uruguay Round of Multilateral Trade Negotiations shall aim to "bring about further liberalization and expansion of world trade," "strengthen the role of the GATT" and "increase the responsiveness of the GATT system to the evolving international economic environment";

Desiring to further the objectives of the GATT 1994;

Recognizing that clear and predictable rules of origin and their application facilitate the flow of international trade;

Desiring to ensure that rules of origin themselves do not create unnecessary obstacles to trade;

Desiring to ensure that rules of origin do not nullify or impair the rights of Members under the GATT 1994;

Recognizing that it is desirable to provide transparency of laws, regulations, and practices regarding rules of origin;

Desiring to ensure that rules of origin are prepared and applied in an impartial, transparent, predictable, consistent and neutral manner;

Recognizing the availability of a consultation mechanism and procedures for the speedy, effective and equitable resolution of disputes arising under this Agreement;

Desiring to harmonize and clarify rules of origin;

Hereby agree as follows:

PART I

DEFINITIONS AND COVERAGE

Article 1

Rules of Origin

1. For the purposes of Parts I to IV of this Agreement, rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods provided such rules of origin are not related to contractual
or autonomous trade régimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I +4 of the GATT 1994.

2. Rules of origin referred to in paragraph 1 shall include all rules of origin used in non-preferential commercial policy instruments, such as in the application of: most-favoured-nation treatment under Articles I, II, III, XI and XIII of the GATT 1994; anti-dumping and countervailing duties under Article VI of the GATT 1994; safeguard measures under Article XIX of the GATT 1994; origin marking requirements under Article IX of the GATT 1994; and any discriminatory quantitative restrictions or tariff quotas. They shall also include rules of origin used for government procurement and trade statistics.¹

PART II

DISCIPLINES TO GOVERN THE APPLICATION OF RULES OF ORIGIN

Article 2

Disciplines During the Transition Period

Until the work programme for the harmonization of rules of origin set out in Part IV below is completed, Members shall ensure that:

(a) when they issue administrative determinations of general application, the requirements to be fulfilled are clearly defined. In particular:

- (i) in cases where the criterion of change of tariff classification is applied, such a rule of origin, and any exceptions to the rule, must clearly specify the sub-headings or headings within the tariff nomenclature that are addressed by the rule;

- (ii) in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin;

- (iii) in cases where the criterion of manufacturing or processing operation is prescribed, the operation that confers origin on the good concerned shall be precisely specified;

(b) notwithstanding the measure or instrument of commercial policy to which they are linked, their rules of origin are not used as instruments to pursue trade objectives directly or indirectly;

(c) rules of origin shall not themselves create restrictive, distorting, or disruptive effects on international trade. They shall not pose unduly strict requirements or require the fulfillment of a certain condition not related to manufacturing or processing, as a prerequisite for the determination of the country of origin. However, costs not directly

¹It is understood that this provision is without prejudice to those determinations made for purposes of defining "domestic industry" or "like products of domestic industry" or similar terms wherever they apply.
related to manufacturing or processing may be included for the purposes of the application of an ad valorem percentage criterion consistent with subparagraph (a) above;

(d) the rules of origin that they apply to imports and exports are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other Members, irrespective of the affiliation of the manufacturers of the good concerned;

(e) their rules of origin are administered in a consistent, uniform, impartial and reasonable manner;

(f) their rules of origin are based on a positive standard. Rules of origin that state what does not confer origin (negative standard) are permissible as part of a clarification of a positive standard or in individual cases where a positive determination of origin is not necessary;

(g) their laws, regulations, and judicial and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of paragraph 1 of Article X + of the GATT 1994;

(h) upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (j) below. Such assessments shall be made publicly available subject to the provisions of subparagraph (k) below;

(i) when introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;

(j) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;

With respect to rules of origin applied for the purposes of government procurement, this provision shall not create obligations additional to those already assumed by Members under GATT 1994.

In respect of requests made during the first year from entry into force of the WTO Agreement Establishing the WTO, Members shall only be required to issue these assessments as soon as possible.
(k) all information that is by nature confidential or that is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 3

Disciplines after the Transition Period

Taking into account the aim of all Members to achieve, as a result of the harmonization work programme set out in Part IV below, the establishment of harmonized rules of origin, the Members shall ensure, upon the implementation of the results of the harmonization work programme, that:

(a) they apply rules of origin equally for all purposes as set out in Article 1 above;

(b) under their rules of origin, the country to be determined as the origin of a particular good is either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;

(c) the rules of origin that they apply to imports and exports are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other Members, irrespective of the affiliation of the manufacturers of the good concerned;

(d) the rules of origin are administered in a consistent, uniform, impartial and reasonable manner;

(e) their laws, regulations, and judicial and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of paragraph 1 of Article X of the GATT 1994;

(f) upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (h) below. Such assessments shall be made publicly available subject to the provisions of subparagraph (i) below;

(g) when introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws.
or regulations;

(h) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;

(i) all information which is by nature confidential or which is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

PART III

PROCEDURAL ARRANGEMENTS ON NOTIFICATION, REVIEW, CONSULTATION AND DISPUTE SETTLEMENT

Article 4

Institutions

There shall be established under this Agreement:

1. (a) a Committee on Rules of Origin (hereinafter referred to as "the Committee") composed of the representatives from each of the Members. The Committee shall elect its own Chairman and shall meet as necessary, but not less than once a year, for the purpose of affording Members the opportunity to consult on matters relating to the operation of Parts I, II, III and IV of the Agreement or the furtherance of the objectives set out in these Parts and to carry out such other responsibilities assigned to it under this Agreement or by the Council for Trade in Goods. Where appropriate, the Committee shall request information and advice from the Technical Committee (referred to in paragraph 2 below) subparagraph (b) on matters related to this Agreement. The Committee may also request such other work from the Technical Committee as it considers appropriate for the furtherance of the above-mentioned objectives of this Agreement. The MTO WTO Secretariat shall act as the secretariat to the Committee;

2. (b) a Technical Committee on Rules of Origin (hereinafter referred to as "the Technical Committee") under the auspices of the Customs Co-operation Council (CCC) as set out in Annex I of this Agreement. The Technical Committee shall carry out the technical work called for in Part IV and prescribed in Annex I of this Agreement. Where appropriate, the Technical Committee shall request information and advice from the Committee on matters related to this Agreement. The Technical Committee may also request such other work from the Committee as it considers appropriate for the furtherance of the above-mentioned objectives of the Agreement. The CCC Secretariat shall act as the secretariat to the Technical Committee.
Article 5

Information and Procedures for Modification
and Introduction of New Rules of Origin

1. Upon entry into force of the WTO Agreement Establishing the MTO, each Member shall provide to the MTO WTO Secretariat within 90 days its rules of origin, judicial decisions, and administrative rulings of general application relating to rules of origin in effect on the date of entry into force of the WTO Agreement Establishing the MTO. If by inadvertence a rule of origin has not been provided, the Member concerned shall provide it immediately after this fact becomes known. Lists of information received and available with the MTO WTO Secretariat shall be circulated to the Members by the MTO WTO Secretariat.

2. During the period referred to in Article 2 above, Members introducing modifications, other than de minimis modifications, to their rules of origin or introducing new rules of origin, which, for the purpose of this Article, shall include any rule of origin referred to in paragraph 1 above and not provided to the MTO WTO Secretariat, shall publish a notice to that effect at least 60 days before the entry into force of the modified or new rule in such a manner as to enable interested parties to become acquainted with the intention to modify a rule of origin or to introduce a new rule of origin, unless exceptional circumstances arise or threaten to arise for a Member. In these exceptional cases, the Member shall publish the modified or new rule as soon as possible.

Article 6

Review

1. The Committee shall review annually the implementation and operation of Parts II and III of this Agreement having regard to its objectives. The Committee shall annually inform the Council for Trade in Goods of developments during the period covered by such reviews.

2. The Committee shall review the provisions of Parts I, II and III above and propose amendments as necessary to reflect the results of the harmonization work programme.

3. The Committee, in cooperation with the Technical Committee, shall set up a mechanism to consider and propose amendments to the results of the harmonization work programme, taking into account the objectives and principles set out in Article 9. This may include instances where the rules need to be made more operational or need to be updated to take into account new production processes as affected by any technological change.

Article 7

Consultation

The provisions of Article XXII of the GATT 1994, as elaborated and applied by the Dispute Settlement Understanding on Rules and Procedures Governing the Settlement of Disputes, are applicable to this Agreement.
Article 8

Dispute Settlement

The provisions of Article XXIII of the GATT 1994, as elaborated and applied by the Dispute Settlement Understanding on Rules and Procedures Governing the Settlement of Disputes, are applicable to this Agreement.

PART IV

HARMONIZATION OF RULES OF ORIGIN

Article 9

Objectives and Principles

1. With the objectives of harmonizing rules of origin and, inter alia, providing more certainty in the conduct of world trade, the Ministerial Conference shall undertake the work programme set out below in conjunction with the CCC, on the basis of the following principles:

(a) rules of origin should be applied equally for all purposes as set out in Article 1 above;

(b) rules of origin should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;

(c) rules of origin should be objective, understandable and predictable;

(d) notwithstanding the measure or instrument to which they may be linked, rules of origin should not be used as instruments to pursue trade objectives directly or indirectly. They should not themselves create restrictive, distorting or disruptive effects on international trade. They should not pose unduly strict requirements or require the fulfilment of a certain condition not relating to manufacturing or processing as a prerequisite for the determination of the country of origin. However, costs not directly related to manufacturing or processing may be included for purposes of the application of an ad valorem percentage criterion;

(e) rules of origin should be administrable in a consistent, uniform, impartial and reasonable manner;

(f) rules of origin should be coherent;

(g) rules of origin should be based on a positive standard. Negative standards may be used to clarify a positive standard.
Work Programme

2. (a) The work programme shall be initiated as soon after the entry into force of the WTO Agreement Establishing the MTO as possible and will be completed within three years of initiation.

(b) The Committee and the Technical Committee provided for in Article 4 of this Agreement shall be the appropriate bodies to conduct this work.

(c) To provide for detailed input by the CCC, the Committee shall request the Technical Committee to provide its interpretations and opinions resulting from the work described below on the basis of the principles listed in paragraph 1 of this Article. To ensure timely completion of the work programme for harmonization, such work shall be conducted on a product sector basis, as represented by various chapters or sections of the Harmonized System (HS) nomenclature.

(i) Wholly Obtained and Minimal Operations or Processes

The Technical Committee shall develop harmonized definitions of:

- the goods that are to be considered as being wholly obtained in one country. This work shall be as detailed as possible;
- minimal operations or processes that do not by themselves confer origin to a good.

The results of this work shall be submitted to the Committee within three months of receipt of the request from the Committee.

(ii) Substantial Transformation - Change in Tariff Classification

- The Technical Committee shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use of change in tariff subheading or heading when developing rules of origin for particular products or a product sector and, if appropriate, the minimum change within the nomenclature that meets this criterion.
- The Technical Committee shall divide the above work on a product basis taking into account the chapters or sections of the HS nomenclature, so as to submit results of its work to the Committee at least on a quarterly basis. The Technical Committee shall complete the above work within one year and three months from receipt of the request of the Committee.

(iii) Substantial Transformation - Supplementary Criteria

Upon completion of the work under subparagraph (ii) for each product sector or individual product category where the exclusive use of the HS nomenclature does not allow for the expression of substantial transformation, the Technical Committee:

- shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use, in a supplementary or exclusive manner, of other
requirements, including ad valorem percentages\(^4\) and/or manufacturing or processing operations\(^5\), when developing rules of origin for particular products or a product sector;

- may provide explanations for its proposals;
- shall divide the above work on a product basis taking into account the chapters or sections of the HS nomenclature, so as to submit results of its work to the Committee at least on a quarterly basis. The Technical Committee shall complete the above work within two years and three months of receipt of the request from the Committee.

**Rôle of the Committee**

3. On the basis of the principles listed in paragraph 1 of this Article:

(a) the Committee shall consider the interpretations and opinions of the Technical Committee periodically in accordance with the time-frames provided in subparagraphs (i), (ii) and (iii) above of paragraph 2(c) with a view to endorsing such interpretations and opinions. The Committee may request the Technical Committee to refine or elaborate its work and/or to develop new approaches. To assist the Technical Committee, the Committee should provide its reasons for requests for additional work and, as appropriate, suggest alternative approaches;

(b) upon completion of all the work identified in subparagraphs (i), (ii) and (iii) above of paragraph 2(c), the Committee shall consider the results in terms of their overall coherence.

**Results of the Harmonization Work Programme and Subsequent Work**

4. The Ministerial Conference shall establish the results of the harmonization work programme in an annex as an integral part of this Agreement.\(^6\) The Ministerial Conference shall establish a time-frame for the entry into force of this annex.

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\(^4\)If the ad valorem criterion is prescribed, the method for calculating this percentage shall also be indicated in the rules of origin.

\(^5\)If the criterion of manufacturing or processing operation is prescribed, the operation that confers origin on the product concerned shall be precisely specified.

\(^6\)At the same time, consideration shall be given to arrangements concerning the settlement of disputes relating to customs classification.
ANNEX I

TECHNICAL COMMITTEE ON RULES OF ORIGIN

Responsibilities

1. The ongoing responsibilities of the Technical Committee shall include the following:

(a) at the request of any member of the Technical Committee, to examine specific technical problems arising in the day-to-day administration of the rules of origin of Members and to give advisory opinions on appropriate solutions based upon the facts presented;

(b) to furnish information and advice on any matters concerning the origin determination of goods as may be requested by any Member or the Committee;

(c) to prepare and circulate periodic reports on the technical aspects of the operation and status of this Agreement; and

(d) to review annually the technical aspects of the implementation and operation of Parts II and III of this Agreement.

2. The Technical Committee shall exercise such other responsibilities as the Committee may request of it.

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Members or the Committee, in a reasonably short period of time.

Representation

4. Each Member shall have the right to be represented on the Technical Committee. Each Member may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a Member so represented on the Technical Committee is hereinafter referred to as a "member" of the Technical Committee. Representatives of members of the Technical Committee may be assisted by advisers at meetings of the Technical Committee. The WTO Secretariat may also attend such meetings with observer status.

5. Members of the CCC who are not WTO Members of the WTO may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

6. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the CCC (hereinafter referred to as "the Secretary-General") may invite representatives of governments which are neither WTO Members of the WTO nor members of the CCC and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

7. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.
Meetings

8. The Technical Committee shall meet as necessary, but not less than once a year.

Procedures

9. The Technical Committee shall elect its own Chairman and shall establish its own procedures.

ANNEX II

COMMON DECLARATION WITH REGARD TO PREFERENTIAL RULES OF ORIGIN

1. Recognizing that some Members apply preferential rules of origin, distinct from non-preferential rules of origin, the Members hereby agree as follows.

2. For the purposes of this Common Declaration, preferential rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine whether goods qualify for preferential treatment under contractual or autonomous trade régimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I-4- of the GATT 1994.

3. The Members agree to ensure that:

(a) When they issue administrative determinations of general application, the requirements to be fulfilled are clearly defined. In particular:

-(i) in cases where the criterion of change of tariff classification is applied, such a preferential rule of origin, and any exceptions to the rule, must clearly specify the subheadings or headings within the tariff nomenclature that are addressed by the rule;

-(ii) in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the preferential rules of origin;

-(iii) in cases where the criterion of manufacturing or processing operation is prescribed, the operation that confers preferential origin shall be precisely specified;

(b) their preferential rules of origin are based on a positive standard. Preferential rules of origin that state what does not confer preferential origin (negative standard) are permissible as part of a clarification of a positive standard or in individual cases where a positive determination of preferential origin is not necessary;

(c) their laws, regulations, and judicial and administrative rulings of general application relating to preferential rules of origin are published as if they were subject to, and in accordance with, the provisions of paragraph 1 of Article X-1- of the GATT 1994;
(d) upon request of an exporter, importer or any person with a justifiable cause, assessments of the preferential origin they would accord to a good are issued as soon as possible but no later than 150 days after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the preferential rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in sub-paragraph subparagraph (f) below. Such assessments shall be made publicly available subject to the provisions of sub-paragraph subparagraph (g) below;

(e) when introducing changes to their preferential rules of origin or new preferential rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;

(f) any administrative action which they take in relation to the determination of preferential origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;

(g) all information that is by nature confidential or that is provided on a confidential basis for the purpose of the application of preferential rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

4. The Members agree to provide to the WTO Secretariat promptly their preferential rules of origin, including a listing of the preferential arrangements to which they apply, judicial decisions, and administrative rulings of general application relating to their preferential rules of origin in effect on the date of entry into force of this Common Declaration. Furthermore, Members agree to provide any modifications to their preferential rules of origin or new preferential rules of origin as soon as possible to the WTO Secretariat. Lists of information received and available with the WTO Secretariat shall be circulated to the Members by the WTO Secretariat.

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7In respect of requests made during the first year from entry into force of the Agreement Establishing the WTO, Members shall only be required to issue these assessments as soon as possible.
5. Agreement on Import Licensing Procedures

AGREEMENT ON IMPORT LICENSING PROCEDURES

Members,

Having regard to the Multilateral Trade Negotiations;

Desiring to further the objectives of the GATT 1994;

Taking into account the particular trade, development and financial needs of developing country Members;

Recognizing the usefulness of automatic import licensing for certain purposes and that such licensing should not be used to restrict trade;

Recognizing that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of the GATT 1994;

Recognizing the provisions of the GATT 1994 as they apply to import licensing procedures;

Desiring to ensure that import licensing procedures are not utilized in a manner contrary to the principles and obligations of the GATT 1994;

Recognizing that the flow of international trade could be impeded by the inappropriate use of import licensing procedures;

Convinced that import licensing, particularly non-automatic import licensing, should be implemented in a transparent and predictable manner;

Recognizing that non-automatic licensing procedures should be no more administratively burdensome than absolutely necessary to administer the relevant measure;

Desiring to simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices;

Desiring to provide for a consultative mechanism and the speedy, effective and equitable resolution of disputes arising under this Agreement;

Hereby agree as follows:
Article 1

General Provisions

1. For the purpose of this Agreement, import licensing is defined as administrative procedures used for the operation of import licensing régimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member.

2. Members shall ensure that the administrative procedures used to implement import licensing régimes are in conformity with the relevant provisions of the GATT 1994 including its annexes and protocols, as interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing country Members.

3. The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner.

4. (a) The rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms and institutions to make such applications, the administrative body(ies) to be approached, and the lists of products subject to the licensing requirement shall be published in the sources notified to the Committee established under Article 4, in such a manner as to enable governments and traders to become acquainted with them. Such publication shall take place, whenever practicable, twenty-one days prior to the effective date of the requirement but in all events not later than such effective date. Any exception, derogations or changes in or from the rules concerning licensing procedures or the list of products subject to import licensing shall also be published in the same manner and within the same time periods as specified above. Copies of these publications shall also be made available to the WTO Secretariat.

(b) Members who wish to make comments in writing shall be provided the opportunity to discuss these comments upon request. The concerned Member shall give due consideration to these comments and results of discussion.

5. Application forms and, where applicable, renewal forms shall be as simple as possible. Such documents and information as are considered strictly necessary for the proper functioning of the licensing régime may be required on application.

6. Application procedures and, where applicable, renewal procedures shall be as simple as possible. Applicants shall be allowed a reasonable period for the submission of licence applications. Where there is a closing date, this period should be at least twenty-one days with provision for extension in circumstances where insufficient applications have been received within this period. Applicants

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1Those procedures referred to as "licensing" as well as other similar administrative procedures.

2Nothing in this Agreement shall be taken as implying that the basis, scope or duration of a measure being implemented by a licensing procedure is subject to question under this Agreement.

3For the purpose of this Agreement, the term "governments" is deemed to include the competent authorities of the European Communities.
shall have to approach only one administrative body in connection with an application. Where it is strictly indispensable to approach more than one administrative body, applicants shall not need to approach more than three administrative bodies.

7. No application shall be refused for minor documentation errors which do not alter basic data contained therein. No penalty greater than necessary to serve merely as a warning shall be imposed in respect of any omission or mistake in documentation or procedures which is obviously made without fraudulent intent or gross negligence.

8. Licensed imports shall not be refused for minor variations in value, quantity or weight from the amount designated on the licence due to differences occurring during shipment, differences incidental to bulk loading and other minor differences consistent with normal commercial practice.

9. The foreign exchange necessary to pay for licensed imports shall be made available to licence holders on the same basis as to importers of goods not requiring import licences.

10. With regard to security exceptions, the provisions of Article XXI of the GATT 1994 apply.

11. The provisions of this Agreement shall not require any Member to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

**Article 2**

*Automatic Import Licensing*

1. Automatic import licensing is defined as import licensing where approval of the application is granted in all cases, and in accordance with the requirements of paragraph 2(a) of this Article.

2. The following provisions, in addition to those in paragraphs 1 to 11 of Article 1 and paragraph 1 of the present Article, shall apply to automatic import licensing procedures:

   (a) automatic licensing procedures shall not be administered in such a manner as to have restricting effects on imports subject to automatic licensing. Automatic licensing procedures shall be deemed to have trade-restricting effects unless, *inter alia*:

   (i) any person, firm or institution which fulfils the legal requirements of the importing Member for engaging in import operations involving products subject to automatic licensing is equally eligible to apply for and to obtain import licenses.

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*Those import licensing procedures requiring a security which have no restrictive effects on imports are to be considered as falling within the scope of paragraphs 1 and 2 of this Article.*

*A developing country Member, other than a developing country Member which was a Party to the Agreement on Import Licensing Procedures 1979, which has specific difficulties with the requirements of subparagraphs (a)(ii) and (a)(iii) may, upon notification to the Committee referred to in Article 4, delay the application of these subparagraphs by not more than two years from the date of entry into force of the WTO Agreement Establishing the WTO for such Member.*
licences;

(ii) applications for licences may be submitted on any working day prior to the customs clearance of the goods;

(iii) applications for licences when submitted in appropriate and complete form are approved immediately on receipt, to the extent administratively feasible, but within a maximum of ten 10 working days;

(b) Members recognize that automatic import licensing may be necessary whenever other appropriate procedures are not available. Automatic import licensing may be maintained as long as the circumstances which gave rise to its introduction prevail and as long as its underlying administrative purposes cannot be achieved in a more appropriate way.

**Article 3**

*Non-automatic Automatic Import Licensing*

1. The following provisions, in addition to those in paragraphs 1 to 11 of Article 1, shall apply to non-automatic import licensing procedures. Non-automatic import licensing procedures are defined as import licensing not falling within the definition contained in paragraph 1 of Article 2.

2. Non-automatic licensing shall not have trade-restrictive or distortive effects on imports additional to those caused by the imposition of the restriction. Non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure.

3. In the case of licensing requirements for purposes other than the implementation of quantitative restrictions, Members shall publish sufficient information for other Members and traders to know the basis for granting and/or allocating licences.

4. Where a Member provides the possibility for persons, firms or institutions to request exceptions or derogations from a licensing requirement, it shall include this fact in the information published under paragraph 4 of Article 1 as well as information on how to make such a request and, to the extent possible, an indication of the circumstances under which requests would be considered.

5. (a) Members shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning:

   (i) the administration of the restrictions;

   (ii) the import licences granted over a recent period;

   (iii) the distribution of such licences among supplying countries;

   (iv) where practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing. Developing country Members would
not be expected to take additional administrative or financial burdens on this account;

(b) Members administering quotas by means of licensing shall publish the overall amount of quotas to be applied by quantity and/or value, the opening and closing dates of quotas, and any change thereof, within the time periods specified in paragraph 4 of Article 1 and in such a manner as to enable governments and traders to become acquainted with them;

(c) in the case of quotas allocated among supplying countries, the Member applying the restrictions shall promptly inform all other Members having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall publish this information within the time periods specified in paragraph 4 of Article 1 and in such a manner as to enable governments and traders to become acquainted with them;

(d) where situations arise which make it necessary to provide for an early opening date of quotas, the information referred to in paragraph 4 of Article 1 should be published within the time periods specified in paragraph 4 of Article 1 and in such a manner as to enable governments and traders to become acquainted with them;

(e) any person, firm or institution which fulfils the legal and administrative requirements of the importing Member shall be equally eligible to apply and to be considered for a licence. If the licence application is not approved, the applicant shall, on request, be given the reason therefor and shall have a right of appeal or review in accordance with the domestic legislation or procedures of the importing Member;

(f) the period for processing applications shall, except when not possible for reasons outside the control of the Member, not be longer than thirty days if applications are considered as and when received, i.e. on a first-come first-served basis, and no longer than sixty days if all applications are considered simultaneously. In the latter case, the period for processing applications shall be considered to begin on the day following the closing date of the announced application period;

(g) the period of licence validity shall be of reasonable duration and not be so short as to preclude imports. The period of licence validity shall not preclude imports from distant sources, except in special cases where imports are necessary to meet unforeseen short-term requirements;

(h) when administering quotas, Members shall not prevent importation from being effected in accordance with the issued licences, and shall not discourage the full utilization of quotas;

(i) when issuing licences, Members shall take into account the desirability of issuing licences for products in economic quantities;

(j) in allocating licences, the Member should consider the import performance of the applicant. In this regard, consideration should be given as to whether licences issued to applicants in the past have been fully utilized during a recent representative period.
In cases where licences have not been fully utilized, the Member shall examine the reasons for this and take these reasons into consideration when allocating new licences. Consideration shall also be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for products in economic quantities. In this regard, special consideration should be given to those importers importing products originating in developing country Members and, in particular, the least-developed country Members;

\(\text{k}\) in the case of quotas administered through licences which are not allocated among supplying countries, licence holders\(^6\) shall be free to choose the sources of imports. In the case of quotas allocated among supplying countries, the licence shall clearly stipulate the country or countries;

\(\text{l}\) in applying paragraph 8 of Article 1, compensating adjustments may be made in future licence allocations where imports exceeded a previous licence level.

\[\text{Article 4}\]

\[\text{Institutions}\]

There shall be established under this Agreement a Committee on Import Licensing composed of representatives from each of the Members (referred to in this Agreement as "the Committee"). The Committee shall elect its own Chairman and Vice-Chairman and shall meet as necessary for the purpose of affording Members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives.

\[\text{Article 5}\]

\[\text{Notification}\]

1. Members which institute licensing procedures or changes in these procedures shall notify the Committee of such within sixty 60 days of publication.

2. Notifications of the institution of import licensing procedures shall include the following information:

(a) list of products subject to licensing procedures;

(b) contact point for information on eligibility;

(c) administrative body(ies) for submission of applications;

(d) date and name of publication where licensing procedures are published;

(e) indication of whether the licensing procedure is automatic or non-automatic according

\(^6\text{Sometimes referred to as "quota holders".}\)
to definitions contained in Articles 2 and 3;

(f) in the case of automatic import licensing procedures, their administrative purpose;

(g) in the case of non-automatic import licensing procedures, indication of the measure being implemented through the licensing procedure; and

(h) expected duration of the licensing procedure if this can be estimated with some probability, and if not, reason why this information cannot be provided.

3. Notifications of changes in import licensing procedures shall indicate the elements mentioned above, if changes in such occur.

4. Members shall notify the Committee of the publication(s) in which the information required in paragraph 4 of Article 1 will be published.

5. Any interested Member which considers that another Member has not notified the institution of a licensing procedure or changes therein in accordance with the provisions of paragraphs 1 to 3 of this Article may bring the matter to the attention of such other Member. If notification is not made promptly thereafter, such Member may itself notify the licensing procedure or changes therein, including all relevant and available information.

Article 6

Consultation and Dispute Settlement

Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall be subject to the provisions of Articles XXII and XXIII of the GATT 1994, as elaborated and applied by the Dispute Settlement Understanding on Rules and Procedures Governing the Settlement of Disputes.

Article 7

Review

1. The Committee shall review as necessary, but at least once every two years, the implementation and operation of this Agreement, taking into account the objectives thereof, and the rights and obligations contained therein.

2. As a basis for the Committee review, the MTS WTO Secretariat shall prepare a factual report based on information provided under Article 5, responses to the annual questionnaire on import licensing procedures and other relevant reliable information which is available to it. This report shall provide a synopsis of the aforementioned information, in particular indicating any changes or developments during the period under review, and including any other information as agreed by the Committee.

3. Members undertake to complete the annual questionnaire on import licensing procedures promptly and in full.

4. The Committee shall inform the Council for Trade in Goods of developments during the period covered by such reviews.

Article 8

Final Provisions

Reservations

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

Domestic Legislation

2. (a) Each Member shall ensure, not later than the date of entry into force of the WTO Agreement Establishing the MTO for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

   (b) Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.
6. Agreement on Subsidies and Countervailing Measures

AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

PART I: GENERAL

Article 1

Definition of a Subsidy

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any public body within the territory of a Member (hereinafter referred to as "government"), i.e. 7 where:

(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);  

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

or

(a)(2) there is any form of income or price support in the sense of Article XVI of the GATT 1994;

and

(b) a benefit is thereby conferred.

1In accordance with the provisions of Article XVI of the GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of this Agreement, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.
1.2 A subsidy as defined in paragraph 1 above shall be subject to the provisions of Part II or shall be subject to the provisions of Part III or V of this Agreement only if such a subsidy is specific in accordance with the provisions of Article 2 below.

Article 2

Specificity

2.1 In order to determine whether a subsidy, as defined in paragraph 1 of Article 1 above, is specific to an enterprise or industry or group of enterprises or industries (hereinafter referred to as "certain enterprises") within the jurisdiction of the granting authority, the following principles shall apply:

(a) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific.

(b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification.

(c) If, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b) above, there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In applying this subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

2.2 A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Agreement.

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2Objective criteria or conditions, as used herein, mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise.

3In this regard, in particular, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall, in particular, be considered.
2.3 Any subsidy falling under the provisions of Article 3 shall be deemed to be specific.

2.4 Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.

PART II: PROHIBITED SUBSIDIES

Article 3

Prohibition

3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1 above, shall be prohibited:

(a) subsidies contingent, in law or in fact\(^4\), whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I\(^5\);

(b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

3.2 Members shall not neither grant nor maintain subsidies referred to in paragraph 1.

Article 4

Remedies

4.1 Whenever a Member has reason to believe that a prohibited subsidy is being granted or maintained by another Member, such Member may request consultations with such other Member.

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

4.3 Upon request for consultations under paragraph 1 above, the Member believed to be granting or maintaining the subsidy in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

\(^4\)This standard is met when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is accorded to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.

\(^5\)Measures referred to in Annex I as not constituting export subsidies shall not be prohibited under this or any other provision of this Agreement.
4.4 If no mutually acceptable solution has been reached within thirty 30 days of the request for consultations, any Member party to such consultations may refer the matter to the Dispute Settlement Body (the DSB) for the immediate establishment of a Panel, unless the DSB decides by consensus not to establish a panel.

4.5 Upon its establishment, the Panel may request the assistance of the Permanent Group of Experts (hereinafter referred to as the "PGE") with regard to whether the measure in question is a prohibited subsidy. If so requested, the PGE shall immediately review the evidence with regard to the existence and nature of the measure in question and shall provide an opportunity for the Member granting, applying, or maintaining the measure to demonstrate that the measure in question is not a prohibited subsidy. The PGE shall report its conclusions to the Panel within a time-limit determined by the Panel. The PGE's conclusions on the issue of whether or not the measure in question is a prohibited subsidy shall be accepted by the Panel without modification.

4.6 The Panel, established pursuant to paragraph 4 above, shall submit its final report to the Members party parties to the dispute. The report shall be circulated to all Members within ninety 90 days of the date of the composition and the establishment of the Panel's terms of reference.

4.7 If the measure in question is found to be a prohibited subsidy, the Panel shall recommend that the subsidizing Member withdraw the subsidy without delay. In this regard, the Panel shall specify in its recommendation the time-period within which the measure must be withdrawn.

4.8 Within thirty 30 days of the issuance of the Panel's report to all Members, the report shall be adopted by the DSB unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report.

4.9 Where a panel report is appealed, the Appellate Body shall issue its decision within thirty 30 days from the date when the party to the dispute formally notifies its intention to appeal. When the Appellate Body considers that it cannot provide its report within thirty 30 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed sixty 60 days. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report within twenty 20 days following its issuance to the Members.

4.10 In the event the recommendation of the DSB is not followed within the time-period specified by the Panel, which shall commence from the date of adoption of the Panel's report or the Appellate Body's report, the DSB shall grant authorization to the complaining Member to take

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6Any time-periods mentioned in this Article may be extended by mutual agreement.

7As established in the Agreement Establishing the WTO and hereinafter referred to as the DSB provided for in paragraph 3 of Article 24.

8If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.
appropriate\textsuperscript{9} countermeasures, unless the DSB decides by consensus to reject the request not to grant such authorization.

4.11 In the event a party to the dispute requests arbitration under paragraph 22.6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the DSU)\textsuperscript{10}, the arbitrator shall determine whether the countermeasures are appropriate.\textsuperscript{10}

4.12 For purposes of disputes conducted pursuant to this Article, except for time periods specifically prescribed in this Article, time periods applicable under the DSU for the conduct of such disputes shall be half the time prescribed therein.

PART III: ACTIONABLE SUBSIDIES

Article 5

Trade Adverse Effects

§1 No Member should cause, through the use of any subsidy referred to in paragraphs 1 and 2 within the meaning of Article 1 above, adverse effects to the interests of other Members, i.e.:

(a) injury to the domestic industry of another Member\textsuperscript{11};

(b) nullification or impairment of benefits accruing directly or indirectly to other Members under the GATT 1994 in particular the benefits of concessions bound under Article II of the GATT 1994\textsuperscript{12};

(c) serious prejudice to the interests of another Member.\textsuperscript{13}

This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture.

\textsuperscript{9}This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited.

\textsuperscript{10}This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited.

\textsuperscript{11}Injury The term "injury to the domestic industry" is used here in the same sense as it is used in Part V of this Agreement.

\textsuperscript{12}Nullification The term "nullification or impairment" is used in this Agreement in the same sense as it is used in the relevant provisions of the GATT 1994, and the existence of such nullification or impairment shall be established in accordance with the practice of application of these provisions.

\textsuperscript{13}Serious The term "serious prejudice to the interests of another Member" is used in this Agreement in the same sense as it is used in paragraph 1 of Article XVI + of the GATT 1994, and includes threat of serious prejudice.
Article 6

Serious Prejudice

6.1 Serious prejudice in the sense of paragraph (c) of Article 5 shall be deemed to exist in the case of:

(a) the total ad valorem subsidization of a product exceeding 5 per cent;

(b) subsidies to cover operating losses sustained by an industry;

(c) subsidies to cover operating losses sustained by an enterprise, other than one-time measures which are non-recurrent and cannot be repeated for that enterprise and which are given merely to provide time for the development of long-term solutions and to avoid acute social problems;

(d) direct forgiveness of debt, i.e. forgiveness of government-held debt, and grants to cover debt repayment.

6.2 Notwithstanding the provisions of paragraph 1 above, serious prejudice shall not be found if the subsidizing Member demonstrates that the subsidy in question has not resulted in any of the effects enumerated in paragraph 3 below.

6.3 Serious prejudice in the sense of paragraph (c) of Article 5 may arise in any case where one or several of the following apply:

(a) the effect of the subsidy is to displace or impede the imports of a like product of another Member into the market of the subsidizing Member;

(b) the effect of the subsidy is to displace or impede the exports of a like product of another Member from a third country market;

(c) the effect of the subsidy is a significant price undercutting by the subsidized products as compared with the price of a like product of another Member in the same market or significant price suppression, price depression or lost sales in the same market;

(d) the effect of the subsidy is an increase in the world market share of the subsidizing Member in a particular subsidized primary product or commodity as compared to

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14The total ad valorem subsidization shall be calculated in accordance with the provisions of Annex IV.

15Since it is anticipated that civil aircraft will be subject to specific multilateral rules, the threshold in this subparagraph does not apply to civil aircraft.

16Members recognize that where royalty-based financing for a civil aircraft programme is not being fully repaid due to the level of actual sales falling below the level of forecast sales, this does not in itself constitute serious prejudice for the purposes of this subparagraph.

17Unless other multilaterally agreed specific rules apply to the trade in the product or commodity in question.
the average share it had during the previous period of three years and this increase must follow a consistent trend over a period when subsidies have been granted.

6.4 For the purpose of paragraph 3(b) above, displacing the displacement or impeding of exports shall include any case in which, subject to the provisions of paragraph 7 below, it has been demonstrated to the Committee that there has been a change in relative shares of the market to the disadvantage of the non-subsidized like product (over an appropriately representative period of, in normal circumstances, at least one year; sufficient to demonstrate clear trends in the development of the market for the product concerned), which, in normal circumstances, shall be at least one year. "Change in relative shares of the market" shall include any of the following situations: (i) there is an increase in the market share of the subsidized product; (ii) the market share of the subsidized product remains constant in circumstances in which, in the absence of the subsidy, it would have declined; (iii) the market share of the subsidized product declines, but at a slower rate than would have been the case in the absence of the subsidy.

6.5 For the purpose of paragraph 3(c) above, price undercutting shall include any case in which such price undercutting has been demonstrated to the Committee through comparing a comparison of prices of the subsidized product with prices of a non-subsidized like product supplied to the same market. The comparison shall be made at the same level of trade and at comparable times, due account being taken of any other factor affecting price comparability. However, if such a direct comparison is not possible, the existence of price undercutting may be demonstrated on the basis of export unit values.

6.6 Each Member in the market of which serious prejudice is alleged to have arisen shall, subject to the provisions of paragraph 3 of Annex V, make available to the parties to a dispute and to the Committee arising under Article 7, and to the panel established pursuant to paragraph 4 of Article 7, all relevant information that can be obtained as to the changes in market shares of the disputing parties to the dispute as well as concerning prices of the products involved.

6.7 Displacement or impediment resulting in serious prejudice shall not arise under paragraph 3 above where any of the following circumstances exist during the relevant period:

(a) prohibition or restriction on exports of the like product from the complaining Member or on imports from the complaining Member into the third country market concerned;

(b) decision by an importing government operating a monopoly of trade or state trading in the product concerned to shift, for non-commercial reasons, imports from the complaining Member to another country or countries;

(c) natural disasters, strikes, transport disruptions or other force majeure substantially affecting production, qualities, quantities or prices of the product available for export from the complaining Member;

(d) existence of arrangements limiting exports from the complaining Member;

\[1\] The fact that certain circumstances are referred to in this paragraph does not, in itself, confer upon them any legal status in terms of either the GATT 1994 or this Agreement. These circumstances must not be isolated, sporadic or otherwise insignificant.
(e) voluntary decrease in the availability for export of the product concerned from the complaining Member (including, *inter alia*, a situation where firms in the complaining Member have been autonomously reallocating exports of this product to new markets);

(f) failure to conform to standards and other regulatory requirements in the importing country.

6.8 In the absence of circumstances referred to in paragraph 7 above, the existence of serious prejudice should be determined on the basis of the information submitted to or obtained by the panel, including information submitted in accordance with the provisions of Annex V.

6.9 This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture.

**Article 7**

**Remedies**

7.1 Except as provided in Article 13 of the Agreement on Agriculture, whenever a Member has reason to believe that any subsidy referred to in within the meaning of Article 1, granted or maintained by another Member, results in injury to its domestic industry, nullification or impairment or serious prejudice, such Member may request consultations with such other Member.

7.2 A request for consultations under paragraph 1 above shall include a statement of available evidence with regard to (a) the existence and nature of the subsidy in question, and (b) the injury caused to the domestic industry, or the nullification or impairment, or serious prejudice caused to the interests of the Member requesting consultations.

7.3 Upon request for consultations under paragraph 1 above, the Member believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

7.4 If consultations do not result in a mutually acceptable solution within sixty days, any Member party to such consultations may refer the matter to the Dispute Settlement Body (DSB) for the establishment of a Panel, unless the DSB decides by consensus not to establish a panel. The composition of the Panel and its terms of reference shall be established within fifteen days from the date when it is established.

7.5 The Panel, established pursuant to paragraph 4 above, shall review the matter and shall submit its final report to the Members party parties to the dispute. The report shall be circulated to...

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19 In the event that the request relates to a subsidy deemed to result in serious prejudice in terms of paragraph 1 of Article 6.1 above 6, the available evidence of serious prejudice may be limited to the available evidence as to whether the conditions of paragraph 1 of Article 6.1 6 have been met or not.

20 Any time periods mentioned in this Article may be extended by mutual agreement.
all Members within 120 days of the date of the composition and establishment of the Panel's terms of reference.

7.6 Within thirty 30 days of the issuance of the Panel's report to all Members, the report shall be adopted by the DSB unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report.

7.7 Where a panel report is appealed, the Appellate Body shall issue its decision within sixty 60 days from the date when the party to the dispute formally notifies its intention to appeal. When the Appellate Body considers that it cannot provide its report within sixty 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed ninety 90 days. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report within twenty 20 days following its issuance to the Members.

7.8 Where a panel report or an Appellate Body report is adopted in which it is determined that any subsidy has resulted in adverse effects to the interests of another Member within the meaning of Article 5 of this Agreement, the Member granting or maintaining such subsidy shall take appropriate steps to remove the adverse effects or shall withdraw the subsidy.

7.9 In the event the Member has not taken appropriate steps to remove the adverse effects of the subsidy or withdraw the subsidy within six months from the date when the DSB adopts the panel report or the Appellate Body report, and in the absence of agreement on compensation, the DSB shall grant authorization to the complaining Member to take countermeasures, commensurate with the degree and nature of the adverse effects determined to exist, unless the DSB decides by consensus to reject the request not to grant such authorization.

7.10 In the event that a party to the dispute requests arbitration under paragraph 22.6 of the DSU, the arbitrator shall determine whether the countermeasures are commensurate with the degree and nature of the adverse effects determined to exist.

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21If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

22If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.
PART IV: NON-ACTIONABLE SUBSIDIES

Article 8

Identification of Non-Actionable Subsidies

8.1 The following subsidies shall be considered as non-actionable:\n
(a) subsidies which are not specific within the meaning of paragraph 1 of Article 2 above;

(b) subsidies which are specific within the meaning of Article 2 above but which meet all of the conditions provided for in paragraphs 2(a) or 2(b) or 2(c) below.

\(^{23}\)It is recognized that government assistance for various purposes is widely provided by Members and that the mere fact that such assistance may not qualify for non-actionable treatment under the provisions of this Article does not in itself restrict the ability of Members to provide such assistance.
8.2 Notwithstanding the provisions of Parts III and V of this Agreement, the following subsidies shall be non-actionable:

(a) assistance for research activities conducted by firms or by higher education or research establishments on a contract basis with firms if: 24, 25, 26

the assistance covers not more than 75 per cent of the costs of industrial research or 50 per cent of the costs of pre-competitive development activity 28, 29;

and provided that such assistance is limited exclusively to:

(i) personnel costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);

(ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;

(iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;

24 Since it is anticipated that civil aircraft will be subject to specific multilateral rules, the provisions of this subparagraph do not apply to that product.

25 Not later than 18 months after the date of entry into force of the WTO Agreement, the Committee on Subsidies and Countervailing Measures, as provided for in Article 24 ("the Committee") shall review the operation of the provisions of this subparagraph 2(a) with a view to making all necessary modifications to improve the operation of these provisions. In its consideration of possible modifications, the Committee shall carefully review the definitions of the categories set forth in this subparagraph in the light of the experience of Members in the operation of research programmes and the work in other relevant international institutions.

26 The provisions of this Agreement do not apply to fundamental research activities independently conducted by higher education or research establishments. The term "fundamental research" means an enlargement of general scientific and technical knowledge not linked to industrial or commercial objectives.

27 The allowable levels of non-actionable assistance referred to in this subparagraph shall be established by reference to the total eligible costs incurred over the duration of an individual project.

28 The term "industrial research" means planned search or critical investigation aimed at discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes or services, or in bringing about a significant improvement to existing products, processes or services.

29 The term "pre-competitive development activity" means the translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services whether intended for sale or use, including the creation of a first prototype which would not be capable of commercial use. It may further include the conceptual formulation and design of products, processes or services alternatives and initial demonstration or pilot projects, provided that these same projects cannot be converted or used for industrial application or commercial exploitation. It does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, and other on-going operations even though those alterations may represent improvements.

30 In the case of programmes which span industrial research and pre-competitive development activity, the allowable level of non-actionable assistance shall not exceed the simple average of the allowable levels of non-actionable assistance applicable to the above two categories, calculated on the basis of all eligible costs as set forth in items (i) to (v) of this subparagraph.
(iv) additional overhead costs incurred directly as a result of the research activity;

(v) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.

(b) assistance to disadvantaged regions within the territory of a Member given pursuant to a general framework of regional development and non-specific (within the meaning of paragraph 1 of Article above) within eligible regions provided that:

(i) each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity;

(ii) the region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region’s difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;

(iii) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors:

- one of either income per capita or household income per capita, or GDP per capita, which must not be above 85 per cent of the average for the territory concerned;

- unemployment rate, which must be at least 110 per cent of the average for the territory concerned;

as measured over a three-year period; such measurement, however, may be a composite one and may include other factors.

(c) assistance to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms, provided that the assistance:

(i) is a one-time non-recurring measure; and

31 A "general framework of regional development" means that regional subsidy programmes are part of an internally consistent and generally applicable regional development policy and that regional development subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of a region.

32 "Neutral and objective criteria" means criteria which do not favour certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy. In this regard, regional subsidy programmes shall include ceilings on the amount of assistance which can be granted to each subsidized project. Such ceilings must be differentiated according to the different levels of development of assisted regions and must be expressed in terms of investment costs or cost of job creation. Within such ceilings, the distribution of assistance shall be sufficiently broad and even to avoid the predominant use of a subsidy by, or the granting of disproportionately large amounts of subsidy to, certain enterprises as provided for in Article 2 of this Agreement.

33 The term "existing facilities" means facilities having been in operation for at least two years at the time when new environmental requirements are imposed.
(ii) is limited to 20 per cent of the cost of adaptation; and

(iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms; and

(iv) is directly linked to and proportionate to a firm’s planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and

(v) is available to all firms which can adopt the new equipment and/or production processes.

8.3 A subsidy programme for which the provisions of paragraph 2 above are invoked shall be notified in advance of its implementation to the Committee in accordance with the provisions of Part VII of this Agreement. Any such notification shall be sufficiently precise to enable other Members to evaluate the consistency of the programme with the conditions and criteria provided for in the relevant provisions of paragraph 2 above. Members shall also provide the Committee with yearly updating updates of such notifications, in particular by supplying information on global expenditure for each programme, and about any modification of the programme since the previous update. Other Members shall have the right to request information about individual cases of subsidization under a notified programme.34

8.4 Upon request of a Member, the WTO Secretariat shall review a notification made pursuant to paragraph 3 above and, where necessary, may require additional information from the subsidizing Member concerning the notified programme under review. The Secretariat shall report its findings to the Committee. The Committee shall then, upon request, promptly review the findings of the Secretariat (or, if a review by the Secretariat has not been requested, the notification itself), with a view to determining whether the conditions and criteria laid down in paragraph 2 above have not been met. The procedure provided for in this paragraph shall be completed at the latest at the first regular meeting of the Committee following the notification of a subsidy programme, provided that at least two months have elapsed between such notification and the regular meeting of the Committee. The review procedure described in this paragraph shall also apply, upon request, to substantial modifications of a programme notified in the yearly updates referred to in paragraph 3 above.

8.5 Upon the request of a Member, the determination by the Committee referred to in paragraph 4 above, or a failure by the Committee to make such a determination, as well as the violation, in individual cases, of the conditions set out in a notified programme, shall be submitted to binding arbitration. The arbitration body shall present its conclusions to the Members within 120 days from the date when the matter was referred to the arbitration body. Except as otherwise provided in this paragraph, the DSU shall apply to arbitrations conducted under this paragraph.

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34It is recognized that nothing in this notification provision requires the provision of confidential information, including confidential business information.
Article 9

Consultations and Authorized Remedies

9.1 If, in the course of implementation of a programme referred to in paragraph 2 of Article 8 above, notwithstanding the fact that the programme is consistent with the criteria laid down in that paragraph 2 of Article 8, a Member has reasons to believe that this programme has resulted in serious adverse effects to the domestic industry of that Member, such as to cause damage which would be difficult to repair, such Member may request consultations with the Member granting or maintaining the subsidy.

9.2 Upon request for consultations under paragraph 1 above, the Member granting or maintaining the subsidy programme in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

9.3 If no mutually acceptable solution has been reached in consultations under paragraph 2 within 60 days of the request for such consultations, the requesting Member may refer the matter to the Committee.

9.4 Where a matter is referred to the Committee, the Committee shall immediately review the facts involved and the evidence of the effects referred to in paragraph 1 above. If the Committee determines that such effects exist, it may recommend to the subsidizing Member to modify this programme in such a way as to remove these effects. The Committee shall present its conclusions within 120 days from the date when the matter is referred to it under this provision paragraph 3. In the event the recommendation is not followed within six months, the Committee shall authorize the requesting Member to take appropriate countermeasures commensurate with the nature and degree of the effects determined to exist.
PART V: COUNTERVAILING MEASURES

Article 10

Application of Article VI of the GATT 1994

Members shall take all necessary steps to ensure that the imposition of a countervailing duty on any product of the territory of any Member imported into the territory of another Member is in accordance with the provisions of Article VI of the GATT 1994 and the terms of this Agreement. Countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement and the Agreement on Agriculture.

Article 11

Initiation and Subsequent Investigation

11.1 Except as provided in paragraph 6 of Article 14, an investigation to determine the existence, degree and effect of any alleged subsidy shall be initiated upon a written application by or on behalf of the domestic industry.

11.2 An application under paragraph 1 shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of the GATT 1994 as interpreted by this Agreement, and (c) a causal link between the subsidized imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic

35The provisions of Parts II or III may be invoked in parallel with the provisions of Part V of this Agreement; however, with regard to the effects of a particular subsidy in the domestic market of the importing country Member, only one form of relief (either a countervailing duty, if other the requirements of Part V are met, or a countermeasure under Articles 4 or of this Agreement) shall be available. The provisions of Parts III and V shall not be invoked regarding measures considered non-actionable in accordance with the provisions of Part IV of this Agreement. However, measures referred to in paragraph 1(a) of Article 8.1(a) above may be investigated in order to determine whether or not they are specific within the meaning of Article 2 above. In addition, in the case of a subsidy referred to in paragraph 2 of Article 8 conferred pursuant to a programme which has not been notified in accordance with paragraph 3 of Article 8, the provisions of Parts III or V may be invoked, but such subsidy shall be treated as non-actionable if it is found to conform to the standards set forth in paragraph 2 of Article 8.

36The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise, as provided for in paragraph 3 of Article VI of the GATT 1994.

37The term "initiated" as used hereinafter means procedural action by which a Member formally commences an investigation as provided in Article 11.
production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(ii) a complete description of the allegedly subsidized product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) evidence with regard to the existence, amount and nature of the subsidy in question;

(iv) evidence that alleged material injury to a domestic industry is caused by subsidized imports through the effects of the subsidies; this evidence includes information on the evolution of the volume of the allegedly subsidized imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 15.

11.3 The authorities shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the opening of an investigation.

11.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

11.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation.

11.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of the existence of a subsidy, injury and causal link, as described in paragraph 2, to justify the initiation of an investigation.

38In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

39Members are aware that in the territory of certain Members, employees of domestic producers of the like product or representatives of those employees, may make or support an application for an investigation under paragraph 1.
11.7 The evidence of both subsidy and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation and (b) thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

11.8 In cases where products are not imported directly from the country of origin but are exported to the country of importation importing Member from an intermediate country, the provisions of this Agreement shall be fully applicable and the transaction or transactions shall, for the purposes of this Agreement, be regarded as having taken place between the country of origin and the country of importation importing Member.

11.9 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case. There shall be immediate termination in cases where the amount of a subsidy is de minimis, or where the volume of subsidized imports, actual or potential, or the injury, is negligible. For the purpose of this paragraph, the amount of the subsidy shall be considered to be de minimis if the subsidy is less than 1 per cent ad valorem.

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

11.11 Investigations shall, except in special circumstances, be concluded within one year after their initiation, and in no case more than 18 months, after their initiation.

Article 12
Evidence

12.1 Interested Members and all interested parties in a countervailing duty investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

12.1.1 Exporters, foreign producers or interested Members receiving questionnaires used in a countervailing duty investigation shall be given at least thirty days for reply. Due consideration should be given to any request for an extension of the thirty-day period and, upon cause shown, such an extension should be granted whenever practicable.

12.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested Member or interested party shall be made available promptly to other interested Members or interested parties participating in the investigation.

12.1.3 As soon as an investigation has been initiated, the authorities shall provide the full

*As a general rule, the time limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic representatives of the exporting Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.
text of the written application received under paragraph 1 of Article 11 to the known exporters\textsuperscript{41} and to the authorities of the exporting country Member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the protection of confidential information\textsuperscript{3} as provided for in paragraph 4 below.

12.2 Interested Members and interested parties also shall have the right, upon justification, to present information orally. Where such information is provided orally, the interested Members and interested parties subsequently shall be required to reduce such submissions to writing. Any decision of the investigating authorities can only be based on such information and arguments as were on the written record of this authority and which were available to interested Members and interested parties participating in the investigation, due account having been given to the need to protect confidential information.

12.3 The authorities shall whenever practicable provide timely opportunities for all interested Members and interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 4\textsuperscript{40} and that is used by the authorities in a countervailing duty investigation, and to prepare presentations on the basis of this information.

12.4 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom the supplier acquired the information)\textsuperscript{5} or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submiting it.\textsuperscript{62}

12.4.1 The authorities shall require interested Members or interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such Members or parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

12.4.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.\textsuperscript{63}

12.5 Except in circumstances provided for in paragraph 7, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties Members or interested Members parties upon which their findings are based.

\textsuperscript{41}It being understood that where the number of exporters involved is particularly high, the full text of the application should instead be provided only to the authorities of the exporting country Member or to the relevant trade association who then should forward copies to the exporters concerned.

\textsuperscript{42}Members are aware that in the territory of certain Members disclosure pursuant to a narrowly-drawn protective order may be required.

\textsuperscript{43}Members agree that requests for confidentiality should not be arbitrarily rejected. Members further agree that the investigating authority may request the waiving of confidentiality only regarding information relevant to the proceedings.
12.6 The investigating authorities may carry out investigations in the territory of other Members as required, provided that they have notified in good time the Member in question and unless the latter Member objects to the investigation. Further, the investigating authorities may carry out investigations on the premises of a firm and may examine the records of a firm if (a) the firm so agrees and (b) the Member in question is notified and does not object. The procedures set forth in Annex VI to this Agreement shall apply to investigations on the premises of a firm. The authorities shall, subject to the requirement to protect confidential information, make the results of any verifications such investigations available, or shall provide disclosure thereof pursuant to paragraph 8, to the firms to which they pertain and may make such results available to the applicants.

12.7 In cases in which any interested party or Member refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.

12.8 The authorities shall, before a final determination is made, inform all interested Members or and interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

12.9 For the purposes of this Agreement, "interested parties" shall include:

(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product; and

(ii) a producer of the like product in the importing country Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing country Member.

This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

12.10 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding subsidization, injury and causality.

12.11 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

12.12 The procedures set out above are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.
Article 13

Consultations

13.1 As soon as possible after an application under Article 11 is accepted, and in any event before
the initiation of any investigation, Members the products of which may be subject to such investigation
shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in
paragraph 2 of Article 11 above and arriving at a mutually agreed acceptable solution.

13.2 Furthermore, throughout the period of investigation, Members the products of which are the
subject of the investigation shall be afforded a reasonable opportunity to continue consultations, with
a view to clarifying the factual situation and to arriving at a mutually agreed acceptable solution.44

13.3 Without prejudice to the obligation to afford reasonable opportunity for consultation, these
provisions regarding consultations are not intended to prevent the authorities of a Member from
proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final
determinations, whether affirmative or negative, or from applying provisional or final measures, in
accordance with the provisions of this Agreement.

13.4 The Member which intends to initiate any investigation or is conducting such an investigation
shall permit, upon request, the Member or Members the products of which are subject to such
investigation access to non-confidential evidence, including the non-confidential summary of confidential
data being used for initiating or conducting the investigation.

Article 14

Calculation of the Amount of a Subsidy in Terms
of the Benefit to the Recipient

For the purpose of Part V of this Agreement, any method used by the investigating authority
to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 above shall be
provided for in the national legislation or implementing regulations of the Member concerned and its
application to each particular case shall be transparent and adequately explained. Furthermore, any
such method shall be consistent with the following guidelines:

(a) Government provision of equity capital shall not be considered as conferring a benefit,
unless the investment decision can be regarded as inconsistent with the usual investment
practice (including for the provision of risk capital) of private investors in the territory
of that Member;

(b) A loan by a government shall not be considered as conferring a benefit, unless there
is a difference between the amount that the firm receiving the loan pays on the

44It is particularly important, in accordance with the provisions of this paragraph, that no affirmative determination whether
preliminary or final be made without reasonable opportunity for consultations having been given. Such consultations may
establish the basis for proceeding under the provisions of Parts II, III and X of this Agreement or X.
government loan and the amount the firm would pay on a comparable commercial loan
which the firm could actually obtain on the market. In this case the benefit shall be
the difference between these two amounts;

(c) A loan guarantee by a government shall not be considered as conferring a benefit, unless
there is a difference between the amount that the firm receiving the guarantee pays
on a loan guaranteed by the government and the amount that the firm would pay for
on a comparable commercial loan absent the government guarantee. In this case the
benefit shall be the difference between these two amounts adjusted for any differences
in fees;

(d) The provision of goods or services or purchase of goods by a government shall not
be considered as conferring a benefit unless the provision is made for less than adequate
remuneration, or the purchase is made for more than adequate remuneration. The
adequacy of remuneration shall be determined in relation to prevailing market conditions
for the good or service in question in the country of provision or purchase (including
price, quality, availability, marketability, transportation and other conditions of purchase
or sale).

Article 15

Determination of Injury

15.1 A determination of injury for purposes of Article VI of the GATT 1994 shall be based on positive
evidence and involve an objective examination of both (a) the volume of the subsidized imports and
the effect of the subsidized imports on prices in the domestic market for like products and (b) the
consequent impact of these imports on the domestic producers of such products.

15.2 With regard to the volume of the subsidized imports, the investigating authorities shall consider
whether there has been a significant increase in subsidized imports, either in absolute terms or relative
to production or consumption in the importing Member. With regard to the effect of the subsidized
imports on prices, the investigating authorities shall consider whether there has been a significant price
undercutting by the subsidized imports as compared with the price of a like product of the importing
Member, or whether the effect of such imports is otherwise to depress prices to a significant degree
or to prevent price increases, which otherwise would have occurred, to a significant degree. No one
or several of these factors can necessarily give decisive guidance.

15.3 Where imports of a product from more than one country are simultaneously subject to
countervailing duty investigations, the investigating authorities may cumulatively assess the effects
of such imports only if they determine that (i) the amount of subsidization established in relation

45Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic
industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry
and shall be interpreted in accordance with the provisions of this Article.

46Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which
is identical, i.e., alike in all respects to the product under consideration, or in the absence of such a product, another product
which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.
to the imports from each country is more than *de minimis* as defined in paragraph 9 of Article 11 and that the volume of imports from each country is not negligible and (2)(b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

15.4 The examination of the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

15.5 It must be demonstrated that the subsidized imports are, through the effects of subsidies, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidized imports. Factors which may be relevant in this respect include, *inter alia*, the volumes and prices of non-subsidized imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

15.6 The effect of the subsidized imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

15.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the investigating authorities should consider, *inter alia*, such factors as:

(i) nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;

(ii) a significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importations;

(iii) sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased subsidized exports to the importing country's market, taking into account the availability of other

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47As set forth in paragraphs 2 and 4 of this Article.
export markets to absorb any additional exports;

(iv) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(v) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further subsidized exports are imminent and that, unless protective action is taken, material injury would occur.

15.8 With respect to cases where injury is threatened by subsidized imports, the application of countervailing measures shall be considered and decided with special care.

Article 16

Definition of Domestic Industry

16.1 For the purposes of this Agreement, the term "domestic industry" shall, except as provided in paragraph 2 below, be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that when producers are related to the exporters or importers or are themselves importers of the allegedly subsidized product or a like product from other countries, the term "domestic industry" may be interpreted as referring to the rest of the producers.

16.2 In exceptional circumstances, the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of subsidized imports into such an isolated market and provided further that the subsidized imports are causing injury to the producers of all or almost all of the production within such market.

16.3 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 2 above, countervailing duties shall be levied only on the products

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For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.
in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permit the levying of countervailing duties on such a basis, the importing Member may levy the countervailing duties without limitation only if (a) the exporters shall have been given an opportunity to cease exporting at subsidized prices to the area concerned or otherwise give assurances pursuant to Article 18 of this Agreement, and adequate assurances in this regard have not been promptly given, and (b) such duties cannot be levied only on products of specific producers which supply the area in question.

16.4 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of the GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraphs 1 and 2 above.

16.5 The provisions of paragraph 6 of Article 15 shall be applicable to this Article.

**Article 17**

**Provisional Measures**

17.1 Provisional measures may be applied only if:

(a) an investigation has been initiated in accordance with the provisions of Article 11, a public notice has been given to that effect and interested Members and interested parties have been given adequate opportunities to submit information and make comments;

(b) a preliminary affirmative determination has been made that a subsidy exists and that there is material injury or threat thereof to a domestic industry caused by subsidized imports; and

(c) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.

17.2 Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization.

17.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

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

17.5 The relevant provisions of Article 19 shall be followed in the application of provisional measures.
Article 18

Undertakings

18.1 Proceedings may\(^{69}\) be suspended or terminated without the imposition of provisional measures or countervailing duties upon receipt of satisfactory voluntary undertakings under which:

(i)\(\text{a}\) the government of the exporting country Member agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(ii)\(\text{b}\) the exporter agrees to revise its prices so that the investigating authorities are satisfied that the injurious effect of the subsidy is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the amount of the subsidy. It is desirable that the price increases be less than the amount of the subsidy if such increases would be adequate to remove the injury to the domestic industry.

18.2 Undertakings shall not be sought or accepted unless the authorities of the importing country Member have made a preliminary affirmative determination of subsidization and injury caused by such subsidization and, in case of undertakings from exporters, have obtained the consent of the exporting Member.

18.3 Undertakings offered need not be accepted if the authorities of the importing Member consider their acceptance impractical, for example if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

18.4 If the undertakings are an undertaking is accepted, the investigation of subsidization and injury shall nevertheless be completed if the exporting Member so desires or the importing Member so decides. In such a case, if a negative determination of subsidization or injury or threat thereof is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases, the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of subsidization and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

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

\(^{69}\)The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of undertakings, except as provided in paragraph 4 of this Article.
18.6 Authorities of an importing Member may require any government or exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on goods entered for consumption not more than ninety days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

Article 19

Imposition and Collection of Countervailing Duties

19.1 If, after reasonable efforts have been made to complete consultations, a Member makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this section unless the subsidy or subsidies are withdrawn.

19.2 The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition should be permissive in the territory of all Members, that the duty should be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry, and that procedures should be established which would allow the authorities concerned to take due account of representations made by domestic interested parties whose interests might be adversely affected by the imposition of a countervailing duty.

19.3 When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and causing injury, except as to imports from those sources which have renounced any subsidies in question or from which undertakings under the terms of this Agreement have been accepted. Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to cooperate, shall be entitled to an expedited review in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter.

19.4 No countervailing duty shall be levied on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.

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50For the purpose of this paragraph, the term "domestic interested parties" shall include consumers and industrial users of the imported product subject to investigation.

51As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.
Article 20

Retroactivity

20.1 Provisional measures and countervailing duties shall only be applied to products which enter for consumption after the time when the decision under paragraph 1 of Article 17 and paragraph 1 of Article 19, respectively, enters into force, subject to the exceptions set out below in this Article.

20.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the subsidized imports would, in the absence of the provisional measures, have led to a determination of injury, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

20.3 If the definitive countervailing duty is higher than the amount guaranteed by the cash deposit or bond, the difference shall not be collected. If the definitive duty is less than the amount guaranteed by the cash deposit or bond, the excess amount shall be reimbursed or the bond released in an expeditious manner.

20.4 Except as provided in paragraph 2 above, where a determination of threat of injury or material retardation is made (but no injury has yet occurred), a definitive countervailing duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

20.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

20.6 In critical circumstances where for the subsidized product in question the authorities find that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from subsidies paid or bestowed inconsistently with the provisions of the GATT 1994 and of this Agreement and where it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports, the definitive countervailing duties may be assessed on imports which were entered for consumption not more than ninety 90 days prior to the date of application of provisional measures.

Article 21

Duration and Review of Countervailing Duties and Undertakings

21.1 A countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidization which is causing injury.

21.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive countervailing duty, upon request by any interested party which submits positive
information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset subsidization, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the countervailing duty is no longer warranted, it shall be terminated immediately.

21.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive countervailing duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both subsidization and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury. The duty may remain in force pending the outcome of such a review.

21.4 The provisions of Article 12 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.

21.5 The provisions of this Article shall apply mutatis mutandis to undertakings accepted under Article 18.

Article 22

Public Notice and Explanation of Determinations

22.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an investigation pursuant to Article 11, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.

22.2 A public notice of the initiation of an investigation shall contain or otherwise make available through a separate report adequate information on the following: (i) the name of the exporting country or countries and the product involved; (ii) the date of initiation of the investigation; (iii) a description of the subsidy practice or practices to be investigated; (iv) a summary of the factors on which the allegation of injury is based; (v) the address to which representations by interested Members and interested parties should be directed; and (vi) the time-limits allowed to interested Members and interested parties for making their views known.

22.3 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 18, of the termination of such

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52 When the amount of the countervailing duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.

53 Where authorities provide information and explanations under the provisions of this Article in a separate report, they shall ensure that such report is readily available to the public.
an undertaking, and of the revocation of a determination or termination of a definitive countervailing duty. Each such notice shall set forth or otherwise make available through a separate report in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

22.4 A public notice of the imposition of provisional measures shall set forth or otherwise make available through a separate report sufficiently detailed explanations for the preliminary determinations on the existence of a subsidy and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular: (i) the names of the suppliers or, when this is impracticable, the supplying countries involved; (ii) a description of the product which is sufficient for customs purposes; (iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined; (iv) considerations relevant to the injury determination as set out in Article 15; (v) the main reasons leading to the determination.

22.5 A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of an undertaking shall contain or otherwise make available through a separate report all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of an undertaking, due regard being paid to the requirement for the protection of confidential information. The in particular, the notice or report shall in particular contain the information described in paragraph 4 above, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by interested Members and by the exporters and importers.

22.6 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 18 shall include or otherwise make available through a separate report the non-confidential part of this undertaking.

22.7 The provisions of this Article shall apply mutatis mutandis to the initiation and completion of reviews pursuant to Article 21 and to decisions under Article 20 to apply duties retroactively.

Article 23
Judicial Review

Each Member whose national legislation contains provisions on countervailing duty measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 21 of this Agreement. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question, and shall provide all interested parties who participated in the administrative proceeding and are directly and individually affected by the administrative actions with access to review.
PART VI: INSTITUTIONS

Article 24

Committee on Subsidies and Countervailing Measures
and other Subsidiary Bodies

24.1 There shall be established under this Agreement a Committee on Subsidies and Countervailing Measures composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

24.2 The Committee may set up subsidiary bodies as appropriate.

24.3 The Committee shall establish a Permanent Group of Experts composed of five independent persons, highly qualified in the fields of subsidies and trade relations. The experts will be elected by the Committee and one of them will serve in rotation every year. The Committee may request the Group of Experts to prepare a proposed conclusion on the existence of a prohibited subsidy be replaced every year. The PGE may be requested to assist a panel, as provided for in paragraph 5 of Article 4 above. The Committee may also seek an advisory opinion on the existence and nature of any subsidy.

24.4 The Group of Experts PGE may be consulted by any Member and give advisory opinions on the nature of any subsidy proposed to be introduced or currently maintained by that Member. Such advisory opinions will be confidential and may not be invoked in proceedings under Article 7 of this Agreement.

24.5 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member, it shall inform the Member involved.

PART VII: NOTIFICATION AND SURVEILLANCE

Article 25

Notifications

25.1 Members agree that, without prejudice to the provisions of paragraph 1 of Article XVI of the GATT 1994, their notifications of subsidies shall be submitted not later than 30 June of each year and shall conform to the provisions of paragraphs 2 through 6 below.
25.2 Members Each Member shall notify any subsidy as defined in paragraphs 1 and 2 of Article 4 above, paragraph 1 of Article 1, which is specific within the meaning of Article 2, granted or maintained within its territory.

25.3 The content of notifications should be sufficiently specific to enable other Members to evaluate the trade effects and to understand the operation of notified subsidy programmes. In this connection, and without prejudice to the contents and form of the questionnaire on subsidies, Members shall ensure that their notifications contain the following information:

(i) the form of a subsidy (i.e. grant, loan, tax concession, etc.);

(ii) the subsidy per unit or, in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy (indicating, if possible, the average subsidy per unit in the previous year);

(iii) the policy objective and/or purpose of a subsidy;

(iv) the duration of a subsidy and/or any other time-limits attached to it;

(v) statistical data permitting an assessment of the trade effects of a subsidy.

25.4 Where specific points in paragraph 3 above have not been addressed in a notification, an explanation shall be provided in the notification itself.

25.5 If subsidies are granted to specific products or sectors, the notifications should be organized by product or sector.

25.6 Members which consider that there are not measures or schemes in their countries requiring notification under paragraph 1 of Article XVI of the GATT 1994 and this Agreement shall so inform the WTO Secretariat in writing.

25.7 Members recognize that notification of a measure does not prejudge either its legal status under the GATT 1994 and this Agreement, the effects under this Agreement, or the nature of the measure itself.

25.8 Any Member may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another Member (including any subsidy referred to in Part IV above), or for an explanation of the reasons for which a specific measure has been considered as not notifiable, subject to the requirement of notification.

25.9 Members so requested shall provide such information as quickly as possible and in a comprehensive manner, and shall be ready, upon request, to provide additional information to the requesting Member. In particular, it shall provide sufficient details to enable the other Member to assess its compliance with the terms of this Agreement. Any Member which considers that such information has not been provided may bring the matter to the attention of the Committee.

54 The Committee shall establish a Working Party to review the contents and form of the questionnaire as contained in BISD 95/193-194.
25.10 Any interested Member which considers that any practice measure of another Member having the effects of a subsidy has not been notified in accordance with the provisions of paragraph 1 of Article XVI of the GATT 1994 and this Article may bring the matter to the attention of such other Member. If the alleged subsidy is not thereafter notified promptly, such Member may itself bring the alleged subsidy in question to the notice of the Committee.

25.11 Each Member shall report without delay to the Committee all preliminary or final actions taken with respect to countervailing duties. Such reports will be available in the WTO Secretariat for inspection by government representatives. Each Member shall also submit, on a semi-annual basis, reports on any countervailing duty actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form.

25.12 Each Member shall notify the Committee (a) which of its authorities are competent to initiate and conduct investigations referred to in Article 11 and (b) its domestic procedures governing the initiation and conduct of such investigations.

\textit{Article 26}

\textit{Surveillance}

26.1 The Committee shall examine new and full notifications submitted under paragraph 1 of Article XVI of the GATT 1994 and paragraph 1 of Article 25 of this Agreement at special sessions held every third year. Notifications submitted in the intervening years (updating notifications) shall be examined at each regular meeting of the Committee.

26.2 The Committee shall examine reports submitted under paragraph 11 of Article 25 above at each regular meeting of the Committee. The semi-annual reports shall be submitted on an agreed standard form.

\textbf{PART VIII: DEVELOPING COUNTRY MEMBERS}

\textit{Article 27}

\textit{Special and Differential Treatment for Developing Country Members}

27.1 Members recognize that subsidies may play an important role in economic development programmes of developing country Members.

27.2 The prohibition of paragraph 1(a) of Article 3 shall not apply to:

\begin{itemize}
  \item[(a)] developing country Members referred to in Annex VII.
  \item[(b)] other developing country Members for a period of eight years from the date of entry into force of the WTO Agreement Establishing the WTO, subject to compliance with the provisions in paragraph 3 below.
\end{itemize}
27.2bis 27.3 The prohibition of paragraph 1(b) of Article 3 shall not apply to developing countries for a period of five years, and shall not apply to least developed countries for a period of eight years, from the date of entry into force of the WTO Agreement Establishing the WTO.

27.3 27.4 Any developing country Member referred to in paragraph 2(b) above shall phase out its export subsidies within the eight-year period, preferably in a progressive manner. However, a developing country Member shall not increase the level of its export subsidies, and shall eliminate them within a period shorter than that provided for in this provision, when the use of such export subsidies is inconsistent with its development needs. If a developing country Member deems it necessary to apply such subsidies beyond the eight-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the developing country Member in question. If the Committee determines that the extension is justified, the developing country Member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the developing country Member shall phase out the remaining export subsidies within two years from the end of the last authorized period.

27.4 27.5 A developing country Member that which has reached export competitiveness in any given product shall phase out its export subsidies for such product(s) over a period of two years. However, for a developing country Member which is referred to in Annex VII and which has reached export competitiveness in one or more products, export subsidies on such products shall be gradually phased out over a period of eight years.

27.5 27.6 Export competitiveness in a product exists if a country’s exports of that product have reached a share of at least 3.25 per cent in world trade of that product for two consecutive calendar years. Export competitiveness shall exist either (a) on the basis of notification by the developing country Member having reached export competitiveness, or (b) on the basis of a computation undertaken by the WTO Secretariat at the request of any Member. For the purpose of this paragraph, a product is defined as a section heading of the Harmonized System Nomenclature. Members agree that the Committee shall review the operation of this provision five years from the date of the entry into force of the WTO Agreement Establishing the WTO.

27.6 Provisions 27.7 The provisions of Article 4 shall not apply to a developing country Member in the case of export subsidies which are in conformity with the provisions of paragraphs 2 through 4 above. The relevant provisions in such a case shall be those of Article 7.

27.7 27.8 There shall be no presumption in terms of paragraph 1 of Article 6 that a subsidy granted by a developing country Member results in serious prejudice, as defined in this Agreement. Such serious prejudice, where applicable under the terms of paragraph 8 below, shall be demonstrated by positive evidence, in accordance with the provisions of paragraphs 3 through 8 of Article 6.

27.8 27.9 Regarding actionable subsidies granted or maintained by a developing country Member other than those referred to in paragraph 1 of Article 6, action may not be authorized or taken under

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35For countries a developing country Member not granting export subsidies as of the day date of entry into force of the WTO Agreement establishing the WTO, this provision shall apply on the basis of the level of export subsidies granted in 1986.
Article 7 of this Agreement unless nullification or impairment of tariff concessions or other obligations under the GATT 1994 is found to exist as a result of such a subsidy, in such a way as to displace or impede imports of like products of another Member into the market of the subsidizing developing country Member or unless injury to a domestic industry in the importing market of an importing Member occurs in terms of Article 15 of this Agreement.

27.9 Any countervailing duty investigation of a product originating in a developing country Member shall be terminated as soon as the authorities concerned determine that:

(a) the overall level of subsidies granted upon the product in question does not exceed 2 per cent of its value calculated on a per unit basis; or

(b) the volume of the subsidized imports represents less than 4 per cent of the total imports for of the like product in the importing Member, unless imports from developing country Members whose individual shares of total import imports represent less than 4 per cent collectively account for more than 9 per cent of the total imports for of the like product in the importing country Member.

27.10 For those developing country Members within the scope of paragraph 2(b) of Article 27 which have eliminated export subsidies prior to the expiry of the period of 8 eight years from the date of entry into force of the Agreement Establishing the MTO and those WTO Agreement, and for those developing country Members referred to in Annex VII, the number in paragraph 9(a) 10(a) shall be 3 per cent rather than 2 per cent. This provision shall apply from the date that the elimination of export subsidies is notified to the Committee and for so long as export subsidies are not granted by the notifying developing country Member. This provision shall expire 8 eight years from the date of entry into force of the WTO Agreement Establishing the MTO.

27.11 The provisions of paragraphs 9 10 and 10 11 shall govern any determination of de minimis under paragraph 3 of Article 15 of this Agreement.

27.12 The provisions of Part III of this Agreement shall not be applicable to direct forgiveness of debts, subsidies to cover social costs, in whatever form, including relinquishment of government revenue and other transfer of liabilities when such subsidies are granted within and directly linked to a privatization programme of a developing country Member, provided that both such programme and the subsidies involved are granted for a limited period and notified to the Committee and that the programme results in eventual privatization of the enterprise concerned.

27.13 The Committee shall, upon request by an interested Member, undertake a review of a specific export subsidy practice of a developing country Member to examine whether the practice is in conformity with its development needs.

27.14 The Committee shall, upon request by an interested developing country Member, undertake a review of a specific countervailing measure to examine whether it is consistent with the provisions of paragraphs 9 10 and 10 above 11 as applicable to the developing country Member in question.
PART IX: TRANSITIONAL ARRANGEMENTS

Article 28

Existing Programmes

28.1 Subsidy programmes that have been established within the territory of any Member before the date on which such a Member signed the WTO Agreement Establishing the MTO and which are inconsistent with the provisions of this Agreement shall be:

- (a) notified to the Committee not later than 90 days after the date of entry into force of the WTO Agreement Establishing the MTO for such Member; and
- (b) brought into conformity with the provisions of this Agreement within 3 years of the date of entry into force of the WTO Agreement Establishing the MTO for such Member and until then shall not be subject to Part II of this Agreement.

28.2 No Member shall extend the scope of any such programme, nor shall such a programme be renewed upon its expiration.

Article 29

Transformation into a Market Economy

29.1 Members in the process of transformation from a centrally-planned into a market, free-enterprise economy may apply programmes and measures necessary for such a transformation.

29.2 For such Members, subsidy programmes falling within the scope of Article 3, and notified according to paragraph 3 below, shall be phased out or brought into conformity with Article 3 within a period of 7 years from the date of entry into force of the WTO Agreement Establishing the MTO. In such a case, Article 4 shall not apply. In addition during the same period:

- (a) Subsidy programmes falling within the scope of paragraph 1(d) of Article 6 shall not be actionable under Article 7;
- (b) With respect to other actionable subsidies, the provisions of paragraph 8 of Article 27 shall apply.

29.3 Subsidy programmes falling within the scope of Article 3 shall be notified to the Committee by the earliest practicable date after the date of entry into force of the WTO Agreement Establishing the MTO. Further notifications of such subsidies may be made up to two years after the date of entry into force of the WTO Agreement Establishing the MTO.

29.4 In exceptional circumstances Members referred to in paragraph 1 may be given departures from their notified programmes and measures and their time-frame by the Committee if such departures are deemed necessary for the process of transformation.
PART X: DISPUTE SETTLEMENT

Article 30

The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

PART XI: FINAL PROVISIONS

Article 31

Provisional Application

The provisions of paragraph 1 of Article 6 and the provisions of Article 8 and Article 9 shall apply for a period of five years, beginning with the date of entry into force of the WTO Agreement Establishing the WTO. Not later than 180 days before the end of this period, the Committee shall review the operation of those provisions, with a view to determining whether to extend their application, either as presently drafted or in a modified form, for a further period.

Article 32

Other Final Provisions

32.1 No specific action against a subsidy of another Member can be taken except in accordance with the provisions of the GATT 1994, as interpreted by this Agreement.56

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

32.3 Subject to sub-paragraph 4, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement Establishing the WTO.

32.4 For the purposes of paragraph 3 of Article 21, existing countervailing measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement Establishing the WTO, except in cases in which the domestic legislation of a Member in force at that date already included a clause of the type provided for in that paragraph.

32.5 (a) Each government accepting or acceding to the WTO Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into

56This paragraph is not intended to preclude action under other relevant provisions of the GATT 1994, where appropriate.
force of the WTO Agreement Establishing the MTO for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply to the Member in question.

(b) 32.6 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

32.5 32.7 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

32.6 32.8 The Annexes to this Agreement constitute an integral part thereof.
ANNEX I

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

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

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

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

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

(e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises.

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation

57The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

58For the purpose of this Agreement:
The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;
The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;
The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;
"Prior-stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;
"Cumulative" indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;
"Remission" of taxes includes the refund or rebate of taxes;
"Remission or drawback" includes the full or partial exemption or deferral of import charges.

59The Members recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The Members reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any Member may draw the attention of another Member to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the Members shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of Members under the GATT 1994, including the right of consultation created in the preceding sentence.

Paragraph (e) is not intended to limit a Member from taking measures to avoid the double taxation of foreign-source income earned by its enterprises or the enterprises of another Member.
of the base on which direct taxes are charged.

(g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

(h) The exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II.

(i) The remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III.

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

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

Provided, however, that if a Member is a party to an international undertaking on official export credits to which at least twelve original Members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a Member applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

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60 Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).
(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of the GATT 1994.
ANNEX II

GUIDELINES ON CONSUMPTION OF INPUTS IN THE PRODUCTION PROCESS

I

1. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).

2. The Illustrative List of Export Subsidies in Annex I of this Agreement makes reference to the term "inputs that are consumed in the production of the exported product" in paragraphs (h) and (i). Pursuant to paragraph (h), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of the exported product. Pursuant to paragraph (i), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of the exported product. Paragraph (i) also provides for substitution, where appropriate.

II

In examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis:

1. Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the investigating authorities should first determine whether the government of the exporting country Member has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts.

Where such a system or procedure is determined to be applied, the investigating authorities should then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The investigating authorities may deem it necessary to carry out, in accordance with paragraph 6 of Article 12 of this Agreement, certain practical tests in order to verify information or to satisfy themselves that the system or procedure is being effectively applied.

2. Where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting country Member based on the actual inputs involved would need to be

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61Inputs consumed in the production process are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the exported product.
carried out in the context of determining whether an excess payment occurred. If the importing country investigating authorities deemed it necessary, a further examination would be carried out in accordance with paragraph 1 above.

3. Investigating authorities should treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. The Members note that an input need not be present in the final product in the same form in which it entered the production process.

4. In determining the amount of a particular input that is consumed in the production of the exported product, a "normal allowance for waste" should be taken into account, and such waste should be treated as consumed in the production of the exported product. The term "waste" refers to that portion of a given input which does not serve an independent function in the production process, is not consumed in the production of the exported product (for reasons such as inefficiencies) and is not recovered, used nor sold by the same manufacturer.

5. The investigating authority's determination of whether the claimed allowance for waste is "normal" should take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate. The investigating authority should bear in mind that an important question is whether the authorities in the exporting country Member have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission.
ANNEX III

Guidelines in the Determination of Substitution
Drawback Systems as Export Subsidies

I

Drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product and where the export of this latter product contains domestic inputs having the same quality and characteristics as those substituted for the imported inputs. Pursuant to paragraph (i) of the Illustrative List of Export Subsidies in Annex I of this Agreement, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed.

II

In examining any substitution drawback system as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis:

1. Paragraph (i) of the Illustrative List stipulates that home market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported inputs being substituted. The existence of a verification system or procedure is important because it enables the government of the exporting country Member to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported inputs in question.

2. Where it is alleged that a substitution drawback system conveys a subsidy, the investigating authorities should first proceed to determine whether the government of the exporting country Member has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that the procedures are determined to meet this test and are effectively applied, no subsidy should be presumed to exist. It may be deemed necessary by the investigating authorities to carry out, in accordance with paragraph 6 of Article 12 of this Agreement, certain practical tests in order to verify information or to satisfy themselves that the verification procedures are being effectively applied.

3. Where there are no verification procedures, where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not applied effectively, there may be a subsidy. In such cases a further examination by the exporting country Member based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the importing country investigating authorities deemed it necessary, a further examination would be carried out in accordance with paragraph 2 above.
4. The existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy.

5. An excess drawback of import charges in the sense of paragraph (i) would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.
ANNEX IV

Calculation of the Total Ad Valorem Subsidization
(paragraph 1(a) of Article 6)

1. Any calculation of the amount of a subsidy for the purpose of paragraph 1(a) of Article 6 above shall be done in terms of the cost to the granting government.

2. Except as provided in paragraphs 3-5, in determining whether the overall rate of subsidization exceeds 5 per cent of the value of the product, the value of the product shall be calculated as the total value of the recipient firm's sales in the most recent twelve-month period, for which sales data is available, preceding the period in which the subsidy is granted.

3. Where the subsidy is tied to the production or sale of a given product, the value of the product shall be calculated as the total value of the recipient firm's sales of that product in the most recent twelve-month period, for which sales data is available, preceding the period in which the subsidy is granted.

4. Where the recipient firm is in a start-up situation, serious prejudice shall be deemed to exist if the overall rate of subsidization shall not exceed 15 per cent of the total funds invested. For purposes of this paragraph, a start-up period will not extend beyond the first year of production.

5. Where the recipient firm is located in an inflationary economy country, the value of the product shall be calculated as the recipient firm's total sales (or sales of the relevant product, if the subsidy is tied) in the preceding calendar year indexed by the rate of inflation experienced in the twelve months preceding the month in which the subsidy is to be given.

6. In determining the overall rate of subsidization in a given year, subsidies given under different programmes and by different authorities in the territory of a Member shall be aggregated.

7. Subsidies granted prior to the date of entry into force of the WTO Agreement Establishing the WTO, the benefits of which are allocated to future production, shall be included in the overall rate of subsidization.

8. Subsidies which are non-actionable under relevant provisions of this Agreement shall not be included in the calculation of the amount of a subsidy for the purpose of paragraph 1(a) of Article 6 above.

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62 An understanding among Members should be developed, as necessary, on matters which are not specified in this Annex or which need further clarification for the purposes of paragraph 1(a) of Article 6.

63 The recipient firm is a firm in the territory of the subsidizing country Member.

64 In the case of tax-related subsidies the value of the product shall be calculated as the total value of the recipient firm’s sales in the fiscal year in which the tax-related measure was earned.

65 Start-up situations include instances where financial commitments for product development or construction of facilities to manufacture products benefiting from the subsidy have been made, even though production has not begun.
ANNEX V

Procedures for Developing Information Concerning Serious Prejudice

1. Every Member shall cooperate in the development of evidence to be examined by the Committee or its subsidiary bodies or a panel in procedures under Article 7 above, paragraphs 4 through 6 of Article 7. The parties to the dispute and any third-country Member concerned shall notify the Committee DSB, as soon as the provisions of paragraph 4 of Article 7 have been invoked, the organization responsible for administration of this provision within its territory and the procedures to be used to comply with requests for information.

2. In cases where matters are referred to the Committee DSB under paragraph 4 of Article 7, the Committee DSB shall upon request, initiate the procedure to obtain such information from the government of the subsidizing Member as necessary to establish the existence and amount of subsidizations, the value of total sales of the subsidized firms, as well as information necessary to analyze the adverse effects caused by the subsidized product. This process may include, where appropriate, presentation of questions to the government of the subsidizing and of the complaining country Member to collect information, as well as to clarify and obtain elaboration of information available to the parties in a dispute through the notification procedures set forth in Part VII above.

3. In the case of effects in third-country markets, a Member party to a dispute may collect information, including through the use of questions to the government of the third-country Member, necessary to analyze adverse effects, which is not otherwise reasonably available from the complaining Member or the subsidizing Member. This requirement should be administered in such a way as not to impose an unreasonable burden on the third-country Member. In particular, such a Member is not expected to make a market or price analysis specially for that purpose. The information to be supplied is that which is already available or can be readily obtained by this Member (e. g. most recent statistics which have already been gathered by relevant statistical services but which have not yet been published, customs data concerning imports and declared values of the products concerned, etc.). However, if a Member party to a dispute undertakes a detailed market analysis at its own expense, the task of the person or firm conducting such an analysis shall be facilitated by the authorities of the third-country Member and such a person or firm shall be given access to all information which is not normally maintained confidential by the government.

4. The Committee DSB shall designate a representative to serve the function of facilitating the information-gathering process. The sole purpose of the representative shall be to ensure the timely development of the information necessary to facilitate expeditious subsequent multilateral review of the dispute. In particular, the representative may suggest ways to most efficiently solicit necessary information as well as encourage the cooperation of the parties.

5. The information-gathering process outlined in paragraphs 2-4 above shall be completed within 60 days of the date on which the matter has been referred to the Committee DSB under

66 In cases where the existence of serious prejudice has to be demonstrated.

67 The information-gathering process by the Committee DSB shall take into account the need to protect information which is by nature confidential or which is provided on a confidential basis by any Member involved in this process.
paragraph 4 of Article 7 above. The information obtained during this process shall be submitted to
the Committee or to a panel established by the Committee DSB in accordance with the provisions of
Part X above. This information should include, *inter alia*, data concerning the amount of the subsidy
in question (and, where appropriate, the value of total sales of the subsidized firms), prices of the
subsidized product, prices of the non-subsidized product, prices of other suppliers to the market, changes
in the supply of the subsidized product to the market in question and changes in market shares. It
should also include rebuttal evidence, as well as such supplemental information as the Committee or
the panel deems relevant in the course of reaching its conclusions.

6. If the subsidizing and/or third-country Member fail to co-operate in the
information-gathering process, the complaining Member will present its case of serious prejudice, based
on evidence available to it, together with facts and circumstances of the non co-operation of the
subsidizing and/or third-country Member. Where information is unavailable due to non-
co-operation by the subsidizing and/or third-country Member, the Committee or the panel
may complete the record as necessary relying on best information otherwise available.

7. In making its determination, the Committee or the panel should draw adverse inferences from
instances of non co-operation by any party involved in the information-gathering process.

8. In making a determination to use either best information available or adverse inferences, the
Committee or the panel shall consider the advice of the Committee DSB representative nominated under
paragraph 4 above as to the reasonableness of any requests for information and the efforts made by
parties to comply with these requests in a co-operative manner.

9. Nothing in the information-gathering process shall limit the ability of the Committee or the
panel to seek such additional information it deems essential to a proper resolution to the dispute, and
which was not adequately sought or developed during that process. However, ordinarily the panel
should not request additional information to complete the record where the information would support
a particular party’s position and the absence of that information in the record is the result of unreasonable
non co-operation by that party in the information-gathering process.
ANNEX VI

Procedures for On-The-Spot Investigations Pursuant to
Paragraph 6 of Article 12

(a) Upon initiation of an investigation, the authorities of the exporting country Member and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.

(b) If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting country Member should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.

(c) It should be standard practice to obtain explicit agreement of the firms concerned in the exporting country Member before the visit is finally scheduled.

(d) As soon as the agreement of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting country Member of the names and addresses of the firms to be visited and the dates agreed.

(e) Sufficient advance notice should be given to the firms in question before the visit is made.

(f) Visits to explain the questionnaire should only be made at the request of an exporting firm. In case of such a request the investigating authorities may place themselves at the disposal of the firm; such a visit may only be made provided if [a] the authorities of the importing country Member notify the representatives of the government of the country Member in question and unless [b] the latter do not object to the visit.

(g) As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting country Member is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

(h) Enquiries or questions put by the authorities or firms of the exporting countries Members and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.
ANNEX VII

Developing Country Members Referred to
in Paragraph 2(a) of Article 27

The developing country Members not subject to the provisions of paragraph 1(a) of Article 3 under the terms of paragraph 2(a) of Article 27 are:

(a) Least-developed countries designated as such by the United Nations that which are Members of the WTO.

(b) Each of the following developing country Members countries which are Members of the WTO shall be subject to the provisions which are applicable to other developing country Members according to paragraph 2(b) of Article 27 when GNP per capita has reached $1,000 per annum\(^68\):

Bolivia, Cameroon, Congo, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe.

Note: The inclusion of countries in the list in (b) is based on the most recent data from the World Bank on GNP per capita.

\(^68\) The inclusion of developing country Members in the list in paragraph (b) is based on the most recent data from the World Bank on GNP per capita.
NOTES ON THE RECTIFIED TEXT:

GENERAL

1. Throughout the text, the comma has been deleted after the terms "i.e." and "e.g.". See Article 1.1(a)(i); 1.1(a)(1)(i), 1.1(a)(ii); 5.1; 6.1(d); 25.3(a); Annex V, paragraph 3; this has been done to correct punctuation.

2. Throughout the text, references to "of this Agreement" following Article and Part citations have been deleted. See Article 1.2; 2.1; 7.8; 8.2; 8.3; 12.6; 14; 16.3; 23; 24.4; 27.9; 27.12; 28.1(b); note 11, 32; Annex III, paragraph 1; this change eliminates unnecessary verbiage.

3. Throughout the text, the terms "above" and "below" following citation to another provision of the Agreement have been deleted. See Article 1.2; 2.1(c); 3.1; 4.2; 4.3; 5.1; 6.2; 6.4; 6.5; 6.7; 6.8; 7.2; 7.3; 8.1; 8.2(b); 8.3; 8.4; 8.5; 9.1; 9.2; 9.4; 12.1.3; 13.1; 16.1; 16.3; 20.4; 25.1; 25.4; 26.2; 27.4; 27.8; 29.2; Annex II, paragraph 2; Annex III, paragraph 3; Annex IV, paragraphs 1, 8; Annex V, paragraphs 1, 2, 5, 8; this change eliminates unnecessary verbiage.

4. Throughout the text, references to an Article and paragraph number (e.g. "Article 5(c)") have been re-ordered (e.g. "paragraph (c) of Article 5"). See Article 6.1; 6.3; and note 13, 19;

5. Throughout the text, where there are cross-references to paragraphs within an Article the reference to the Article ("of Article ") is deleted as unnecessary verbiage.

6. Throughout the text, references to obligations by "Members" have changed to obligations by "Each Member" or "A Member". Corresponding changes of subsequent articles from plural to singular are sometimes required. See Article 3.2; 8.3; 25.2; 25.6; 25.9; 25.11; this change is made because obligations are undertaken by individual Members.

7. Throughout the text, a consistent rule is applied that numbers from one through nine are spelled out (except when followed by "per cent"), while larger numbers are expressed numerically. See Article 4.4; 4.6; 4.8; 4.9; 6.3(d); 7.4; 7.6; 7.7; 9.4; 12.1.1; 18.6; 21.4; 27.5; 27.6; 27.11; 28.1(b); 29.2; 31; Annex IV, paragraphs 2, 3, 5.

8. Throughout the text, "Panel" is replaced by "panel". See Article 4.4; 4.5; 4.6; 4.7; 4.8; 4.10; 7.4; 7.5; 7.6; this change is made for consistency.

9. Throughout the text, "Members party to the dispute" is replaced by "parties to the dispute". See Article 4.6; 7.5; This change is made for consistency.

10. Throughout the text, "MTO" is changed to "WTO". See Article 8.4; 24.1; 25.6; 25.11; 27.6; this change is made to reflect subsequent developments.

11. Throughout the text, "Agreement Establishing the MTO" is replaced by "WTO Agreement". See Article 27.2(b); 27.3; 27.6; 27.11; 27.12; 28.1; 28.1(a); 28.1(b); 29.2; 29.3; 31; 32.3; 32.4; 32.5; note 25, 55; Annex IV, paragraph 7; this change is made for consistency.
12. Throughout the text, references to "entry into force" have been changed to "date of entry into force". See Article 27.11; 29.3; Annex IV, paragraph 7; these changes are made for consistency and clarity.

13. Throughout the text, "importing country" and "exporting country" have been changed to "importing Member" and "exporting Member" where appropriate. See Article 11.8; 12.1.3; 12.9(ii); 15.7(iii); 18.1(a); 18.2; Annex II.II, paragraphs 1, 2, 5; Annex III.II, paragraphs 1, 2, 3; Annex VI, paragraphs 1, 2, 3, 4, 6, 7, 8.

ARTICLE 1

14. In the first line of Article 1.1, the phrase "shall be deemed to exist" has been replaced with "exists". This change clarifies the language and eliminates unnecessary verbiage.

15. In the first line of Article 1.1(a)(1)(i), "Government" is replaced with "a government." This change corrects capitalization and grammar.

16. In the first line of Article 1.1(a)(1)(ii), the comma following "due" is deleted. This change corrects punctuation.

17. In the second line of note 1 to Article 1.1, "producted" is changed to "product". This change corrects a typographical error.

18. In the third line of note 1 to Article 1.1, "amount" is changed to "amounts". This change improves style.

ARTICLE 2

19. In the first line of Article 2.1, a comma is added after "Article 1" in first line. This change corrects punctuation.

20. In the second line of note 2 to Article 2.1(b), a comma is added after "application". This change corrects punctuation.

21. In the second line of Article 2.2, "will" is replaced with "shall" for consistency.

22. In note 3 to Article 2.1(c), the placement of the clause "in particular" is changed. This change improves syntax.

23. In Article 2.3, "deemed to be" is deleted. This change eliminates unnecessary verbiage.

ARTICLE 3

24. In note 4 to Article 3.1(a), "accorded" is replaced by "granted". This change was made for consistency, (compare Article 3.2).
25. In Article 3.2, "not" is replaced by "neither". This change corrects grammar.

ARTICLE 4

26. In the third line of Article 4.4, "the DSB" is replaced by DSB". This change is made for consistency.

27. In note 6 to Article 4.4, a hyphen is added between "time" and "periods". This change corrects hyphenation.

28. In the second line of Article 4.5, ("hereinafter referred to as 'PGE'") is replaced by ("PGE"). This change is made for consistency.

29. In note 7 to Article 4.4, "As established in the Agreement Establishing the MTO and hereinafter referred to as the DSB" is replaced by "As provided for in paragraph 3 of Article 24". This change was made because note 7 refers to the PGE and not to the DSB.

30. In the first line of Article 4.6, "established pursuant to paragraph 4 above," was deleted. This change eliminates unnecessary verbiage.

31. In the fifth line of Article 4.5, "granting" is replaced by "applying". This change is made because a measure is not "granted."

32. In the third line of Article 4.7, "measure" is replaced by "subsidy". This change was made to clarify the reference to the previous sentence.

33. In note 8 to Article 4.9, the second reference to "of the DSB" was deleted. This change eliminates unnecessary verbiage.

34. In the fourth and fifth lines of Article 4.10, "the DSB shall grant authorization to the complaining Member to take appropriate [note omitted] countermeasures, unless the DSB decides by consensus to reject the request" is replaced by "the DSB shall grant authorization to the complaining Member to take appropriate [note omitted] countermeasures, unless the DSB decides by consensus not to grant such authorization". This change clarifies the text, as it was unclear to what "request" the text referred.

35. In the second line of Article 4.11, "(the DSU)" was replaced by "("DSU")". This change was made for consistency.

36. In the first line of Article 4.10 and the second and third lines of Article 4.12, a hyphen was added to connect "time" and "period". The change corrects hyphenation.

ARTICLE 5

37. The title of the Article was changed from "Trade Effects" to "Adverse Effects" to make the title consistent with the term used in the chapeau.
38. The numbering "5.1" was deleted. This change was made for consistency of paragraph numbering.

39. "subsidy referred to in paragraphs 1 and 2 of Article 1" was replaced by "subsidy within the meaning of Article 1". This change eliminates unnecessary verbiage.

40. In note 11 to Article 5.1(a), "Injury to the domestic industry" was replaced by "The term 'injury to the domestic industry'". This change improves style.

41. In note 12 to Article 5.1(b), "Nullification and impairment" was replaced by "the term 'nullification or impairment'". This change improves style.

42. In note 13 to Article 5.1(c), "serious prejudice to the interests of another Member" was changed to "The term 'serious prejudice to the interests of another Member'". This change improves style.

ARTICLE 6

43. In notes 15 and 16 to paragraph 6.1(a), "sub paragraph" was changed to "subparagraph". These changes correct spelling.

44. In note 16 to paragraph 6.1(a), the comma was deleted preceding "where". This change corrects a punctuation.

45. In Article 6.3(a) and 6.3(b), "like product" was replaced by "a like product". This change was made for consistency.

46. In Article 6.3(a), "of another Member" was added for consistency.

47. In Article 6.3(c), "products" was replaced by "product". This change was made for consistency.

48. In the first line of Article 6.4, "displacing or impeding exports" was replaced by "the displacement or impeding of exports". This change was made to improve style.

49. In the third line of Article 6.4, "to the Committee" was deleted. This change was made because the reference to the Committee is no longer appropriate in light of applicable dispute settlement rules.

50. In Article 6.3(d), "must follow" was replaced with "follows". This change was made to improve style.

51. In the fourth through sixth lines of Article 6.4, the order of the parenthetical was changed so as to provide "(over an appropriately representative period sufficient to demonstrate clear trends in the development of the market concerned, which, in normal circumstances, shall be at least one year.)" The change was made to improve style.

52. In the second line of Article 6.5, "it" has been replaced by "such price undercutting." This change was made to clarify that "it" refers to price undercutting.
53. In the second line of Article 6.5, "to the Committee" has been deleted. This change was made because the reference to the Committee is no longer appropriate in light of applicable dispute settlement rules.

54. In the second line of Article 6.5, "comparing" has been replaced by "a comparison of". This change was made to improve style.

55. In the third line of Article 6.5, "non-subsidized like products" has been replaced by "a non-subsidized like product." This change was made for consistency.

56. In the second and third lines of Article 6.6, "and to the Committee" has been replaced by "arising under Article 7, and to the Panel established pursuant to paragraph 4 of Article 7,". This change was made to clarify the text in light of the operation of the dispute settlement system.

57. In the last two lines of Article 6.6, "disputing parties" has been replaced by "parties to the dispute". This change has been made for consistency.

58. In the first line of Article 6.7, "impedence" has been replaced by "impediment". This change has been made because the term "impedence" is not accepted English usage.

59. In the second line of Article 6.7(a), "third market" has been changed to "third country market". This change has been made for clarity and consistency.

60. In Article 6.7(c), "product available for exports" has been changed to "product available for export". This change corrects a grammatical error.

61. In Article 6.8, "the existence of serious prejudice should be determined on the basis of the information submitted in accordance with the provisions of Article V" has been changed to "the existence of serious prejudice should be determined on the basis of the information submitted to or obtained by the panel, including information submitted in accordance with the provisions of Annex V". This change clarifies that a panel is not limited to the consideration of evidence submitted under Annex V.

ARTICLE 7

62. In the second line of Article 7.1, "referred to in Article 1" has been changed to "within the meaning of Article 1". This change was made because Article 1 defines, rather than refers to, subsidies.

63. In the second line of Article 7.4, "Dispute Settlement Body" is replaced by "DSB". This change is made for consistency.

64. In note 20 to Article 7.4, a hyphen was added between "time" and "periods". This change corrects spelling.

65. In notes 21 and 22 to Articles 7.6 and 7.7, the second reference to "of the DSB" was deleted. This change eliminates unnecessary verbiage.
66. In the first line of Article 7.8, the comma following "adopted" was deleted. This change corrects punctuation.

67. In the fifth and sixth lines of Article 7.9, "the DSB shall grant authorization to the complaining Member to take countermeasures . . . unless the DSB decides by consensus to reject the request" is replaced by "the DSB shall grant authorization to the complaining Member to take countermeasures . . . unless the DSB decides by consensus not to grant such authorization". This change clarifies to what the term "request" refers.

ARTICLE 8

68. In note 23 to Article 8.1, "that" is added after "the mere fact". This change was made to improve the style.

69. In Article 8.1(a), the comma following "specific" was deleted. This change corrects punctuation.

70. In Article 8.1(a), "within the meaning of paragraph 1 of Article 2" was changed to "within the meaning of Article 2". This change was made for consistency (compare note 35).

71. In Article 8.1(b), the reference to "conditions provided for in paragraphs 2(a) or 2(b) below" was replaced by "conditions provided for in paragraphs 2(a), 2(b) or 2(c) below". This change was consequential to the addition of a third category on non-actionable subsidies.

72. In note 24 to Article 8.2(a), "sub-paragraph" is changed to "subparagraph". This change corrects spelling.

73. A new note 25 to Article 8.2(a) was created based on the second and third sentences of Final Act note 24. This change was made to separate several distinct elements previously included in a single note.

74. In note 25 to Article 8.2(a), "Committee" was replaced by "Committee on Subsidies and Countervailing Measures, as provided for in Article 24 ("the Committee")". This change was made to clarify the term Committee in the first case where it appears.

75. In note 25 to Article 8.2(a), "this sub-paragraph" was changed to "subparagraph 2(a)". This change was made to clarify the reference and to correct spelling.

76. In note 25 to Article 8.2(a), "sub-paragraph" was changed to "subparagraph". This change was made to correct spelling.

77. A new note 26 was created based on the last two sentences of note 24 of the Final Act text. This change was made to separate several distinct elements previously contained in a single note.

78. In Article 8.2(a)(i), "personnel costs" was changed to "costs of personnel". This change was made for improved style.

79. The note numbered 25 in the Final Act was moved to become note 30 to Article 8.2(a).
80. In note 27 to Article 8.2(a), "sub-paragraph" was changed to "subparagraph". This change was made to correct spelling.

81. In note 30 to Article 8.2(a), "sub-paragraph" was changed to "subparagraph". This change was made to correct spelling.

82. In note 30 to Article 8.2(a), quotation marks were removed from "industrial research" and "pre-competitive development activity". This change was made because these terms were previously defined.

83. In Article 8.2(b), the phrase "within the meaning of paragraph 1 of Article 2" was changed to "within the meaning of Article 2". This change was made for consistency (compare note 35).

84. In the fifth line of Article 8.3, "updating" is replaced by "updates". This change improves style.

85. In the seventh line of Article 8.3, "about" is replaced by "on". This change improves style.

86. In the seventh line of Article 8.3, the words "since the previous update" have been deleted. This change eliminates unnecessary verbiage.

87. In the third line of Article 8.4, "finding" is replaced by "findings". This change clarifies that the Secretariat may make more than one finding.

88. In the fourth line of Article 8.4, the word "then" is deleted. This change eliminates unnecessary verbiage.

ARTICLE 9

89. In the second and third lines of Article 9.1, "paragraph 2 of Article 8" is replaced by "that paragraph". This change eliminates verbiage which is unnecessary in the context of the sentence as a whole.

90. In the fifth line of Article 9.1, "granting the subsidy" is replaced by "granting or maintaining the subsidy". This change is made for consistency.

91. In the first line of Article 9.2, "maintaining the subsidy programme" is replaced by "granting or maintaining the subsidy programme". This change is made for consistency.

92. In the fifth line of Article 9.4, "this provision" is replaced by "paragraph 3". This change clarifies the text and makes it more precise.
ARTICLE 11

93. Article 11.2 (i); first line: the word "the" has been inserted before "identity" to improve style and to ensure consistency with "the identity" in Article 11.2(ii).

94. Article 11.2(iv), first line: the word "material" before "injury" has been deleted in view of the definition of "injury" in footnote 45 ad Article 15.

95. Article 11.3, second line: the word "initiation" has been substituted for "opening" to ensure consistency with the terminology in Article 11.1 and 2.

96. Article 11.4, footnote 39: the commas in this footnote have been deleted to correct the punctuation.

97. Article 11.6, first line: a comma has been inserted after "If" to improve the punctuation.

98. Article 11.7, second line: a comma has been inserted after "thereafter" to improve punctuation.

99. Article 11.11: the words "after their initiation" have been moved to the end of the sentence to clarify the meaning of the provision.

ARTICLE 12

100. Article 12.1.1, second and third line: a hyphen has been added between "30" and "day".

101. Article 12.1.1, footnote 40, second line: "day" has been replaced with "date" to ensure consistency with use of that word in the first line. A comma has been inserted after "or" in the third line to improve the punctuation.

102. Article 12.1.3, third line: the word "shall" has been inserted before "make" to improve the grammar.

103. Article 12.1.3, last line: a comma has been inserted after "information" to improve punctuation.

104. Article 12.2, second line: the words "Members and interested" have been inserted after "interested" to ensure consistency with use of the expression "interested Members and interested parties" in the first and third sentence of this paragraph.

105. Article 12.3, third line: a comma has been inserted after "paragraph 4" to correct the punctuation.

106. Article 12.4, first line: the comma after "confidential" has been deleted and a comma has been inserted at the end of the parenthetical to correct the punctuation.

107. Article 12.5, second and third line: the words "Members or interested" have been inserted between "interested" and "parties" to clarify the scope of the provision, consistent with other references in Article 12 to "interested Members and interested parties".
108. Article 12.6, third line: "the latter" has been replaced with "that Member" for greater clarity.

109. Article 12.6, last sentence: for grammatical reasons, the words "the authorities" have been moved to after "Subject to the requirement to protect confidential information", and "shall" has been inserted after "or".

110. Article 12.6, eighth line: "verifications" has been replaced with "such investigations" to ensure consistency with use of "investigations" at the beginning of the paragraph.

111. Article 12.6, eighth line: a comma has been inserted after "available" to correct the punctuation.

112. Article 12.7, first line: "interested party or Member" has been replaced with "interested Member or interested party" in order to ensure consistency with the order in which the terms "interested Member" and "interested party" appear in other paragraphs.

113. Article 12.8, first line: "or" after "interested Members" has been replaced with "and" to clarify the meaning of the provision.

114. Article 12.9(ii), second line: "territory of the" has been added for consistency.

115. Article 12.11, second line: a comma has been inserted after "requested" and the word "shall" inserted before "provide" to correct punctuation and grammar.

ARTICLE 13

116. Article 13.1, fourth line: the reference to paragraph 1 of Article 11 has been replaced with a reference to paragraph 2 of Article 11 to clarify the meaning of the provision.

117. Article 13.1, fourth line, and Article 13.2, third line: "acceptable" has been substituted for "agreed" to ensure consistency with Articles 4.3 and 7.3.

118. Article 13.2, footnote 44, third line: "and" has been replaced with "or" after "X" to clarify the meaning of the footnote.

119. Article 13.4, third line: a comma has been added after "evidence" to improve punctuation.

ARTICLE 14

120. Article 14(b), third line: the words "the amount the firm would pay on" have been inserted after "and" in order to clarify the meaning of the provision, consistent with the wording of paragraph (c).

121. Article 14(c), third line: "for" has been replaced with "on" to ensure consistency with use of that word at the beginning of the third line in paragraph (c) and in paragraph (b).
ARTICLE 15

122. Article 15.3, second line: the word "the" has been inserted before "effects" to ensure consistency with "the effects of ..." in the sixth line.

123. Article 15.3, third and fifth line: "(1)" and "(2)" have been replaced with "(a)" and "(b)" to ensure consistency with serialization elsewhere in the text.

124. Article 15.3, fifth line: the word "that" before "volume" has been deleted in view of use of "that" after "determine" in the third line.

125. Article 15.3, sixth line: the word "the" has been inserted before "imported" to ensure consistency with "the imported products" in the last line.

126. Article 15.4, sixth line: the spelling of "Government" has been corrected.

127. Article 15.7(ii), second line: the word "importations" has been corrected to read "importation".

ARTICLE 17

130. Article 17.1(b), second line: the word "material" before "injury" and the words "or threat thereof" have been deleted in view of the definition of the term "injury" in footnote 45 ad Article 15.

ARTICLE 18

131. Article 18.1: "(i)" and "(ii)" have been replaced with "(a)" and "(b)" to ensure consistent serialization throughout the Agreement.

132. Article 18.4, first line: "the undertakings are" has been replaced with "an undertaking is" to ensure consistency with use of "undertaking" throughout the paragraph.

133. Article 18.4, third line: the words "or threat thereof" have been deleted in view of the definition of "injury" in footnote 45 ad Article 15.

134. Article 18.4, fifth line: a comma has been added after "cases" to improve punctuation.

135. Article 18.5, second line: "an undertaking" has been replaced with "undertakings" to ensure consistency with use of "undertakings" at the beginning of the sentence.

136. Article 18.6, first two sentences: "undertakings have" has been replaced with "an undertaking
has" to ensure consistency with the reference to "any government or exporter" at the beginning of the paragraph and to "the undertaking" at the end of the paragraph.

137. Article 18.6, sixth line: a comma has been inserted after "cases" to improve the punctuation.

138. Article 18.6, seventh line: "goods" has been replaced with "products", the term consistently used in Part V of the Agreement.

139. Article 18.6, eighth line: "ninety" before "days" has been changed to "90".

ARTICLE 19

140. Article 19.1, fourth line: "section" has been replaced with "Article" to clarify the meaning of this paragraph.

141. Article 19.2, second line: a comma has been inserted after "fulfilled" to correct the punctuation.

142. Article 19.3, sixth line: the spelling of "co-operate" has been corrected.

ARTICLE 20

143. Article 20.1, third line: "below" has been replaced with "in this Article" for greater precision.

144. Article 20.4, third line: a comma has been inserted after "retardation" to improve the punctuation.

145. Article 20.6, sixth line: "ninety" before "days" has been changed to "90".

ARTICLE 21

146. Article 21.5: the words "mutatis mutandis" have been moved to after "apply" to improve the grammar.

ARTICLE 22

147. Article 22.1, second line: the comma after "Members" has been deleted to improve the punctuation.

148. Article 22.2, first and second line: commas have been inserted after "contain" and "report" to improve the punctuation.

149. Article 22.2, clauses (v) and (vi): the words "Members and interested" have been inserted before "parties" to ensure consistency with references to "interested Members and interested parties" in Article 12.
150. Article 22.3, third line: "revocation of a determination" has been replaced with "termination of a definitive countervailing duty" in order to ensure consistency with the terminology elsewhere in the Agreement (e.g. Article 21.2 and 21.3).

151. Article 22.4, first and second line: commas have been inserted after "forth" and "report" to improve the punctuation.

152. Article 22.4, sixth line: a comma has been inserted after "or" to improve punctuation.

153. Article 22.4, last line: "determinations" has been replaced with "determination" to ensure consistency with "determination" at the end of clause (v).

154. Article 22.5, third line: commas have been inserted after "contain" and "report" to improve the punctuation.

155. Article 22.5, sixth line: the words "in particular" have been moved to the beginning of the sentence to improve the grammar.

156. Article 22.5, last line: "interested Members and" has been added before "the exporters" to ensure consistency with the references to "interested Members" in Article 12.

ARTICLE 23

158. In the first line of Article 23, the comma is deleted following "Member". This change was made to correct punctuation.

159. In the second line of Article 23, the comma is deleted following "measures". This change was made to correct punctuation.

ARTICLE 24

160. In the title to Article 24, "other" is deleted. This change was made to clarify that the Committee was not as a result of this title to be considered a "subsidiary body".

161. In the fourth line of Article 24.3, "The experts will be elected by the Committee and one of them will serve in rotation every year." is replaced by "The experts will be elected by the Committee and one of them will be replaced every year." This change is intended to clarify the intent of the drafters with respect to the operation of the PGE.

162. In the fifth line of Article 24.3, "The Committee may request the Group of Experts to prepare a proposed conclusion on the existence of a prohibited subsidy, as provided for in paragraph 5 of Article 4" is replaced by "The PGE may be requested to assist a panel, as provided for in paragraph 5 of Article 4". This change was made because Article 4.5 no longer envisions that the Committee request the assistance of the PGE, but rather that a panel so request.
163. In the first line of Article 24.4, "Group of Experts" is replaced by "PGE". This change was made for consistency and because the abbreviation is called for in Article 4.5.

ARTICLE 25

164. In the second and third lines of Article 25.2, "any subsidy as defined in paragraphs 1 and 2 of Article 1" is replaced by "any subsidy as defined in paragraph 1 of Article 1, which is specific within the meaning of Article 2". The purpose of this change is to clarify that it is specific subsidies that are to be notified.

165. In the second line of Article 25.3, a comma is added after "connection". The change is made to correct punctuation.

166. The subcategories of Article 25.3(i) through (v) are redenominated (a) through (e). This change was made for reasons of consistency in numbering.

167. In Article 25.3(a), "it" is changed to "this". The change is made to improve style.

168. In Article 25.5, "sectors" is changed to "sector". The change is made to improve style.

169. In the second line of Article 25.6, "measures or schemes" is replaced by "measures". This change was made for consistency and to eliminate unnecessary verbiage.

170. In the second line of Article 25.6, "countries" is replaced by "territory". This change was made for consistency with Article 25.2.

171. In the third line of Article 28.8, the article "an" was placed before "explanation". This change was made to correct the grammar.

172. In the fourth line of Article 25.5, "notifiable" was replaced by "subject to the requirement of notification". This change was made because any measure, whether or not subject to a notification requirement, could be "notifiable".

173. In the first line of Article 25.10, "interested Member" was changed to "Member". This change eliminates unnecessary verbiage and clarifies that any Members may bring to the attention of the Committee the possibility that another Member has failed to notify a subsidy.

174. In the first line of Article 25.10, "practice" was replaced by "measure". This change was made for consistency.

175. In the second line of Article 25.11, "will" was replaced by "shall". This change clarifies the nature of the obligation.

176. In the third line of Article 25.11 "government representatives" was replaced by "other Members". This change clarifies that it is other Members that are entitled to examine these reports.

177. In the fifth line of Article 25.11, the sentence "The semi-annual reports shall be submitted
on an agreed standard form." was added. This sentence was moved from Article 26.2 in order to group together related obligations.

ARTICLE 26

178. In the second and third lines of Article 26.2, the sentence "The semi-annual reports shall be submitted on an agreed standard form." was moved to Article 25.11. This sentence was made in order to group together related obligations.

ARTICLE 27

179. In the title to Article 27, "Special and Differential Treatment for Developing Countries" is changed to "Special and Differential Treatment of Developing Countries". This change was made to improve style.

180. Throughout Article 27, references to "country", "developing country" and "Member" are replaced by "developing country Member" where that term is appropriate. See Article 27.3; 27.4; 27.5; 27.6; 27.9; 27.10; 27.11; note 55. These changes are made to insure consistency and because Article 27 only applies to Members.

181. In the first line of Article 27.1, "rle" was replaced by "role". This change was made to correct a typographical error.

182. In Article 27.2(b), "eight years" was changed to "a period of eight years". This change was made to improve style.

183. Article 27.2bis was renumbered as Article 27.3. This change required renumbering of subsequent paragraphs and conforming changes in Articles 27.2(b); 27.8; 27.11; 27.12; 27.15; and 29.2(b).

184. In the second line of Article 27.4, a hyphen was added between "eight" and "year". This change was made to correct spelling.

185. In the fourth line of Article 27.4, "provision" was changed to "paragraph". This change makes the reference more precise.

186. In note 55 to Article 7.4, "day of entry into force" was changed to "date of entry into force". This change was made for consistency.

187. In note 55 to Article 7.4, "provision" was changed to "paragraph". This change was made to increase the precision of the reference.

188. In the first line of Article 27.5, "that" was changed to "which". This change was made to correct grammar.

189. In the sixth line of Article 27.6, a comma was added after "paragraph". This change was made to correct punctuation.
190. In the seventh line of Article 27.6, "Members agree that the Committee shall" was replaced by "The Committee shall". This change eliminates unnecessary verbiage.

191. In the first line of Article 27.7, "Provisions" was changed to "The provisions". This change was made to improve style.

192. In the first line of Article 27.9, "granted or maintained by a developing country Member" was added after "Regarding actionable subsidies". This change was made to clarify that Article 27.9 only applied to subsidies granted or maintained by developing country Members.

193. In the fifth line of Article 27.9, "like products" is replaced by "a like product of another Member". These changes were made for reasons of consistency and because rights and obligations accrue only to Members.

194. In the sixth line of Article 27.9 "domestic industry" is changed to "a domestic industry". This change was made for consistency.

195. In sixth and seventh lines of Article 27.9, "importing market of a Member" was changed to "Market of an importing Member". This change was made to improve style.

196. In the last line of Article 27.9, "in terms of Article 15 of this Agreement" was deleted. This change was made because the reference was unnecessary in light of note 45.

197. In Article 27.10(a), "value/calculated" was replaced by "value calculated". This change was made to correct a typographical error.

198. In the second and fourth line of Article 27.10(b), "for" was corrected to "of".

199. In the fourth line of Article 27.10(b), "import" is replaced by "imports". This change was made to correct an error in pluralization.

200. In the last line of Article 27.10(b), "importing country" is replaced by "importing Member". This change was made because rights and obligations under the Agreement apply only to Members.

201. In the third and fourth lines of Article 27.11, "and those in Annex VII" is replaced by "and for those developing country Members referred to in Annex VII". This change was made to make the reference more precise.

202. In the fifth line of Article 27.11, "this elimination" was changed to "the elimination". This change was made to improve the style.

203. In the sixth line of Article 27.11, a comma and the word "and" were added after "Committee". This change was made to improve the style.

204. In the first line of Article 27.13, "applicable" was replaced by "apply". This change to the active voice was made to improve the style.
ARTICLE 28

205. In Article 28.1, "that" was changed to "which". This change was made to correct the grammar.

206. Articles 28.1(i) and (ii) were redenominated as 28(a) and (b). This change was made for consistency in numbering.

207. An "and" was added after Article 28.1(a) to clarify the relationship between the two subparagraphs.

208. In Article 28.2, "expiration" was replaced by "expiry". This change was made to use a more precise term.

ARTICLE 29

209. In the first line of Article 29.2, a hyphen was added between "free" and "enterprise". This change was made to correct spelling.

210. In the second line of Article 29.1, a comma was deleted after "economy". This change was made to correct punctuation.

211. In Article 29.2, the two subparagraphs were designated (a) and (b). This change was made for consistency and ease of citation.

212. In Article 29.2(b), "the" was added before "provision". This change was made to improve the style.

213. In the first sentence of Article 29.4, "Members" is changed to "Members referred to in paragraph 1". This change was made to clarify that Article 29.4 applies only to Members in the process of transformation from a centrally-planned into a market, free-enterprise economy.

ARTICLE 32

214. The numbering of Article 32 was changed in order to achieve consistency with the numbering in other parts of the text, and consequent cross-references were changed.

215. In the first line of Article 32.5, "Each government accepting or acceding to the MTO" was changed to "Each Member". This change was made because only Members have obligations under this Agreement.

216. In the second line of Article 32.7, "The Committee shall annually inform" was changed to "The Committee shall inform annually". This change was made to correct grammar.

ANNEX I

217. Paragraph (h): the spelling of "prior-stage" has been corrected.
ANNEX II

218. Paragraphs I.1 and 2: the spelling of "prior-stage" has been corrected.

219. Paragraph II.2, second sentence: "importing country" was replaced with "investigating authorities" for consistency with paragraph II.1.

220. Paragraph II.4, last line: "nor" has been replaced with "or" to correct the grammar.

ANNEX III

221. Paragraph I, fourth line: a comma has been inserted after "Annex I" to improve the punctuation.

222. Paragraph II.3, fifth line: a comma has been inserted after "necessary" to improve the punctuation. "Importing country" was replaced with "investigating authorities" for consistency with paragraph II.2.

ANNEX IV

223. Paragraphs 1 and 8: "paragraph 1" has been replaced with "paragraph 1(a)" to ensure consistency with the reference in the title of the Annex and in footnote 62.

224. Paragraph 2, first line: "3-5" has been corrected to "3 to 5".

225. Paragraph 4: "the overall rate of subsidization shall not exceed" has been replaced with "serious prejudice shall be deemed to exist if the overall rate of subsidization exceeds ..." in order to clarify the meaning of this paragraph in the context of Article 6.1(a).


ANNEX V

227. Throughout the Annex, the hyphen was eliminated from "co-operate", co-operative", etc. This change was made to correct spelling.

228. In the second line of paragraph 1, "the Committee or its subsidiary bodies" was replaced by "a panel". This change was made because under the dispute settlement system as now provided for it is a panel that considers evidence under Article 7.4 through 7.6. Further, a panel is established by the DSB, and is not a subsidiary body of the Committee.

229. In the second and third lines of paragraph 1, "Article 7 above, paragraphs 4 through 6" is changed to "paragraphs 4 through 6 of Article 7". This change is made for consistency.

230. In the fourth line of paragraph 1, "to the Committee" is changed to "the DSB". This change reflects that it is the DSB rather than the Committee which is responsible for dispute settlement
matters.

231. In the first line of paragraph 2, "referred to in the Committee" is replaced by "referred to the DSB". This change is for consistency with Article 7.4. Deletion of the word "in" corrects a typographical error.

232. In the second line of paragraph 2, "Committee" is replaced by "DSB". "DSB" rather than "panel" was used because the process in Annex V appears to envision that the procedure for obtaining information be initiated before a panel is composed and ready to begin work (especially given that the process is restricted to 60 days).

233. In the second line of paragraph 2, a comma was inserted after "shall". This change was made to correct punctuation.

234. In the fourth line of paragraph 2, "subsidizations" was changed to "subsidization". This change was made to correct an erroneous pluralization.

235. In the sixth and seventh lines of paragraph 2, "subsidizing country" and "complaining country" were changed to "subsidizing Member" and "complaining Member". These changes were made because only Members can be parties to a dispute under the Agreement.

236. In note 67 to paragraph 2, a hyphen is added between "information" and "gathering" to correct spelling.

237. In note 67 to paragraph 2, "Committee" is changed to "DSB" because it is the DSB which initiates and conducts the information-gathering process under Annex V.

238. In the first line of paragraph 3, "Member party to a dispute" is changed to "party to a dispute". This change is made for consistency and because only Members can be parties to a dispute under the Agreement.

239. In the second line of paragraph 3, "third country," is changed to "third-country Member". This change is made for consistency with the rest of the paragraph, which refers to gathering information from third-country Members.

240. In the third line of paragraph 3, "analyze" is changed to "analyse" for consistency of spelling.

241. In the tenth line of paragraph 3, "Member party to a dispute" is changed to "party to a dispute" for consistency.

242. In the first line of paragraph 4, "Committee" is changed to "DSB" for the same reason as in the second line of paragraph 2.

243. In the first line of paragraph 5, "2-4" was replaced by "2 to 4" for consistency.

244. In the second and fourth lines of paragraph 5, "Committee" was replaced by "DSB" because it is to the DSB that matters are referred under Article 7.4.

245. In the fourth and penultimate lines of paragraph 5, "Committee or to a" was deleted to conform
with the operation of the dispute settlement system.

246. In the penultimate line of paragraph 6 and the first line of paragraph 7, "Committee or the" was deleted because it is the panel, and not the Committee or the DSB, which could rely on best information available.

247. In the second line of paragraph 8, "Committee or the" is deleted to conform with the operation of the dispute settlement system.

248. In the second line of paragraph 8 "Committee" is replaced by "DSB" to conform to paragraph 4 of the Annex.

249. In the first line of paragraph 9, "Committee or the" is deleted to conform with the operation of the dispute settlement system.

ANNEX VI

250. The numbering scheme in this Annex has been changed, consistent with the numbering schemes in other Annexes to the Agreement.

251. Paragraph 4, first line: a comma has been inserted after "obtained" to correct the punctuation.

252. Paragraph 6: to clarify the meaning of the paragraph "provided" has been replaced with "if", "unless" has been deleted, and "(a)" and "(b)" inserted.

ANNEX VII

253. "Member" in the first line of the chapeau has been corrected to "Members".

254. Paragraph (a): "that" has been replaced by "which" to correct the grammar.

255. Paragraph (b): "developing country Members" has been replaced with "developing countries which are Members" to ensure consistency with paragraph (a).

256. Paragraph (b): text previously in the unnumbered "Note" now appears in footnote 68 in the third line.
7. Agreement on Safeguards

AGREEMENT ON SAFEGUARDS

Members,

Having in mind the overall objective of the Members to improve and strengthen the international trading system based on the GATT 1994;

Recognizing the need to clarify and reinforce the disciplines of the GATT 1994, and specifically those of its Article XIX (Emergency Action on Imports of Particular Products), to re-establish multilateral control over safeguards and eliminate measures that escape such control;

Recognizing the importance of structural adjustment and the need to enhance rather than limit competition in international markets; and

Recognizing further that, for these purposes, a comprehensive agreement, applicable to all Members and based on the basic principles of the GATT 1994, is called for;

Hereby agree as follows:

SECTION I Article 1

General

1. This Agreement establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of the GATT 1994.

SECTION II

Conditions

2. A Member\(^1\) may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive

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\(^1\)A customs union may apply a safeguard measure as a single unit or on behalf of a member state. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof under this Agreement shall be based on the conditions existing in the customs union as a whole. When a safeguard measure is applied on behalf of a member state, all the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in that member state and the measure shall be limited to that member state. Nothing in this Agreement prejudices the interpretation of the relationship between Article XIX and Article XXIV:8 of GATT 1994.
products.

5. Safeguard measures shall be applied to a product being imported irrespective of its source.

Article 2

Investigation

2(a) A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of the GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

(b) Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Article 3

Determination of serious injury or threat thereof

6. For the purposes of this Agreement:

(a) "serious injury" shall be understood to mean a significant overall impairment in the position of a domestic industry;

(b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraphs 7 below 2 and 3. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; and

(c) in determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production
7.2. (a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

3. (b) The determination referred to in sub-paragraph 7(a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

4. (e) The competent authorities shall publish promptly, in accordance with the provisions of paragraph 3 above Article 2, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.

Article 4

Application of safeguard measures

8. 1. Safeguard A Member shall apply safeguard measures shall be applied only to the extent as may be necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members should choose measures most suitable for the achievement of these objectives.

9. 2. (a) In cases in which a quota is allocated among supplying countries, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Members having a substantial interest in supplying the product shares based upon the proportions, supplied by such Members during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

(b) A Member may depart from the provisions in (a) above paragraph 2(a) provided that consultations under paragraph 27 of Article 11 are conducted under the auspices of the Committee on Safeguards established in paragraph 36 of this Agreement Article 12 and that clear demonstration is provided to the Committee that (i) imports from certain Members have increased in disproportionate percentage in relation to the total increase of imports of the product concerned in the representative period, (ii) the reasons for
the departure from the provisions in (a) above paragraph 2(a) are justified, and (iii) the conditions of such departure are equitable to all suppliers of the product concerned. The duration of any such measure shall not be extended beyond the initial period under paragraph 10 below 1 of Article 6. The departure referred to above shall not be permitted in the case of threat of serious injury.

Article 5

Provisional safeguard measures

4. In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure may be taken pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of this Section and Section VII Articles 1, 2, 3, 4 and 11 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraphs 7 below 2 and 3 of Article 3 does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraphs 10, 11 and 12 below 1, 2 and 3 of Article 6.

Article 6

Duration of safeguard measures

40. 1. Safeguard measures shall be applied A Member shall apply safeguard measures only for a such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. The period shall not exceed four years, unless it is extended under paragraph 11 below 2.

41. 2. The period mentioned in paragraph 10 above 1 may be extended provided that the competent authorities of the importing Member have determined, in conformity with the procedures set out in this Section Articles 1, 2, 3 and 4, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting and provided that the pertinent provisions of Sections III Articles 7 and VII below 11 are observed.

42. 3. The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years.

43. 4. In order to facilitate adjustment, if the expected duration of a safeguard measure as notified under the provisions of paragraph 25 1 of Article 11 is over one year, it shall be the Member applying the measure shall progressively liberalize it at regular intervals during the period of application. If the duration of the measure exceeds three years, the Member applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A measure extended under paragraph 11 above 2 shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.
44. No safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement Establishing the WTO, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

45. Notwithstanding the provisions of paragraph 44 above, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

(b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

SECTION III Article 7

Level of concessions and other obligations

46. A Member proposing to apply a safeguard measure or seeking an extension of a safeguard measure shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members which would be affected by such a measure under the GATT 1994, in accordance with the provisions of paragraph 27 below 3 of Article 11. To achieve this objective, the Members concerned may agree on any adequate means of trade compensation for the adverse effects of the measure on their trade.

47. If no agreement is reached within 30 days in the consultations under paragraph 27 below 3 of Article 11, then the affected exporting Members shall be free, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the Council for Trade in Goods, the application of substantially equivalent concessions or other obligations under the GATT 1994, to the trade of the Member applying the safeguard measure, the suspension of which the Council for Trade in Goods does not disapprove.

48. The right of suspension referred to in paragraph 47 above shall not be exercised for the first three years that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Agreement.

SECTION IV Article 8

Developing country members Members

49. Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned in the importing Member.

2A Member shall immediately notify an action taken under paragraph 49 of Article 8 to the Committee on Safeguards.
20.2. A developing country Member shall have the right to extend the period of application of a
safeguard measure for a period of up to two years beyond the maximum period provided for in
paragraph 12 above 3 of Article 6. Notwithstanding the provisions of paragraph 14 above 5 of Article 6,
a developing Member shall have the right to apply a safeguard measure again to the import
of a product which has been subject to such a measure, taken after the date of entry into force of the
WTO Agreement Establishing the MTO, after a period of time equal to half that during which such
a measure has been previously applied, provided that the period of non-application is at least two years.

SECTION V Article 9

Pre-existing Article XIX measures

21. Each Member shall terminate all safeguard measures taken pursuant to Article XIX
of the GATT 1947 that were in existence at the date of entry into force of the WTO Agreement
Establishing the MTO not later than eight years after the date on which they were first applied or five
years after the date of entry into force of the WTO Agreement Establishing the MTO, whichever comes
later.

SECTION VI Article 10

Prohibition and elimination of certain measures

22. (a) A Member shall not take or seek any emergency action on imports of particular products
as set forth in Article XIX of the GATT 1994 unless such action conforms with the
provisions of that Article applied in accordance with this Agreement.

(b) Furthermore, a Member shall not seek, take or maintain any voluntary export restraints,
orderly marketing arrangements or any other similar measures on the export or the
import side. These include actions taken by a single Member as well as actions under
agreements, arrangements and understandings entered into by two or more Members.
Any such measure in effect at the time of entry into force of the
WTO Agreement Establishing the MTO shall be brought into conformity with this
Agreement or phased out in accordance with paragraph 23 below 2.

(c) This Agreement does not apply to measures sought, taken or maintained by a Member
pursuant to provisions of the GATT 1994 other than Article XIX, and Multilateral
Trade Agreements in Annex 1A other than this Agreement, or pursuant to protocols
and agreements or arrangements concluded within the framework of the GATT 1994.

23. The phasing out of measures referred to in paragraph 22(b) above 1(b) shall be carried out

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3An import quota applied as a safeguard measure in conformity with the relevant provisions of the GATT 1994 and this
Agreement may, by mutual agreement, be administered by the exporting Member.

4Examples of similar measures include export moderation, export-price or import-price monitoring systems, export or
import surveillance, compulsory import cartels and discretionary export or import licensing schemes, any of which afford
protection.
according to timetables to be presented to the Committee on Safeguards by the Members concerned not later than 180 days after the date of entry into force of the WTO Agreement Establishing the MTO. These timetables shall provide for all measures referred to in paragraph 22 above to be phased out or brought into conformity with this Agreement within a period not exceeding four years after the date of entry into force of the WTO Agreement Establishing the MTO, subject to not more than one specific measure per importing Member, the duration of which shall not extend beyond December 31, 1999. Any such exception must be mutually agreed between the Members directly concerned and notified to the Committee on Safeguards for its review and acceptance within 90 days of the coming entry into force of the WTO Agreement Establishing the MTO. The Annex to this Agreement indicates a measure which has been agreed as falling under this exception.

24. Members shall not encourage or support the adoption or maintenance by public and private enterprises of non-governmental measures equivalent to those referred to in paragraph 22 above.

SECTION VII Article 11

Notification and consultation

25. A Member shall immediately notify the Committee on Safeguards upon:

(a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

(b) making a finding of serious injury or threat thereof caused by increased imports; and

(c) taking a decision to apply or extend a safeguard measure.

26. In making the notifications referred to in sub-paragraphs 25(b) and (e) above, the Member proposing to apply or extend a safeguard measure shall provide the Committee on Safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction, expected duration and timetable for progressive liberalization. In the case of an extension of a measure, evidence that the industry concerned is adjusting shall also be provided. The Council for Trade in Goods or the Committee on Safeguards may request such additional information as they may consider necessary from the Member proposing to apply or extend the measure.

27. A Member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Members having a substantial interest as exporters of the product concerned, with a view to, inter alia, reviewing the information provided under paragraph 26 above, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in Paragraph 16 above Paragraph 1 of Article 7.

28. A Member shall make a notification to the Committee on Safeguards before taking a provisional safeguard measure referred to in paragraph 4 above Article 5. Consultations shall be initiated immediately after the measure is taken.

5The only such exception to which the European Communities is entitled is indicated in the Annex to this Agreement.
29§. The results of the consultations referred to in this Section Article, as well as the results of mid-term reviews referred to in paragraph 43 4 of Article 6, any form of compensation referred to in paragraph 46 1 of Article 7, and proposed suspensions of concessions and other obligations referred to in paragraph 47 2 of Article 7, shall be notified immediately to the Council for Trade in Goods by the Members concerned.

30. Members Each Member shall notify promptly the Committee on Safeguards of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.

31. Members maintaining measures described in paragraphs 21 and 22 above Article 9 and paragraph 1 of Article 10 which exist at on the date on which the Agreement Establishing the MTO enters into force of entry into force of the WTO Agreement shall notify such measures to the Committee on Safeguards, not later than 60 days after the date of entry into force of the WTO Agreement Establishing the MTO.

32. Any Member may notify the Committee on Safeguards of all laws, regulations, administrative procedures and any measures or actions dealt with in this Agreement that have not been notified by other Members that are required by this Agreement to make such notifications.

33. Any Member may notify the Committee on Safeguards of any non-governmental measures referred to in paragraph 24 above Article 10.

34. All notifications to the Council for Trade in Goods referred to in this Agreement shall normally be made through the Committee on Safeguards.

35. The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

SECTION VIII Article 12

Surveillance

36. There shall be a Committee on Safeguards under the authority of the Council for Trade in Goods, which shall be open to the participation of any Member indicating its wish to serve on it. The Committee will have the following functions:

(a) to monitor, and report annually to the Council for Trade in Goods on, the general implementation of this Agreement and make recommendations towards its improvement;

(b) to find, upon request of an affected Member, whether or not the procedural requirements of this Agreement have been complied with in connection with a safeguard measure, and report its findings to the Council for Trade in Goods;

(c) to assist Members, if they so request, in their consultations under the provisions of this Agreement;
(d) to examine measures covered by paragraphs 21 and 22 of Article 10, monitor the phase-out of such measures and report as appropriate to the Council for Trade in Goods;

(e) to review, at the request of the Member taking a safeguard measure, whether proposals to suspend concessions or other obligations are "substantially equivalent", and report as appropriate to the Council for Trade in Goods;

(f) to receive and review all notifications provided for in this Agreement and report as appropriate to the Council for Trade in Goods; and

(g) to perform any other function connected with this Agreement that the Council for Trade in Goods may determine.

37. To assist the Committee in carrying out its surveillance function, the MTO WTO Secretariat shall prepare annually a factual report on the operation of the Agreement based on notifications and other reliable information available to it.

SECTION IX Article 13

Dispute settlement

38. The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall apply to consultations and the settlement of disputes arising under this Agreement.
ANNEX

Exception Referred to in Paragraph 23 of Article 10

<table>
<thead>
<tr>
<th>Members concerned</th>
<th>Product</th>
<th>Termination</th>
</tr>
</thead>
<tbody>
<tr>
<td>EC/Japan</td>
<td>Passenger cars, off road vehicles, light commercial vehicles, light trucks (up to 5 tonnes), and the same vehicles in wholly knocked-down form (CKD sets).</td>
<td>31 December 1999</td>
</tr>
</tbody>
</table>
I. Change in the Structure of the Agreement on Safeguards

1. To harmonize the structure of this Agreement with other Agreements, the text is now organized in terms of "Articles" and not "Sections". Sections I and II have been reorganized into six Articles to clarify the nature of the provisions in these Sections. Article 1, titled "General", includes previous paragraphs 1, 2 and 5, i.e. it includes Section I as well as two paragraphs from Section II. These three paragraphs are now respectively renumbered as paragraphs 1, 2 and 3 of Article 1. Previous paragraphs 3, 4 and 6 to 15 of Section II are now organized under five Articles, i.e. Articles 2 to 6 (see below). There is no change in the structure of the other Sections, and therefore the only change for them is that Sections III to IX are now, respectively, Articles 7 to 13. The titles of Articles 7 to 13 are the same as the titles of the respective Sections to which these Articles correspond.

2. Article 2, titled "Investigation", comprises the previous paragraph 3. In place of previous paragraphs 3(a) and 3(b), we now have paragraphs 1 and 2 of Article 2.

3. Article 3, titled "Determination of serious injury or threat thereof", includes previous paragraphs 6 and 7. Previous paragraph 6 is now paragraph 1 of this Article and previous sub-paragraphs 7(a) to 7(c) are respectively paragraphs 2 to 4 of this Article. Previous sub-paragraphs 7(a) to 7(c) have been changed to paragraphs 2 to 4 for reasons of consistency with the presentation of similar issues in other Agreements.

4. Article 4, titled "Application of safeguard measures", comprises previous paragraphs 8 and 9 which are now paragraphs 1 and 2 of this Article.

5. Article 5, titled "Provisional safeguard measures", comprises the previous paragraph 4.

6. Article 6, titled "Duration of safeguard measures" comprises previous paragraphs 10 to 15 which are now paragraphs 1 to 6 of this Article.

II. Changes in References to Paragraphs and Articles Due to the Change in the Structure of the Text

7. Article 3, paragraph 1(b) (previous paragraph 6(b)) -- first sentence: "paragraph 7 below" has been replaced by "paragraphs 2 and 3".

8. Article 3, paragraph 3 (previous paragraph 7(b)) -- first sentence: "sub-paragraph 7(a)" has been replaced by "paragraph 2".

9. Article 3, paragraph 4 (previous paragraphs 7(c)): "paragraph 3 above" has been replaced by "Article 2".

10. Article 4, paragraph 2(b) (previous paragraph 9(b)) -- first and second sentences: "provisions in (a) above" has been replaced by "provisions in paragraph 2(a)"; "paragraph 27" has been replaced by "paragraph 3 of Article 11"; "paragraph 36 of this Agreement" has been replaced by "paragraph 1 of Article 12"; "paragraph 10 below" has been replaced by "paragraph 1 of Article 6".

11. Article 5 (previous paragraph 4) -- second, third and fourth sentences: "this Section and Section VII" has been replaced by "Articles 1, 2, 3, 4, and 11"; "paragraph 7 below" has been replaced by "paragraphs 2 and 3 of Article 3"; "paragraphs 10, 11 and 12 below" has been changed to "paragraphs 1, 2 and 3 of Article 6".
12. Article 6, paragraph 1 (previous paragraph 10) — last sentence: "paragraph 11 below" has been replaced by "paragraph 2".

13. Article 6, paragraph 2 (previous paragraph 11): "paragraph 10 above" has been replaced by "paragraph 1"; "this Section" has been replaced by "Articles 1, 2, 3 and 4"; "Sections III and VII below" has been replaced by "Articles 7 and 11".

14. Article 6, paragraph 4 (previous paragraph 13) — first and last sentences: "paragraph 25" has been replaced by "paragraph 1 of Article 11"; "paragraph 11 above" has been replaced by "paragraph 2".

15. Article 6, paragraph 6 (previous paragraph 15) — first line: "paragraph 14 above" has been replaced by "paragraph 5".

16. Article 7, paragraphs 1 and 2 (previous paragraphs 16 and 17) — first sentence in both: "paragraph 27 below" has been replaced by "paragraph 3 of Article 11".

17. Article 7, paragraph 3 (previous paragraph 18) — first line: "paragraph 17 above" has been replaced by "paragraph 2".

18. Footnote 2: "paragraph 19" has been replaced by "paragraph 1 of Article 8".

19. Article 8, paragraph 2 (previous paragraph 20) — first and second sentences: "paragraph 12 above" has been replaced by "paragraph 3 of Article 6"; "paragraph 14 above" has been replaced by "paragraph 5 of Article 6".

20. Article 10, paragraph 1(b) (previous paragraph 22(b)) — last line: "paragraph 23 below" has been replaced by "paragraph 2".

21. Article 10, paragraph 2 (previous paragraph 23) — first and second sentences: "paragraph 22(b) above" has been replaced by "paragraph 1(b)"; "paragraph 22 above" has been replaced by "paragraph 1".

22. Article 10, paragraph 3 (previous paragraph 24) — last line: "paragraph 22 above" has been replaced by "paragraph 1".

23. Article 11, paragraph 2 (previous paragraph 26) — first sentence: "sub-paragraphs 25(b) and (c) above" has been replaced by "paragraphs 1(b) and 1(c)".

24. Article 11, paragraph 3 (previous paragraph 27): "paragraph 26 above" has been replaced by "paragraph 2"; "Paragraph 16 above" has been replaced by "paragraph 1 of Article 7".

25. Article 11, paragraph 4 (previous paragraph 28) — first sentence: "paragraph 4 above" has been replaced by "Article 5".

26. Article 11, paragraph 5 (previous paragraph 29): "Section" has been replaced by "Article"; "paragraph 13" has been replaced by "paragraph 4 of Article 6"; "paragraph 16" has been replaced by "paragraph 1 of Article 7"; "paragraph 17" has been replaced by "paragraph 2 of Article 7".
27. Article 11, paragraph 7 (previous paragraph 31) -- first line: "paragraphs 21 and 22 above" has been replaced by "Article 9 and paragraph 1 of Article 10".

28. Article 11, paragraph 9 (previous paragraph 33) -- end of the sentence: "paragraph 24 above" has been replaced by "paragraph 3 of Article 10".

29. Article 12, paragraph 1(d) (previous paragraph 36(d)) -- first line: "paragraphs 21 and 22" has been replaced by "Article 9 and paragraph 1 of Article 10".

30. ANNEX: "Paragraph 23" in the title has been replaced by "Paragraph 2 of Article 10".

III. Horizontal Changes Made Across Different Texts

31. The term "the GATT 1994" has been replaced by "GATT 1994", i.e. the word "the" has been deleted.

32. The phrase "entry into force of the Agreement Establishing the MTO" has been changed to "entry into force of the WTO Agreement".6

33. The term "MTO" has been changed to "WTO".

34. Some changes were made in order to clarify the fact that the obligations in the Agreements have been imposed on Members. In the Agreement on Safeguards, these changes are as follows

(a) Article 4, paragraph 1 (previous paragraph 8) -- first line: "Safeguard measures shall be applied" has been replaced by "A Member shall apply safeguard measures".

(b) Article 5 (previous paragraph 4) -- first sentence: "a provisional safeguard measure may be taken" has been changed to "a Member may take a provisional safeguard measure".

(c) Article 6, paragraph 1 (previous paragraph 10) -- first line: "Safeguard measures shall be applied" has been changed to "A Member shall apply safeguard measures".

(d) Article 6, paragraph 4 (previous paragraph 13) -- first sentence: "it shall be progressively liberalized" has been replaced by "the Member applying the measure shall progressively liberalize it".

IV. Other Changes to the Text of the Agreement on Safeguards

35. Footnote 1 -- first and third sentences: "state" has been replaced by "State".

36. Article 2, paragraph 2 (previous paragraph 3(b)) -- last sentence: "would be free to disregard" has been replaced by "may disregard". This is a stylistic improvement.

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6In the Agreement on Safeguards, this has meant a change in the following places: Article 6, paragraph 5 (previous paragraph 14), last sentence of paragraph 2 of Article 8 (previous paragraph 20), Article 9 (previous paragraph 21), last sentence of paragraph 1(b) of Article 10 (previous paragraph 22(b)), first three sentences of paragraph 2 of Article 10 (previous paragraph 23), Article 11, paragraph 7 (previous paragraph 31).
37. Article 3, paragraphs 1(a), 1(b) and 1(c) (previous paragraphs 6(a), 6(b) and 6(c)) — first line in each: "serious injury", "threat of serious injury" and "domestic industry" have been put within quotation marks to clarify that these are the terms being defined in the relevant paragraphs.

38. Article 3, paragraphs 2 and 3 (previous paragraphs 7(a) and 7(b)) — end of each paragraph: full-stops have been replaced by semi-colons.

39. Article 4, paragraph 1 (previous paragraph 8) — first sentence: "as may be" has been deleted because it is superfluous.

40. Article 6, paragraph 1 (or the previous paragraph 10) — first sentence: "a period of time" has been replaced by "such period of time" to make a stylistic improvement.

41. Article 6, paragraph 2 (previous paragraph 11): "injury; that" has been replaced by "injury and that"; the semi-colon after "adjusting" has been replaced by a comma.

42. Article 7, paragraph 1 (previous paragraph 16) — first sentence: "to that existing between it" has been replaced by "to that existing under GATT 1994 between it", and in the fourth line "under the GATT 1994" has been deleted. This change is to clarify the text because in the previous version of the text, "under the GATT 1994" seemed to qualify the measure and not the level of concessions and other obligations under GATT 1994.

43. Article 7, paragraph 2 (previous paragraph 17): "Members are free" has been replaced by "Members shall be free". This change has been made for reasons of consistency with paragraph 3(a) of Article XIX of GATT.

44. Article 8, paragraph 1 (previous paragraph 19): the comma after "provided that" has been deleted to make a stylistic improvement; at the end, "in the importing Member" has been added to clarify the provision.

45. Article 9 (previous paragraph 21) — first sentence: "Members" has been replaced by "Each Member" to clarify that each Member has to terminate its own pre-existing Article XIX measures, i.e. those taken under GATT 1947; "at the date" has been replaced by "on the date".

46. Article 10, paragraph 1(b) (previous paragraph 22(b)) — last sentence: "at the time of entry" has been changed to "on the date of entry". This is for reasons of consistency.

47. Article 10, paragraph 2 (previous paragraph 23) — second and third sentences: "December 31, 1999" has been replaced by "31 December 1999"; "coming into force" has been changed to "entry into force". This is for reasons of consistency.

48. Article 11, paragraph 4 (previous paragraph 28) — first sentence: "to the Committee on Safeguards" has been added after the word "notification", in order to clarify the body to which the notification has to be made.

49. Article 11, paragraph 6 (previous paragraph 30): "Members" and "their" have been respectively replaced by "Each Member" and "its". This is to clarify that each Member has to notify its own laws, etc. Also, this change will make this provision consistent with similar provisions in other Agreements.
50. Article 11, paragraph 7 (previous paragraph 31): "at the date on which" has been replaced by "on the date of entry into force of"; "enters into force" has been deleted; "after the entry" has been replaced by "after the date of entry". This is for reasons of consistency.

51. Article 12, paragraph 2 (previous paragraph 37): "the Agreement" has been replaced by "this Agreement" for consistency with other references to the Agreement in the text.

52. ANNEX: for reasons of consistency, the comma after "December" in the column "Termination" has been deleted.