

ANNEX V

**EAST AFRICAN COMMUNITY
CUSTOMS UNION
(SUBSIDIES AND COUNTERVAILING MEASURES)
REGULATIONS**

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(SUBSIDIES AND COUNTERVAILING MEASURES)
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SCHEDULES

PART 1
PRELIMINARY PROVISIONS

REGULATION 1
Citation

These Regulations may be cited as the East African Community Customs Union (Subsidies and Countervailing Measures) Regulations.

REGULATION 2
Purpose of the Regulations

The purpose of these Regulations is to implement the provisions of Articles 17 and 18 of the Protocol and to ensure that there is uniformity among the Partner States in the application of subsidies and countervailing measures and that to the extent possible the process is transparent, accountable, fair, predictable and consistent with provisions of the Protocol.

REGULATION 3
Interpretation

In these Regulations, unless the context otherwise requires –

"Committee" means the East African Community Committee on Trade Remedies;

"Council" means the Council of Ministers established under Article 9 of the Treaty;

"countervailing duty" means 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 General Agreement on Tariff and Trade, 1994;

"countervailing measures" means actions taken to counteract the effect of injurious subsidies;

"Court" means the East African Court of Justice established under Article 9 of the Treaty;

"cumulative indirect taxes" means 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;

"Customs Union" means the East African Community Customs Union;

"direct taxes" means taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;

"granting authority" means a Partner State, a foreign country or their agents granting a subsidy;

"import charges" means tariffs, duties, and other fiscal charges not elsewhere enumerated in these Regulations that are levied on imports;

"indirect taxes" means 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" means taxes levied on goods or services used directly or indirectly in making the product;

"injury" unless otherwise specified under these Regulations, means 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 these Regulations;

"interested parties" includes:

- (a) an exporter or foreign producer or the importer of a product subject to investigations, or a trade or business association a majority of the members of which are producers, or exporters of such product;
- (b) the government of the exporting country; and
- (c) a producer of the like product in a Partner State or a trade and business association a majority of the members which produce like products in the Partner States;

"investigating authority" means the national authority charged with the responsibility of conducting investigations on subsidies in a Partner State on behalf of the Committee;

"levy" means the definitive or final legal assessment or collection of a duty or tax;

"like product" means a product which is identical, is alike in all respects to the product under consideration, or in the absence of such product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration;

"Protocol" means the Protocol on the Establishment of the East African Community Customs Union;

"remission of taxes" means the waiver of duty or refrainment from exacting of duty;

"subsidy" means a subsidy referred to in Regulation 7 of these Regulations;

"Secretariat" means the Secretariat of the East African Community established under Article 9 of the Treaty;

"WTO Agreement" means the WTO Agreement on subsidies and countervailing measures.

REGULATION 4 **Application of the Regulations**

1. These Regulations shall apply to investigations or reviews initiated under existing national legislation of Partner States upon coming into force of the Protocol.
2. These Regulations shall be applied in conjunction with the existing national legislation of each Partner State for the conduct of investigations and reviews in each Partner State to determine the existence and effect of subsidies.
3. Where an investigation is initiated by a Partner State against another Partner State during the transitional period, the provisions of these Regulations shall apply.
4. The provisions of paragraph 1 of Regulation 12 and the provisions of Regulation 14 and 15 shall apply remain in force as long as they are in force under the WTO Agreement.
5. Where an investigation is initiated by a Partner State against a foreign country, the provisions of the WTO Agreement shall apply.

REGULATION 5 **Interim Provisions**

1. A Partner State which does not have national legislation on subsidies and countervailing measures undertakes to enact legislation to provide for the formation of an investigating authority for the conduct of investigations to reflect the provisions of these Regulations, within such period as the Council may determine.
2. Where there is national legislation, the Partner States undertake to harmonise such legislation with these Regulations.

REGULATION 6
Conditions for Applying Countervailing Measures

1. A countervailing measure shall be applied only under the circumstances provided for in Articles 17 and 18 of the Protocol.
2. A Partner State may apply countervailing measures pursuant to investigations initiated and conducted in accordance with the provisions of these Regulations.

PART II
GENERAL PROVISIONS

REGULATION 7
Definition of Subsidy

1. For purposes of these Regulations, a subsidy shall be deemed to exist where there is a financial contribution by a government or any public body within the territory of a Partner State or a foreign country (referred to in this Regulation as “government”) and where as a result of the financial contribution a benefit is conferred in situations where:
 - (a) a government practice involves a direct transfer of funds such as grants, loans, and equity infusion, potential direct transfers of funds or liabilities such as loan guarantees;
 - (b) government revenue that is otherwise due is foregone or not collected, such as fiscal incentives, the exemption of an exported product from duties or taxes borne by a like product 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;
 - (c) a government provides goods or services other than general infrastructure or purchases goods;
 - (d) 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 sub-paragraphs (a), (b) and (c) which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments; or
 - (e) there is any form of income or price support.
2. A subsidy shall also be deemed to exist where there is any form of income or price support and a benefit is conferred as a result.
3. A subsidy as defined in paragraph 1 of this Regulation shall be subject to the provisions of Part III, IV or VI only where a subsidy is specific in accordance with the provisions of Regulation 8 of these Regulations.

REGULATION 8

Specificity

1. In order to determine whether a subsidy, as defined in paragraph 1 of Regulation 7, is specific to an enterprise or industry or group of enterprises or industries (referred to in these Regulations 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 laws, regulations, or other official documents, so as to be capable of verification.
 - (c) In sub-paragraph (b), "objective criteria or conditions" means, 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 the number of employees or size of an enterprise; and
 - (d) where, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in sub-paragraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, the following factors may be considered:
 - (i) use of a subsidy programme by a limited number of certain enterprises;

- (ii) predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises; and
 - (iii) the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In particular, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall be considered; and
 - (e) In applying sub-paragraph (d) or 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. A subsidy that is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. The setting or change of generally applicable tax rates set by government shall not be deemed to be a specific subsidy for the purposes of these Regulations.
 3. Any subsidy falling under the provisions of Regulation 9 shall be deemed to be specific.
 4. Any determination of specificity under the provisions of this Regulation shall be clearly substantiated on the basis of positive evidence.

PART III

PROHIBITED SUBSIDIES

REGULATION 9 Prohibition

1. Except as provided in the WTO Agreement on Agriculture, the following subsidies, within the meaning of Regulation 7, shall be prohibited:
 - (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in the First Schedule to these Regulations, provided that the standard shall be met when the facts demonstrate that the granting of a subsidy is tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision; and
 - (b) subsidies contingent, in law or fact whether solely or as one of several other conditions, upon the use of domestic over imported goods.
2. Except as specified on Part VIII and the Seventh Schedule of these Regulations, a Partner State shall not grant or maintain subsidies referred to in paragraph 1(a) of this Regulation.

REGULATION 10
Remedies on Prohibited Subsidies

1. Whenever a Partner State has reason to believe that a prohibited subsidy is being granted or maintained by another Partner State or foreign country, the Partner State may request for consultations with the other Partner States or foreign country. All such requests for consultations shall be notified to the Committee.
2. A request for consultations under paragraph 1 shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.
3. Upon request for consultations under paragraph 1, the Partner State or foreign country believed to be granting or maintaining the subsidy in

question shall enter into consultations as quickly as possible to clarify the facts of the situation and to arrive at a mutually agreed solution.

4. Where no mutually agreed solution is reached within thirty days of the request for consultations, or such other time as may be mutually agreed upon, any Partner State which is a party to the consultations may refer the matter to the Committee for consideration.
5. The Committee shall immediately review the evidence with regard to the existence and nature of the measure in question and shall provide an opportunity for the Partner State applying or maintaining the measure to demonstrate that the measure in question is not a prohibited subsidy.
6. The Committee shall submit its final report to the parties to the dispute and circulate it to all Partner States within ninety days of the date of request by the Partner State.
7. Where the measure in question is found to be a prohibited subsidy, the Committee shall recommend that the subsidising Partner State or foreign country withdraw the subsidy without delay. In this regard, the Committee shall specify in its recommendation the time-period within which the measure must be withdrawn.
8. Within thirty days of the issuance of the Committee's report to all Partner States, the report shall be adopted by the Council unless one of the parties to the dispute formally notifies the Council of its intention to appeal to it for review of the decisions of Committee or where the Council decides by consensus not to adopt the report.
9. (1) Where a Committee's report is appealed against, the Council shall issue its decision within thirty days from the date when a party to a dispute formally notifies its intention to appeal. Where the Council considers that it cannot provide its report within thirty days, it shall inform the parties 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 forty-five days.

- (2) Where the Council reaches a decision by consensus, it shall issue its decision in the form of a directive.
 - (3) Where the Council fails to reach a decision by consensus, the aggrieved party may refer the matter to Court within twenty days of notification of the decision by the Council.
10. Where no reference is made within twenty days or where the parties do not implement the directive within the period specified by the Council, the Council shall grant authorisation to the complaining Partner State to take appropriate counter measures.

PART IV

ACTIONABLE SUBSIDIES

REGULATION 11 Adverse Effects

1. No Partner State or a foreign country shall cause, through the use of any subsidy referred to in Regulation 9, adverse effects to the interests of Partner States.
2. Adverse effects shall include:

- (a) injury to the domestic industry of a Partner State;
 - (b) nullification or impairment of benefits accruing directly or indirectly to other Partner States under the General Agreement on Tariffs and Trade, 1994 in particular the benefits of concessions bound under Article II of that Agreement. The term "nullification or impairment" is used in these Regulations in the same sense as it is used in the relevant provisions of the General Agreement on Tariff and Trade, 1994, and the existence of such nullification or impairment shall be established in accordance with the practice of application of the provisions of the General Agreement on Tariffs and Trade, 1994; and
 - (c) serious prejudice to the interests of another Partner State.
3. The term "serious prejudice to the interests of another Partner State" is used in these Regulations in the same sense as it is used in the Fifth Schedule to these Regulations, and includes threat of serious prejudice.
4. This Regulation does not apply to subsidies maintained on agricultural products as provided in Article 13 of the WTO Agreement on Agriculture.

REGULATION 12

Serious Prejudice

1. "Serious prejudice" in the context of paragraph 2 (c) of Regulation 11 shall be deemed to exist in the case of:
- (a) the total *ad valorem* subsidisation of a product exceeding five per cent which is calculated in accordance with the provisions of the Fourth Schedule of these Regulations;
 - (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; and
 - (d) direct cancellation of debts including the cancellation of government-held debts and grants to cover debt repayment.
- 2. Notwithstanding the provisions of paragraph 1, serious prejudice shall not be found where the subsidising Partner State or a foreign country demonstrates that the subsidy in question has not resulted in any of the effects provided in paragraph 3.
- 3 "Serious prejudice" in the context of paragraph 2(c) of Regulation 11 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 a Partner State or foreign country into the market of the subsidising Partner State;
 - (b) the effect of the subsidy is to displace or impede the exports of a like product of a Partner State from a market of a foreign country;
 - (c) the effect of the subsidy is a significant price undercutting by the subsidized product as compared with the price of a like product of a Partner State in the same market or significant price suppression, price depression or lost sales in the same market; or
 - (d) the effect of the subsidy is an increase in the world market share of the subsidising country in a particular subsidised primary product or commodity unless other multilaterally agreed specific rules apply to the trade in the product or

commodity in question as compared to the average share it had during the previous period of three years and this increase follows a consistent trend over a period when subsidies have been granted.

4. (1) For purposes of paragraph 3(b) of this Regulation the displacement or impeding of exports shall include any case in which, subject to the provisions of paragraph 7 of this Regulation, it has been demonstrated that there has been a change in relative shares of the market to the disadvantage of the non-subsidised like product (over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the product concerned, which, in normal circumstances, shall be at least one year.
- (2) For purposes of sub-paragraph (1), "change in relative shares of the market" shall include any of the following situations:
 - (a) where there is an increase in the market share of the subsidised product;
 - (b) the market share of the subsidized product remains constant in circumstances in which, in the absence of the subsidy, it would have declined; or
 - (c) where the market share of the subsidised product declines, but at a slower rate than would have been the case in the absence of the subsidy.
5. For purposes of paragraph 3(c) of this Regulation , price undercutting shall include any case in which a price undercutting has been demonstrated through a comparison of prices of the subsidised product with prices of a non-subsidised like product supplied to the same market. The comparison shall be made at the same level of trade and at comparable times and due account shall be taken of any other factor affecting price comparability. However, where such a direct comparison

is not possible, the existence of price undercutting may be demonstrated on the basis of export unit values.

6. Each Partner State in whose market serious prejudice is alleged to have arisen shall, subject to the provisions of paragraph 3 of the Fifth Schedule, make available to the parties to a dispute arising under Regulation 13 and to the Committee all relevant information that can be obtained as to the changes in market shares of the parties to the dispute and prices of the products involved.
7. Displacement or impediment resulting in serious prejudice shall not arise under paragraph 3 of this Regulation where any of the following circumstances exist during the relevant period:
 - (a) prohibition or restriction on exports of the like product from the complaining Partner States on imports from the complaining Partner States into the foreign 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 Partner State 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 Partner State;
 - (d) existence of arrangements limiting exports from the complaining Partner State;
 - (e) voluntary decrease in the availability for export of the product concerned from the complaining Partner State including, inter alia, a situation where firms in the complaining Partner State have been autonomously reallocating exports of this product to new markets; and

- (f) failure to conform to standards and other regulatory requirements in the importing country.
- 8. In the absence of circumstances referred to in paragraph 7 of this Regulation, the existence of serious prejudice shall be determined on the basis of the information submitted to or obtained by the Committee, including information submitted in accordance with the provisions of the Fifth Schedule to these Regulations.
- 9. This Regulation does not apply to subsidies maintained on agricultural products as provided in Article 13 of the WTO Agreement on Agriculture.

REGULATION 13
Remedies on Actionable Subsidies

- 1. Except as provided in Article 13 of the WTO Agreement on Agriculture, whenever a Partner State has reason to believe that any subsidy referred to in Regulation 7, granted or maintained by another Partner State or foreign country, results in injury to its domestic industry, nullification or impairment or serious prejudice, the Partner State may request for consultations with the other Partner States or foreign country.
- 2. A request for consultations under paragraph 1 shall include a statement of available evidence with regard to:
 - (a) the existence and nature of the subsidy in question, and
 - (b) the injury caused to the domestic industry, or the nullification or impairment, or serious prejudice caused to the interests of the Partner State requesting consultations. In this sub-paragraph the available evidence of serious prejudice may be limited to the

available evidence on whether the conditions of paragraph 1 of Regulation 12 have been met.

3. Upon request for consultations under paragraph 1 of this Regulation, the Partner State or foreign country believed to be granting or maintaining the subsidy practice in question shall enter into such consultations within fourteen days. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually agreed solution. All such requests for consultation shall be notified to the Committee.
4. Where consultations do not result in a mutually agreed solution within sixty days, or any other period agreed upon by the parties, any party to such consultations may refer the matter to the Committee for consideration.
5. Where a matter is referred to the Committee for consideration, the Committee may immediately review the evidence with regard to the issues in question and shall provide an opportunity for the Partner State applying or maintaining the measure to demonstrate that the measure in question does not cause injury to the domestic industry, or the nullification or impairment or serious prejudice to the interests of the Partner State requesting consultations. The Committee shall submit its final report to the parties to the dispute and the report shall be circulated to all Partner States within 120 days of the request.
6. Within thirty days of the issuance of the Committee's report to all Partner States, the report shall be adopted by the Council unless one of the parties to the dispute formally notifies the Council of its intention to appeal to it for review of the decision of the Committee or the Council decides by consensus not to adopt the report.
7. (1) Where the Committee's report is appealed against, the Council shall issue its decision within sixty days from the date a party to the dispute formally notifies its intention to appeal. Where the Council considers that it cannot provide its report within sixty days, it shall inform the parties in writing of the reasons for the delay together with an estimate of the period within which it shall

submit its report. In no case shall the proceedings exceed ninety days.

- (2) Where the Council makes a decision by consensus, it shall issue its decisions in form of a directive.
 - (3) Where the Council fails to reach a decision by consensus, the party may refer the matter to Court within twenty days.
8. Where no reference is made to Court within twenty days or where the parties to a dispute do not implement the directive within the period specified by the Council, the Council shall grant authorisation to the complaining Partner State to take appropriate counter measures commensurate with the degree and nature of the adverse effects determined to exist.

PART V
NON-ACTIONABLE SUBSIDIES

REGULATION 14
Identification of Non-Actionable
Subsidies

1. The following subsidies shall be considered as non-actionable:
 - (a) subsidies which are not specific within the meaning of Regulation 8; and
 - (b) subsidies which are specific within the meaning of Regulation 8 but which meet all of the conditions provided for in paragraph 2 of this Regulation.

2. Notwithstanding the provisions of Parts III and VI of these Regulations, 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, other than fundamental research activities which are an enlargement of general scientific and technical knowledge not

linked to industrial or commercial objectives if the assistance covers not more than seventy five per centum of the costs of industrial research or fifty per centum of the costs of pre-competitive development activity, provided that these percentages may be varied by the Council from time to time; and that the assistance referred to in this paragraph is limited exclusively to:

- (i) costs of personnel such as 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 and patents;
 - (iv) additional overhead costs incurred directly as a result of the research activity; and
 - (v) other running costs such as costs 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 Partner State given pursuant to a general framework of regional development and which is non-specific within the meaning of Regulation 8 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 and that such criteria must be clearly spelled out in law, regulation or other official document, so as to be capable of verification; and
- (iii) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors:
 - (a) income per capita, household income per capita, or gross domestic product per capita, which must not be above eighty five per centum of the average for the territory concerned; and
 - (b) unemployment rate, which must be at least one hundred and ten per centum 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; and
- (c) assistance to promote adaptation of existing facilities to new environmental requirements imposed by law which result in greater constraints and financial burden on firms, provided that the assistance:
 - (i) is a one-time non-recurring measure;
 - (ii) is limited to twenty per centum of the cost of adaptation;
 - (iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms;

- (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
 - (iv) is available to all firms which can adopt the new equipment and production processes.
- 3 A subsidy programme for which the provisions of paragraph 2 of this Regulation are invoked shall be notified in advance of its implementation to the Committee in accordance with the provisions of Part VII. Any such notification shall be sufficiently precise to enable other Partner States to evaluate the consistency of the programme with the conditions and criteria provided for in the relevant provisions of this Regulation. The Partner States shall also provide the Committee with yearly updates of any notifications, in particular by supplying information on global expenditure for each programme, and on any modification of the programme. Other Partner States shall have the right to request information about individual cases of subsidization under a notified programme.
- 4. Upon the request of a Partner State, the Committee shall review a notification made pursuant to paragraph 3 of this Regulation and, where necessary, may require additional information from the subsidizing Partner State or foreign country concerning the notified programme under review. 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 shall elapse between the 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 of this Regulation.
- 5. For purposes of this Regulation:

- (a) the allowable levels of non-actionable assistance shall be established by reference to the total eligible costs incurred over the duration of an individual project;
- (b) in the case of programmes which span industrial research and pre-competitive development activities the allowable level of non-actionable assistance shall not exceed the simple average of the allowable levels of non-actionable assistance applicable to industrial research and pre-competitive development activities, calculated on the basis of all eligible costs as set out in paragraph 2 (a) of this Regulation.

6. In this Regulation:

"existing facilities" means facilities which have been in operation for at least two years at the time new environmental requirements are imposed;

"industrial research" means planned research or critical investigations aimed at the 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;

"general framework of regional development" means regional subsidy programmes which are part of an internally consistent and generally applicable regional development policy and regional development subsidies which are not granted in isolated geographical points having no, or virtually no, influence on the development of a region;

"neutral and objective criteria" means the 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. The ceilings shall be differentiated according to the different levels of development of assisted regions and expressed in terms of

investment costs or cost of job creation. Within the 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 Regulation 8;

"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. Pre-competitive development activity may further include the conceptual formulation and design of products, processes or services alternatives and initial demonstration or pilot projects, provided that these projects cannot be converted or used for industrial application or commercial exploitation and 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.

REGULATION 15

Consultations on Non-Actionable Subsidies

1. Where, in the course of implementation of a programme referred to in paragraph 2 of Regulation 14, notwithstanding the fact that the programme is consistent with the criteria laid down in that paragraph, a Partner State has reasons to believe that the programme has resulted in serious adverse effects to the domestic industry of that Partner State, such as to cause damage which would be difficult to repair, the Partner State may request consultations with the Partner State or foreign country granting or maintaining the subsidy.
2. Upon request for consultations under paragraph 1 of this Regulation, the Partner States or foreign country granting or maintaining the subsidy programme in question shall enter into such consultations within fourteen days. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

3. Where no mutually acceptable solution is reached in consultations under paragraph 2, within sixty days of the request for consultations, the requesting Partner State may refer the matter to the Committee.
4.
 - (1) Where a matter is referred to the Committee for consideration, the Committee shall immediately review the facts involved and the evidence of the effects referred to in paragraph 1 of this Regulation. Where the Committee determines that such effects exist, it may recommend to the subsidising Partner State or foreign country to modify this programme to remove these effects.
 - (2) The Committee shall present its conclusions within one hundred and twenty days from the date when the matter is referred to it under paragraph 3 of this Regulation. In the event that the recommendation is not followed within six months, the Committee shall authorize the requesting Partner State to take appropriate countermeasures commensurate with the nature and degree of the effects determined to exist.

PART VI

COUNTERVAILING MEASURES

REGULATION 16

Application of Article 18 of the Protocol

1. The Partner States shall take all necessary steps to ensure that the imposition of a countervailing duty on any product in a Partner State imported into its territory or the territory of another Partner State is in accordance with the provisions of Article 18 of the Protocol and these Regulations.
2. Countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with the provisions of these Regulations.

REGULATION 17

Initiation and Subsequent Investigations

1. Except as provided in paragraph 7 of this Regulation, 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.
2. An application under paragraph 1 of this Regulation shall include sufficient evidence of the existence of:
 - (a) a subsidy and, where possible, its amount;
 - (b) injury within the meaning of these Regulations; and
 - (c) a causal link between the subsidised imports and the alleged injury.
3. Simple assertion, unsubstantiated by relevant evidence shall not be considered sufficient to meet the requirements of this Regulation.

4. An application under paragraph 1 of this Regulation shall contain such information as is reasonably available to the applicant on the following:
 - (a) the identity of the applicant, the physical and postal addresses 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 whose behalf the application is made by listing 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;
 - (b) a complete description of the product allegedly subsidised in question, the name of the country of origin or of export, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
 - (c) evidence with regard to the existence and nature of the countervailing measure in question; and
 - (d) evidence that the alleged injury to a domestic industry is caused by subsidised imports through the effects of the subsidies. This evidence shall include 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 Regulation 21.
5. The investigating authority shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation.

6. An investigation shall not be initiated pursuant to paragraph 1 of this Regulation unless the investigating authority has 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" where it is supported by those domestic producers whose collective output constitutes more than fifty per centum 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. No investigation shall be initiated where domestic producers expressly supporting the application account for less than twenty five per centum of the total production of the like product produced by the domestic industry.
7. The investigating authority shall not publish an application for the initiation of an investigation, unless a decision has been made to initiate the investigation.
8. Where, in special circumstances, the investigating authority concerned decides to initiate an investigation without receiving a written application by or on behalf of a domestic industry for the initiation of such investigation, the investigating authority shall proceed with the investigations only where there is sufficient evidence of the existence of a subsidy, injury and causal link, as described in paragraph 2 of this Regulation, to justify the initiation of an investigation.
9. The evidence of both subsidy and injury shall be considered simultaneously:
 - (a) in the decision whether or not to initiate an investigation; and
 - (b) during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of these Regulations, provisional measures may be applied.

10. Where products are not imported directly from the country of origin but are exported to the importing Partner State from an intermediate country, the provisions of these Regulations shall be fully applicable and the transaction or transactions shall, for the purposes of these Regulations, be regarded as having taken place between the country of origin and the importing Partner State.
11. (1) An application under paragraph 1 of this Regulation shall be rejected and an investigation shall be terminated promptly as soon as the investigating authority concerned is satisfied that there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case.
 - (2) There shall be immediate termination of investigations where the amount of a subsidy is de minimis, or where the volume of subsidized imports, actual or potential, or the injury, is negligible.
 - (3) For purposes of this paragraph, the amount of the subsidy shall be considered to be de minimis where the subsidy is less than one per centum ad valorem.
12. An investigation shall not hinder the procedures of customs clearance.
13. Investigations shall, except in special circumstances, be concluded within one year, and shall not in any case exceed eighteen months, after initiation.

REGULATION 18

Evidence

1. All interested parties in an investigation on subsidies and countervailing measures shall be given notice of the information which the investigating authority requires and an ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

2.
 - (1) Exporters or foreign producers receiving questionnaires used in investigations on subsidies and countervailing measures shall be given at least thirty days to reply, after receipt of the questionnaire. Due consideration shall be given to any request for an extension of the thirty day period and, upon cause shown, such an extension shall be granted whenever practicable.
 - (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.
 - (3) As soon as an investigation has been initiated, the investigating authority shall provide the full text of the written application received under paragraph 1 of Regulation 17 to the known exporters and to the investigating authority of the exporting country and shall make it available, upon request, to other interested parties involved. Where the number of exporters involved is particularly high, the full text of the written application shall instead be provided only to the investigating authority of the exporting country or to the relevant trade association.
 - (4) Due regard shall be had to the requirement for the protection of confidential information, as provided in paragraph 6 of this Regulation.
3. All interested parties shall have full opportunity to defend their interests throughout investigations on subsidies and countervailing measures and the investigating authority shall, on request, provide opportunities to all interested parties to meet and present their views to each other taking into account the need to preserve confidentiality and the convenience for 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 have the right, upon good cause determined by the investigating authority, to present other information orally.

4. Oral information provided under paragraph 3 of this Regulation shall be taken into account by the investigating authority only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in paragraph 2(1) of this Regulation.
5. The investigating authority shall whenever practicable provide timely opportunities for all interested parties to access all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 6 of this Regulation, and that is used by the investigating authority in an investigation on subsidies and countervailing measures, and to prepare presentations on the basis of this information.
6. Any information the disclosure of which would be of significant competitive advantage to a competitor or whose disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information, or which is provided in confidence to an investigating authority, shall upon good cause shown, be treated as such by the investigating authority. The information shall not be disclosed without specific permission of the party submitting it.
7.
 - (1) The investigating authority shall require interested parties providing confidential information to furnish non-confidential summaries of the information. 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 to summarisation. In such exceptional circumstances, a statement of the reasons why summarisation is not possible must be provided.
 - (2) Where the investigating authority finds that a request for confidentiality is not warranted and where the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalised or summary form, the investigating authority may disregard such information unless it can be demonstrated to the satisfaction of the investigating authority

from appropriate sources that the information is correct. Requests for confidentiality shall not be arbitrarily rejected.

8. Except in circumstances provided for in paragraph 10 of this Regulation, the investigating authority shall during the course of an investigation satisfy itself as to the accuracy of the information supplied by the interested parties.
9. (1) In order to verify information provided or to obtain further details, the investigating authority may carry out investigations in the territory of other Partner States or foreign country as required, provided prior consent of the firms concerned is obtained and representatives of the government of the Partner States and foreign country in question, do not object to the investigations.
- (2) The procedures set out in the Sixth Schedule to these Regulations shall apply to Investigations carried out in the territory of other Partner States or foreign country. Subject to the requirement to protect confidential information, the investigating authority shall make the findings of such investigations available, or shall disclose the information pursuant to paragraph 11 of this Regulation, to the firms to which they pertain and may make such results available to the applicants.
10. Where an interested party refuses access to, or 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 the Second Schedule to these Regulations shall apply to this paragraph.
11. The investigating authority 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 shall be made in sufficient time for the parties to defend their interests.

12. The investigating authority shall provide opportunities for industrial users of the product under investigation, and for representative consumer organisations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding subsidisation, injury and causality.
13. The investigating authority 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.
14. The procedures set out in this Regulation shall not prevent the investigating authority 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 these Regulations.

REGULATION 19
Consultations on Countervailing
Measures

1. As soon as possible after an application under Regulation 17 is accepted, and in any event before the initiation of any investigation, a Partner State or foreign country whose products may be subject to such investigation shall be invited for consultations to clarify on the matters referred to in paragraph 2 of Regulation 17 and to arrive at a mutually agreed solution.
2. Throughout the period of investigation, a Partner State or third country whose products are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.
3. Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the investigating authority of a Partner State from proceeding

expeditiously to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of these Regulations.

4. The Partner State which intends to initiate any investigation or which conducts an investigation shall permit, upon request, the Partner State or Partner States or foreign country whose products 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.

REGULATION 20
Calculation of the Amount of a Subsidy
in Terms of the Benefits to the Recipient

For purposes of this Part of the Regulations, any method used by the investigating authority to calculate the benefit conferred to the recipient pursuant to paragraph 1 of Regulation 7 shall be provided for in the national legislation or implementing regulations of the Partner State concerned and its application to each particular case shall be transparent and adequately explained and 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 the provision of risk capital of private investors in the territory of that Partner State;
- (b) a loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the

market. In this case the benefit shall be the difference between these two amounts;

- (c) a loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a comparable commercial loan without the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees; and
- (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 goods or services in question in the country of provision or purchase including, price, quality, availability, marketability, transportation and other conditions of purchase or sale.

REGULATION 21 **Determination of Injury**

1. For purposes of these Regulations a determination of injury shall be based on evidence and shall involve an objective examination of both:
 - (a) the volume of the subsidised imports and the effect of the subsidised imports on prices in the domestic market for like products; and
 - (b) the consequent impact of the subsidised imports on domestic producers of like products.
2. With regard to the volume of the subsidised imports, the investigating authority shall consider whether there has been a significant increase in

subsidised imports, either in absolute terms or relative to production or consumption in the importing Partner State. With regard to the effect of the subsidised imports on prices, the investigating authority shall consider whether there has been a significant price undercutting by the subsidised imports as compared with the price of a like product of the importing Partner State, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would have occurred, to a significant degree.

3. No individual or several of these factors may necessarily give decisive guidance on the determination of injury but the totality of the factors considered must lead to the conclusion that there has been a significant increase in subsidised imports or price undercutting by the subsidised imports.
4. Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the investigating authority may cumulatively assess the effects of such imports only if they determine that:
 - (a) the amount of subsidisation established in relation to the imports from each country is more than *de minimis* as defined in paragraph 11 of Regulation 17 and the volume of imports from each country is not negligible; and
 - (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the like domestic products.
5. The examination of the impact of the subsidised imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices with a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity, factors affecting domestic prices, the magnitude of the margin of subsidisation, actual and potential negative effects on cash flow, inventories, employment, wages, growth and the ability to raise capital or investments.

This list is not exhaustive, and no individual or several of these factors may necessarily give decisive guidance on the determination of injury.

6. It must be demonstrated that the subsidised imports are, through the effects of subsidisation as set forth in paragraphs 2 and 4 of this Regulations, causing injury within the meaning of these Regulations. The demonstration of a causal relationship between the subsidised imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the investigating authority. An investigating authority shall also examine any known factors other than the subsidised imports which at the same time injure the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidised imports. Factors which may be relevant in this respect include the volume and prices of non-subsidised imports' 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.
7. The effect of the subsidised imports shall be assessed in relation to the domestic production of the like product when available data permits the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. Where separate identification of that production is not possible, the effects of the subsidised 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.
8. 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 subsidisation would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the investigating authority shall consider, inter alia, such factors as:
 - (a) the nature of a subsidy or subsidies in question and the trade effects likely to arise from the subsidy or subsidies;

- (b) a significant rate of increase of subsidised imports into the domestic market indicating the likelihood of substantially increased importation;
 - (c) sufficient freely disposable, or an imminent substantial increase in the capacity of the exporter indicating the likelihood of substantially increased subsidised exports to the importing Partner State's market, taking into account the availability of other export markets to absorb any additional exports;
 - (d) 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
 - (e) inventories of the product being investigated.
9. None of the factors in paragraph 8 may individually give decisive guidance to the determination of injury and the totality of the factors considered shall lead to the conclusion that further subsidised exports are imminent and that, unless protective action is taken, material injury shall occur.

REGULATION 22

Definition of Domestic Industry

1. For purposes of these Regulations, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of like products or to domestic producers whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:
- (a) where producers are related to the exporters or importers or are themselves importers of the allegedly subsidised product, the term "domestic industry" may be interpreted as referring to the rest of the producers; and

- (b) in exceptional circumstances the territory of the Partner States 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 where:
 - (i) the producers within a competitive market sell all or almost all of their production of the product in question in that market; and
 - (ii) the demand in a competitive 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 subsidised imports into such an isolated market and provided further that the subsidised imports are causing injury to the producers of all or almost all of the production within the competitive market.
2. Where the domestic industry has been interpreted as referring to the producers in a competitive market as defined in sub-paragraph 1(b) of this Regulation, countervailing duties shall be levied only on the products in question consigned for final consumption to that competitive market. Where the law of the importing Partner State does not permit the levying of countervailing duties on such a basis, the importing Partner State may levy the countervailing duties without limitation only where:
- (a) the exporters are given an opportunity to cease exporting at subsidised prices to the area concerned or otherwise give assurances pursuant to Regulation 13 and adequate assurances in this regard have not been promptly given; and

- (b) the countervailing duties cannot be levied only on products of specific producers which supply the competitive market in question.
- 3. The provisions of paragraph 7 of Regulation 21 shall apply to this Regulation.

REGULATION 23
Provisional Measures

- 1. In critical circumstances where delay would cause injury, the investigating authority may in accordance with the provisions of this Regulation, apply provisional measures pursuant to a preliminary determination that there is clear evidence of subsidisation and consequent injury or threat of serious injury.
- 2. Provisional measures may be applied only where:
 - (a) an investigation has been initiated in accordance with the provisions of Regulation 17, a public notice has been given to that effect and the interested Partner States 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 injury to a domestic industry caused by subsidized imports; and

- (c) the Committee, upon information by the investigating authority, determines that such measures are necessary to prevent injury being caused during the investigation.
3. 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.
 4. Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.
 5. An application of provisional measures shall be limited to as short a period as possible and in any case shall not exceed four months.
 6. The relevant provisions of Regulation 25 shall be followed in the application of provisional measures.

REGULATION 24 **Price Undertakings**

1. Subject to the provisions of paragraph 4 of this Regulation, proceedings may be suspended or terminated without the imposition of provisional measures or countervailing duties, upon receipt of satisfactory voluntary price undertakings under which:
 - (a) the government of the exporting country agrees to eliminate or limit the subsidy or take other measures concerning its effects; or
 - (b) the exporter agrees to revise its prices so that the investigating authorities are satisfied that the injurious effect of the subsidy is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the amount of the subsidy. It is desirable that the price increases be less than the amount of the subsidy where such increases would be adequate to remove the injury to a domestic industry.

2. Price undertakings shall not be sought or accepted unless the investigating authority has made a preliminary affirmative determination of subsidization and injury caused by such subsidization and, in case of price undertakings from exporters, has obtained the consent of the exporting country.
3. Price undertakings offered need not be accepted where the investigating authority considers their acceptance impractical, for example where the number of actual or potential exporters is very high, or for other reasons, including reasons of general policy. In such cases and where practicable, the investigating authority shall give the exporter the reasons which have led the investigating authority to consider acceptance of a price undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments on these reasons.
4. Where a price undertaking is accepted, the investigation of subsidization and injury shall nevertheless be completed where the exporting country so desires or the importing Partner State so decides. In such a case, if a negative determination of subsidization or injury is made, the price undertaking shall automatically lapse, except in cases where such a determination is due to a large extent to the existence of the price undertaking. In such a case, the investigating authority concerned may require that the price undertaking be maintained for a reasonable period consistent with the provisions of these Regulations. In the event that an affirmative determination of subsidization and injury is made, the price undertaking shall continue consistent with its terms and the provisions of these Regulations.
5. Price undertakings may be suggested by the investigating authority but no exporter shall be forced to enter into such price undertakings. The fact that governments or exporters do not offer such price undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the investigating authority shall be free to determine that a threat of injury is more likely to be realized where the subsidized imports continue.

6. The investigating authority may require any government or exporter from whom the price undertaking is accepted to provide periodically information relevant to the fulfilment of the price undertaking, and to permit verification of pertinent data. In case of violation of a price undertaking, the investigating authority may take, under these Regulations in conformity with its provisions, expeditious actions that may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with these Regulations on products entered for consumption not more than ninety days before the application of the provisional measures, except that any retroactive assessment shall not apply to imports entered before the violation of the price undertaking.

REGULATION 25
Imposition and Collection of Countervailing Duties

1. Where, after reasonable efforts have been made to complete consultations, a Partner State makes a final determination of the existence and amount of a subsidy or subsidies and that, through the effects of the subsidy or subsidies, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this Regulation unless the subsidy or subsidies are withdrawn.
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, shall be made by the Committee. It is desirable that the imposition shall be permissive in the territory of all Partner States, that the duty shall be less than the total amount of the subsidy where such lesser duty would be adequate to remove the injury to the domestic industry, and that procedures shall be established which would allow the investigating authority concerned to take due account of representations made by domestic interested parties whose interests may be adversely affected by the imposition of a countervailing duty.

3. Where 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 price undertakings under these Regulations 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 co-operate, shall be entitled to an expedited review in order that the investigating authority promptly establish an individual countervailing duty rate for that exporter.
4. Countervailing duty shall not 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.

REGULATION 26

Retroactivity

1. Provisional measures and countervailing duties shall only be applied to products which are entered for consumption after a decision under Regulation 23 and Regulation 25, respectively, comes into force, subject to the exceptions set out in this Regulation.
2. Where a final determination of injury, but not of a threat of injury 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.
3. where the definitive countervailing duty is higher than the amount guaranteed by the cash deposit or bond, the difference shall not be collected and where 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.

4. Except as provided in paragraph 2 of this Regulation, 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.
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.
6. In critical circumstances where, for the subsidized product in question, the investigating authority finds 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 these Regulations, and where 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 days prior to the date of application of provisional measures.

REGULATION 27
Duration and Review of Countervailing Duties
and Price Undertakings

1. A countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidisation which causes injury.
2. The investigating authority shall review the need for the continued imposition of a countervailing duty, where warranted, on its 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. A determination of final liability for payment of countervailing duties, as provided for in Regulation 25, does not by itself constitute a review within the meaning of this Regulation. Interested parties shall have the right to request the investigating authority to examine whether the continued imposition of the duties is necessary to offset subsidies, whether injury is likely to continue or recur where the duty is removed or varied, or both. Where, as a result of the review under this paragraph, the investigating authority determines that the countervailing duty is no longer warranted, it shall be terminated immediately.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Regulation, any definitive countervailing duty shall be terminated within five years from the date of imposition, or from the date of the most recent review under paragraph 2 of this Regulation where that review has covered both subsidisation and injury, or is made under this paragraph unless the investigating authority determines, in a review initiated before that date on its 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 subsidisation and injury. Where the amount of the countervailing duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under Regulation 25 that no duty is to be levied shall not by itself require the investigating authority to terminate the definitive duty. The duty may remain in force pending the outcome of such a review.
4. The provisions of Regulation 18 regarding evidence and procedure shall apply to any review carried out under this Regulation. Any such review shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.
5. The provisions of this Regulation shall apply *mutatis mutandis* to price undertakings accepted under Regulation 24.

REGULATION 28
Public Notice and Explanation of Determinations

1. Where the investigating authority is satisfied that there is sufficient evidence to justify the initiation of an investigation pursuant to Regulation 17, the country whose products are subject to such investigation and other interested parties known to the investigating authority to have an interest in the investigation, shall be notified and a public notice shall be given.
2. A public notice in the official gazette and any publication of wide circulation of the initiation of an investigation shall contain, adequate information on the following:
 - (a) the name of the exporting country or countries and the product involved;
 - (b) the date of initiation of the investigation;
 - (c) a description of the subsidy practices to be investigated;
 - (d) a summary of the factors on which the allegation of injury is based;
 - (e) the address to which representations by interested parties should be directed; and
 - (f) the time-limits within which Partner States and interested parties may present their views.
3. (1) A public notice shall be given of:

- (a) any preliminary or final determination, whether affirmative or negative,
 - (b) any decision to accept a price undertaking pursuant to Regulation 24;
 - (c) the termination of such a price undertaking; and
 - (d) the termination of a definitive countervailing duty.
 - (2) Each public notice shall set out in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authority. All public notices shall be forwarded to the country whose products are subject to such determination or undertaking and to other interested parties.
4. A public notice of the imposition of provisional measures shall set out, sufficiently detailed explanations for the preliminary determinations on the existence of a subsidy and injury and shall make reference to matters of fact and law which lead to the acceptance or rejection of arguments raised, due regard being paid to the requirement for the protection of confidential information, contain in particular:
- (a) the names of the suppliers, or when this is impracticable, the supplying countries involved;
 - (b) a description of the product which is sufficient for customs purposes;
 - (c) the amount of subsidy established and the basis on which the existence of the subsidy has been raised;
 - (d) considerations relevant to the determination of the injury as set out in Regulation 21; and
 - (e) the main reasons leading to the determination.

5. A public notice of the 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 a price undertaking shall contain, all relevant information and reasons which lead to the imposition of final measures or the acceptance of a price undertaking, due regard being had to the requirement for the protection of confidential information. The public notice shall contain the information required under paragraph 4 of this Regulation, the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers.
6. A public notice of the termination or suspension of an investigation following the acceptance of a price undertaking pursuant to Regulation 24 shall include a non-confidential part of the price undertaking.
7. The provisions of this Regulation shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Regulation 27 and to decisions under Regulation 26 to apply countervailing duties retroactively.

PART VII

NOTIFICATIONS AND SURVEILLANCE

REGULATION 29 **Notifications**

1. The Partner States shall submit their notifications of subsidies not later than the thirtieth day of June of each year in conformity with the provisions of paragraphs 2 to 6 of this Regulation.
2. The Partner States shall notify any subsidy which is specific within the meaning of Regulation 8, granted or maintained within their territories.
3. The content of notifications shall be sufficiently specific to enable other Partner States 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, Partner States shall ensure that their notifications contain the following information:
 - (a) form of a subsidy such as grant, loan, tax concession;
 - (b) subsidy per unit or, in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy indicating, if where possible, the average subsidy per unit in the previous year;
 - (c) policy objective or purpose of a subsidy;
 - (d) duration of a subsidy and any other time-limits attached to it;
and

- (e) statistical data permitting an assessment of the trade effects of a subsidy.
- 4. Where specific issues in paragraph 3 have not been addressed in a notification, an explanation shall be provided in the notification itself.
- 5. Where subsidies are granted to specific products or sectors, the notifications shall be organized by product or sector.
- 6. Partner States which consider that there are no measures in their territories that require notification of these Regulations, shall inform the Committee in writing.
- 7. Partner States recognize that notification of a measure does not prejudice their legal status under the General Agreement on Tariff and Trade, 1994 and these Regulations, the effects under these Regulations, or the nature of the measure itself.
- 8. Any Partner State may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another Partner State, including any subsidy referred to in Part IV of these Regulations, or for an explanation of the reasons for which a specific measure is considered as not subject to the requirement of notification.
- 9. Partner States or foreign countries requested shall provide information within thirty days of the request, in a comprehensive manner, and shall be ready, upon request, to provide additional information to the requesting Partner State. In particular, they shall provide sufficient details to enable the other Partner State assess their compliance with these Regulations. Any Partner State which considers that such information has not been provided may bring the matter to the attention of the Committee.
- 10. Any Partner State which considers that any measure of another Partner State or foreign country having the effects of a subsidy has not been notified may bring the matter to the attention of such other Partner State or foreign country. Where the alleged subsidy is not thereafter notified

promptly, such Partner State may itself bring the alleged subsidy in question to the notice of the Committee.

11. The Partner States shall report without delay, to the Committee, all preliminary or final actions taken with respect to countervailing duties. Such reports shall be available in the Secretariat for inspection by other Partner States. Each Partner State 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.

REGULATION 30 **Surveillance**

1. The Committee shall examine new and full notifications submitted and paragraph 1 of Regulation 29 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.
2. The Committee shall examine reports submitted under paragraph 11 of Regulation 29 at each regular meeting of the Committee.

PART VIII

DEVELOPING AND LEAST DEVELOPED PARTNER STATES

REGULATION 31
Special and Differential Treatment
for Developing and Least Developed
Partner States

Special and differential treatment for developing and least developed Partner States shall be governed by Article 27 of the WTO Agreement as amended from time to time.

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PART IX
MISCELLANEOUS PROVISIONS

REGULATION 32
Existing Programmes

1. Subsidy programmes which have been established within the territory of any Partner State before the coming into force of these Regulations and which are inconsistent with the provisions of these Regulations shall be:
 - (a) notified to the Committee not later than ninety days after the coming into force of these Regulations; and
 - (b) brought into conformity with the provisions of these Regulations within three years of the coming into force of these Regulations, and until then shall not be subject to Part III of these Regulations.
2. A Partner State shall not extend the scope of any such programme, nor shall such a programme be renewed upon its expiry, except in accordance with the provisions of Regulation 31.

REGULATION 33
Consultation and Dispute Settlement

1. Notwithstanding the provisions of paragraph 13 of this Regulation, the procedures set out below shall govern the settlement of any disputes that may arise under these Regulations.
2. Partner State shall afford fair consideration to and adequate opportunity for consultation regarding, representations made by another Partner State or a foreign country with respect to any matter relating to these Regulations.
3. Where a Partner State considers that any benefit accruing to it, directly or indirectly, under these Regulations is being nullified or impaired, or that the achievement of any objective is being impeded by another Partner State or foreign country, it may, with a view to reaching a mutually satisfactory resolution of the matter, request for consultations with a Partner State or a

foreign country in question. Requests for consultations shall be notified to the Committee through the Secretary General.

4. (1) Where there is no mutual agreement within thirty days of the request for consultations, or such other time as may be mutually agreed upon, a Partner State or a foreign country which is a party to the consultations may refer the matter to the Committee for consideration.
- (2) Where a provisional measure has a significant impact and the Partner State that requested consultations considers that the provisional measure was taken contrary to the provisions of paragraph 1 of Regulation 23, the Partner State which is a party to such consultations may refer the matter to the Committee for consideration.
5. The Committee shall at the request of the complaining party, carry out consultations and examine the matter based on:
 - (a) a written statement of the Partner State making the request including how a benefit accruing to it, directly or indirectly, under these Regulations has been nullified or impaired or where the achievement of the objectives of these Regulations is impeded; and
 - (b) the facts availed to the investigating authority in conformity with appropriate domestic procedures.
6. In examining the matter referred to in paragraph 2 of this Regulation the Committee shall:
 - (a) in its assessment of the facts of the matter, determine whether the investigating authority's establishment of the facts was unbiased and objective. Where the establishment of the facts was proper and the evaluation was unbiased and objective, even though the Committee might have reached a

different conclusion, the evaluation shall not be reversed;
and

- (b) interpret the relevant provisions of these Regulations in accordance with customs law of the Community, laws of the Partner States and customary rules of interpretation of public international law. Where the Committee finds that a relevant provision of these Regulations admits more than one permissible interpretation, the Committee shall find the investigating authority's measure to be in conformity with these Regulations where it rests upon one of those permissible interpretations.
7. Confidential information provided to the Committee shall not be disclosed without formal authorisation from the person, body or authority providing the information. Where the information is requested from the Committee but release of such information is not authorised, a non-confidential summary of the information, authorised by the person, body or authority providing the information, shall be availed.
 8. The Committee shall submit its final report to the parties to the dispute, and circulate the report to all Partner States within ninety days of the date of the request to the Committee.
 9. Within thirty days of the issuance of the Committee's report to all Partner States, the report shall be adopted by the Council, unless one of the parties to the dispute formally notifies the Council of its intention to appeal to it for review of the decisions of Committee or where the Council decides by consensus not to adopt the report.
 10. (1) Where a Committee's report is appealed against, the Council shall issue its decision within thirty days from the date a party to the dispute formally notifies its intention to appeal. When the Council considers that it cannot provide its report within thirty days, it shall inform the parties in writing of the reasons for the delay together

with an estimate of the period within which the report shall be submitted.

- (2) In no case shall the proceedings exceed forty-five days.
 - (3) The Council shall issue its decisions in the form of directives.
 - (4) Where the Council fails to reach a decision on the matter, the complaining party may refer the matter to Court within twenty days.
11. Where no reference is made to court within twenty days, the Council shall authorise the complaining Partner State to take appropriate measures.
 12. The provisions of these Regulations shall apply to investigations and reviews of existing measures, initiated pursuant to applications made on or after the coming into force of these Regulations.
 - 13.. The relevant provisions of the East African Community Customs Union (Dispute Settlement Mechanism) Regulations, shall apply to the settlement of disputes under these Regulations.

REGULATIONS 34 **Other Miscellaneous Provisions**

1. No specific action on a subsidy shall be taken against a Partner State, except in accordance with the provisions these Regulations.

2. For purposes of paragraph 3 of Regulation 17, countervailing measures shall be deemed to be imposed on a date not later than the date of coming into force of these Regulations, except in cases in which the national legislation of a Partner State in force on that date already includes a clause of the type provided for in that paragraph.
3. Each Partner State shall inform the Committee of any changes in its laws relevant to these Regulations and in the administration of these laws.
4. The Committee shall review annually the implementation and operation of these Regulations and report to the Council during the period covered by a review.

FIRST SCHEDULE

Regulation 1(9)(a)

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

1. The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.
2. Currency retention schemes or any similar practices which involve a bonus on exports.
3. Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.
4. 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 goods for exported, 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, where in the case of products such terms or conditions are more favourable than those commercially available on world markets to their exporters.
5. 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. This paragraph is not intended to limit a Partner State from taking measures to avoid the double taxation of foreign-source income earned by its enterprises or the enterprises of another Partner State.
6. The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.
7. 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.

8. The exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of products for export 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 products export even when not exempted, remitted or deferred on like products when sold for domestic consumption, where the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the product for export, 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 Part II of this Schedule, paragraph 8 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 7.
9. The remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the product for export 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 specified in the Second Schedule and the guidelines in the determination of substitution drawback systems as export subsidies contained in the Third Schedule.
10. 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.

11. The grant by governments or special institutions controlled by 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.
12. For purposes of this Schedule:
 - (a) The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.
 - (b) The Partner States recognise that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The Partner States reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control shall for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. A Partner State may draw the attention of another Partner State 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 Partner States 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 Partner States under the Protocol, including the right of consultation created in the preceding sentence.

SECOND SCHEDULE

Regulation 18 (10)

GUIDELINES ON CONSUMPTION OF INPUTS IN THE PRODUCTION PROCESS

Section A

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 the First Schedule of these Regulations makes reference to the term "inputs that are consumed in the production of the exported product" in paragraphs 8 and 9. Pursuant to paragraph 8, 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 taxes actually levied on inputs that are consumed in the production of the exported product. Pursuant to paragraph 9, 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 9 also provides for substitution, where appropriate.

Section B

In examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation pursuant to these Regulations, the investigating authority shall 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 authority shall first determine whether the government of the exporting country 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 the system or procedure is determined to be applied, the investigating authority shall 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 authority may deem it necessary to carry out, in accordance with paragraph 6 of Regulation 18, 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 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 based on the actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred. Where the investigating authority deems it necessary, a further examination would be carried out in accordance with paragraph 1 of this Section.
3. The investigating authority shall treat inputs as physically incorporated where the inputs are used in the production process and are physically present in the product exported. The Partner States 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" shall be taken into account, and the waste shall be treated as consumed in the production of the exported product. The term "waste" refers to that portion of a given input which does not serve an independent function in the production process, is not consumed in the production of the exported product for reasons such as inefficiencies and is not recovered, used or sold by the same manufacturer.
5. The investigating authority's determination of whether the claimed allowance for waste is "normal" shall 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 shall bear in mind that an important question is whether the investigating authority in the exporting country has reasonably calculated the amount of waste, when the amount is intended to be included in the tax or duty rebate or remission.

6. In this Schedule inputs consumed in the production process are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts, which are consumed in the course of their use to obtain the exported product.

THIRD SCHEDULE

First and Second Schedules

GUIDELINES IN THE DETERMINATION OF SUBSTITUTION DRAWBACK SYSTEMS AS EXPORT SUBSIDIES

Section A

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 Schedule I, 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.

Section B

In examining any substitution drawback system as part of a countervailing duty investigation pursuant to these Regulations, the investigating authority shall proceed on the following basis:

1. Paragraph 1 of the Illustrative List stipulates that home market inputs may be substituted for imported inputs in the production of a product for export provided the 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 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 authority shall first proceed to determine whether the government of the exporting country has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the investigating authority shall 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 shall be presumed to exist. It may be deemed necessary by the investigating authority to carry out, in accordance with paragraph 6 of Regulation 18, 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 based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. Where the investigating authority deemed it necessary, a further examination would be carried out in accordance with paragraph 2 of this Schedule.
4. The existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed shall not of itself be considered to convey a subsidy.
5. An excess drawback of import charges in the sense of paragraph 1 of this Schedule shall 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.

FOURTH SCHEDULE

Regulation 12 (1) (a)

CALCULATION OF THE TOTAL AD VALOREM SUBSIDIZATION

1. Any calculation of the amount of a subsidy for the purpose of paragraph 1(a) of Regulation 12 shall be done in terms of the cost to the granting government.
2. Except as provided in paragraphs 3, 4 and 5 of this Schedule, in determining whether the overall rate of subsidization exceeds five per centum 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. 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.
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 where the overall rate of subsidization exceeds fifteen per centum of the total funds invested. For purposes of this paragraph, a start-up period will not extend beyond the first year of production. 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.

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 subsidisation in a given year, subsidies given under different programmes and by different authorities in the territory of the Partner States shall be aggregated.
7. Subsidies granted prior to the coming into force of these Regulations, the benefits of which are allocated to future production, shall be included in the overall rate of subsidisation.
8. Subsidies, which are non-actionable under relevant provisions of these Regulations, shall not be included in the calculation of the amount of a subsidy for the purpose of paragraph 1(a) of Regulation 12 of these Regulations.

FIFTH SCHEDULE

Regulations 11 (3) and 12 (1) (a), (6) and (8)

PROCEDURES FOR DEVELOPING INFORMATION CONCERNING SERIOUS PREJUDICE

1. Every Partner State shall cooperate in the development of evidence to be examined by the Committee in procedures under paragraphs 4, 5 and 6 of Regulation 13. The parties to the dispute and any foreign country concerned shall notify to the Committee, as soon as the provisions of paragraph 4 of Regulation 13 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 under paragraph 4 of Regulation 13, the Committee shall, upon request, initiate the procedure to obtain information from the government of the subsidizing Partner State or foreign country as necessary to establish the existence and amount of subsidisation, the value of total sales of the subsidized firms, as well as information necessary to analyse the adverse effects caused by the subsidized product, where the existence of serious prejudice has to be demonstrated. This process may include, where appropriate, presentation of questions to the government of the subsidizing Partner State or foreign country and of the complaining Partner State to collect information, as well as to clarify and obtain elaboration of information available to the parties to a dispute through the notification procedures set out in Part VI of these Regulations.
3. In the case of effects in foreign country markets, a party to a dispute may collect information, including through the use of questions to the government of the third-country, necessary to analyse adverse effects, which is not otherwise reasonably available from the complaining Partner State or foreign country or the subsidizing Partner State or foreign country. This requirement shall be administered in such a way as not to

impose an unreasonable burden on the third-country. In particular, such a Partner State 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 Partner State basing on 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 where a party to a dispute undertakes a detailed market analysis at its own expense, the task of the person or firm conducting such an analysis shall be facilitated by the investigating authority of the third-country 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 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 co-operation of the parties.
5. The information-gathering process outlined in paragraphs 2, 3 and 4 shall be completed within sixty days of the date on which the matter has been referred to the Committee under paragraph 4 of Regulation 13. The information obtained during this process shall be submitted to the Committee in accordance with the provisions of Part VI. This information shall 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 subsidised product, prices of the non-subsidised product, prices of other suppliers to the market, changes in the supply of the subsidised product to the market in question and changes in market shares. It shall also include rebuttal evidence, as well as such supplemental information as the Committee deems relevant in the course of reaching its conclusions.
6. Where the subsidising Partner State or foreign country fail to cooperate in the information-gathering process, the complaining Partner State shall

present its case of serious prejudice, based on evidence available to a Partner State, together with facts and circumstances of the non-cooperation of the subsidizing Partner State or foreign country. Where information is not available due to non-co-operation by the subsidizing Partner State or foreign country, the Committee may complete the record as necessary relying on best information otherwise available.

7. In making its determination, the Committee shall draw adverse inferences from instances of failure to co-operate 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 shall consider the advice of the Committee representative nominated under paragraph 4 as to the reasonableness of any requests for information and the efforts made by parties to comply with these requests in a co-operative and timely manner.
9. Nothing in the information gathering process shall limit the ability of the Committee to seek such additional information the Committee may deem essential to a proper resolution to the dispute, and which was not adequately sought or developed during that process. However, ordinarily the Committee shall 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.

SIXTH SCHEDULE

Regulation 18(9) (2)

PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS

1. Upon initiation of an investigation, the investigating authority of the exporting country and the firms known to be concerned shall be informed of the intention to carry out on-the-spot investigations.
2. Where in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the investigating authority of the exporting country shall be informed. The non-governmental experts shall be subject to effective sanctions for breach of confidentiality requirements.
3. It shall be standard practice to obtain explicit consent of the firms concerned in the exporting country before the visit is finally scheduled.
4. As soon as the consent of the firms concerned has been obtained, the investigating authority shall notify the investigating authority of the exporting country of the names and addresses of the firms to be visited and the dates agreed.
5. Sufficient advance notice shall be given to the firms in question before the visit is made.
6. Visits to explain the questionnaire shall only be made at the request of an exporting firm. In case of such a request the investigating authority may place themselves at the disposal of the firm; such a visit may only be made where the investigating authority of the importing or introducing Partner State notifies the representatives of the government of the Partner State in question and the Partner State does not object to the visit.

7. The main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it shall 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 is informed by the investigating authority of the anticipated visit and does not object to the visit, further, it shall be standard practice prior to the visit the investigating authority shall 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 shall 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 investigating authority or firms of the exporting country and essential to a successful on-the-spot investigation shall, whenever possible, be answered before the visit is made.

SEVENTH SCHEDULE

Regulation 9(2) and 31.

DEVELOPING COUNTRY MEMBERS REFERRED TO IN PARAGRAPH 2(a) OF ARTICLE 27 OF THE WTO AGREEMENT

The developing country Members not subject to the provisions of paragraph 1(a) of Article 3 under the terms of paragraph 2(a) of Article 27 are:

- (a) Least-developed countries designated as such by the United Nations which are Members of the WTO;
- (b) Each of the following developing countries which are Members of the WTO shall be subject to the provisions which are applicable to other developing country Members according to paragraph 2(b) of Article 27 when GNP per capita has reach US \$ 1,000 per annum. Bolivia, Cameroon, Congo, Cote d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe.