

- (c) *training and retraining of workers, mobility of instructors and trainees, co-operation among educational and training institutions, and the development of distance education.*

3. *The Member States shall engender an understanding and appreciation of the Community through effective public relations, educational, cultural and youth exchange programmes.*

#### **ARTICLE 76**

##### **Role of Public Authorities**

*COTED shall promote the modernisation of government bureaucracies by, inter alia:*

- (a) *encouraging the development of closer contacts between public sector administrations, industry and other stakeholders to ensure that challenges presented by the global environment are understood and co-operative solutions developed;*
- (b) *removing impediments and improving the regulatory framework for economic enterprises at national and regional levels;*
- (c) *encouraging cost-effectiveness in the delivery of services to the public; and*
- (d) *proposing adequate arrangements to address the changes in the business environment and future challenges to industry.*

#### **ARTICLE 77**

##### **Special Provisions for Less Developed Countries**

*Where in this Chapter Member States or competent Organs are required to adopt measures for the achievement of the Community Industrial Policy, the special needs and circumstances of the Less Developed Countries shall be taken into account.*

## **CHAPTER FIVE**

### **TRADE POLICY**

#### **PART ONE**

##### **PRELIMINARY**

#### **ARTICLE 78**

##### **Objectives of the Community Trade Policy**

1. *The goal of the Community Trade Policy shall be the sustained growth of intra-Community and international trade and mutually beneficial exchange of goods and services among the Member States and between the Community and third States.*

2. *In fulfilment of the goal set out in paragraph 1 of this Article the Community shall pursue the following objectives:*

- (a) *full integration of the national markets of all Member States of the Community into a single unified and open market area;*
- (b) *the widening of the market area of the Community;*
- (c) *the active promotion of export of internationally competitive goods and services originating within the Community;*

- (d) *the securing of the most favourable terms of trade for Community goods and services exported to third States and groups of States.*
- 3. *In order to achieve the objectives of its Trade Policy, the Community shall:*
  - (a) *undertake:*
    - (i) *the establishment of common instruments, common services and the joint regulation, operation and efficient administration of the internal and external commerce of the CSME;*
    - (ii) *where possible, the employment of common negotiating strategies in the development of mutually beneficial trade agreements with third States and groups of States;*
    - (iii) *participation and joint representation as appropriate in international and regional organisations which negotiate, establish and apply disciplines governing international and regional trade;*
  - (b) *prohibit the imposition by the Member States of new restrictions on imports and exports of products of Community origin.*
- 4. *Member States shall eliminate existing restrictions on imports and exports of goods of Community origin, other than those authorised by this Treaty.*

#### **ARTICLE 79**

##### **General Provisions on Trade Liberalisation**

- 1. *The Member States shall establish and maintain a regime for the free movement of goods and services within the CSME.*
- 2. *Each Member State shall refrain from trade policies and practices, the object or effect of which is to distort competition, frustrate free movement of goods and services, or otherwise nullify or impair benefits to which other Member States are entitled under this Treaty.*
- 3. *The Member States shall not introduce in their territories any new restrictions on imports or exports of Community origin save as otherwise provided in this Treaty.*

#### **ARTICLE 80**

##### **Co-ordination of External Trade Policy**

- 1. *The Member States shall co-ordinate their trade policies with third States or groups of third States.*
- 2. *The Community shall pursue the negotiation of external trade and economic agreements on a joint basis in accordance with principles and mechanisms established by the Conference.*
- 3. *Bilateral agreements to be negotiated by Member States in pursuance of their national strategic interests shall:*
  - (a) *be without prejudice to their obligations under the Treaty; and*
  - (b) *prior to their conclusion, be subject to certification by the CARICOM Secretariat that the agreements do not prejudice or place at a disadvantage the position of other CARICOM States vis-a-vis the Treaty.*
- 4. *Where trade agreements involving tariff concessions are being negotiated, the prior*

approval of COTED shall be required.

5. Nothing in this Treaty shall preclude Belize from concluding arrangements with neighbouring economic groupings provided that treatment not less favourable than that accorded to third States within such groupings shall be accorded to the Member States of the Community, and that the arrangements make adequate provision to guard against the deflection of trade into the rest of CARICOM from the countries of such groupings through Belize.

#### **ARTICLE 81** **Deposit of Agreements with Third Countries**

The Member States shall deposit with the Secretariat, agreements relating to trade or aid concluded by them with third countries.

### **PART TWO** **TRADE LIBERALISATION**

#### **ARTICLE 82** **Establishment of Common External Tariff**

The Member States shall establish and maintain a common external tariff in respect of all goods which do not qualify for Community treatment in accordance with plans and schedules set out in relevant determinations of COTED.

#### **ARTICLE 83** **Operation of the Common External Tariff**

1. Any alteration or suspension of the Common External Tariff on any item shall be decided by COTED.

2. Where:

- (a) a product is not being produced in the Community;
- (b) the quantity of the product being produced in the Community does not satisfy the demand of the Community; or
- (c) the quality of the product being produced in the Community is below the Community standard or a standard the use of which is authorised by COTED,

COTED may decide to authorise the reduction or suspension of the Common External Tariff in respect of imports of that product subject to such terms and conditions as it may decide, provided that in no case shall the product imported from third States be accorded more favourable treatment than similar products produced in the Member States.

3. The authority referred to in paragraph 2 to suspend the Common External Tariff may be exercised by the Secretary-General on behalf of COTED during any period between meetings of COTED. Any exercise of such authority by the Secretary-General shall be reported to the next meeting of COTED.

4. Each Member State shall, for the purpose of administering the Common External Tariff, appoint a competent authority which shall be notified to COTED.

5. COTED shall continuously review the Common External Tariff, in whole or in part, to assess its impact on production and trade, as well as to secure its uniform implementation throughout the Community, in particular, by reducing the need for discretionary application in the day

to day administration of the Tariff.

## **ARTICLE 84**

### **Community Rules of Origin**

1. Subject to the provisions of this Article, goods that have been consigned from one Member State to a consignee in another Member State shall be treated as being of Community origin, where the goods:

- (a) have been wholly produced within the Community; or
- (b) have been produced within the Community wholly or partly from materials imported from outside the Community or from materials of undetermined origin by a process which effects a substantial transformation characterised:
  - (i) by the goods being classified in a tariff heading different from that in which any of those materials is classified; or
  - (ii) in the case of the goods set out in the List in Schedule I to this Treaty (hereinafter referred to as "the List"), only by satisfying the conditions therefor specified.

2. Goods that have been consigned from one Member State to a consignee in another Member State for repair, renovation or improvement shall, on their return to the Member State from which they were exported, be treated for the purpose of re-importation only, in like manner as goods which are of Community origin, provided that the goods are reconsigned directly to that Member State from which they were exported and the value of materials imported from outside the Community or of undetermined origin which have been used in the process of repair, renovation or improvement does not exceed:

- (a) in the case where the goods have undergone the process of repair, renovation or improvement in a More Developed Country, 65 per cent of the cost of repair, renovation or improvement;
- (b) in the case where the goods have undergone the process of repair, renovation or improvement in a Less Developed Country, 80 per cent of the cost of repair, renovation or improvement.

3. Where there is an interruption or inadequacy of supplies of regional materials and the manufacturer of goods, for which the qualifying condition for Community origin is that of "wholly produced" or "produced from regional materials", is unable by reason of circumstances beyond his control to obtain supplies of the regional materials, he shall so inform the competent authority.

4. The competent authority shall:

- (a) after receipt of information from the manufacturer, cause investigations to be made into the matter, and if he is satisfied that the representation from the manufacturer is justified, submit to the Secretary-General in the prescribed instrument an application for a certificate provided for in this Article;
- (b) at the time of making the application, inform the other Member States of the inability of the manufacturer to obtain the supplies of the required materials from within the Community with respect to quantities and specifications of the materials sought and the period during which the materials are required.

5. The Secretary-General shall, on receipt of the application from the competent authority:

- (a) *forthwith make the relevant enquiries by the quickest possible means from the competent authorities in the other Member States as to their ability to supply the materials required by the manufacturer; and*
- (b) *request a reply to the enquiry from each competent authority within seven calendar days of the despatch of his enquiry.*

6. *A competent authority shall reply to the enquiry referred to in paragraph 5 within the time specified.*

7. *Where the Secretary-General, on the basis of his investigations, is satisfied that the application received from the competent authority justifies favourable consideration, he shall, notwithstanding that he may not have received a reply to his enquiry from one or more Member States, within fourteen calendar days after the receipt of the application from the competent authority, issue, on behalf of COTED, a certificate to the competent authority authorising the use of like materials from outside the Community, subject to such conditions as he may think fit to impose.*

8. *The Secretary-General shall inform the Member States of the issue of his certificate, including any conditions attaching thereto and that notwithstanding anything to the contrary in the provisions of this Article, goods manufactured from like materials imported from outside the Community shall be deemed to be of Community origin.*

9. *A Member State may treat as of Community origin any imports consigned from another Member State, provided that the like imports consigned from any other Member State are accorded the same treatment. Member States concerned shall promptly inform COTED of any trading arrangements concluded pursuant to this paragraph and COTED may, as it thinks fit, recommend to the Member States concerned the adoption of alternative trading arrangements.*

10. *The provisions of Schedule I shall apply to and have effect for the purposes of this Article. COTED shall keep the Schedule and, in particular, the List under continuous review, and may amend the Schedule in order to ensure the achievement of the objectives of the Community.*

11. *The issue of a certificate in accordance with paragraph 7 shall be reported by the Secretary-General to COTED at the Meeting of COTED next following the date of issue thereof.*

#### **ARTICLE 85** **Export Promotion**

1. *COTED shall adopt appropriate measures for the promotion and export of goods and services.*

2. *In the implementation of measures to promote exports, COTED shall give consideration to:*

- (a) *the establishment and maintenance of effective trade information systems and services;*
- (b) *the design and implementation of trade facilitation programmes including the conduct of market research and the organisation of trade missions;*
- (c) *the co-ordination and support of the active participation of the Member States in international trade promotion fora, including trade fairs and exhibitions.*

#### **ARTICLE 86** **Freedom of Transit**

1. *The Member States shall grant freedom of transit within the Community with respect to goods and vessels and other vehicles transporting those goods.*

2. *For the purpose of paragraph 1 of this Article, transit means the passage of goods and of vessels and aircraft and vehicles transporting those goods:*

- (a) through or across the frontier of a Member State;*
- (b) with or without transshipment, warehousing, breaking bulk or change of mode of transport,*

*where the passage is only a portion of a journey beginning and terminating beyond its frontier.*

3. *In granting freedom of transit within the meaning of paragraph 2, the Member States:*

- (a) shall ensure that there are no unnecessary delays or restrictions and that goods, vessels, aircraft and vehicles transporting those goods are subject only to charges for transport, handling, and other services rendered;*
- (b) shall not discriminate based on the flag of vessels, place of origin, departure, entry, exit or destination or any circumstance relating to the ownership of goods, vessels, or aircraft or vehicles;*
- (c) shall, with respect to regulations, formalities, fees and other service charges in connection with the transit, ensure that treatment extended to any Member State is on terms no less favourable than those extended to all other Member States.*

#### **ARTICLE 87** **Import Duties**

1. *Save as otherwise provided in this Treaty, Member States shall not impose import duties on goods of Community origin.*

2. *Nothing in paragraph 1 of this Article shall be construed to extend to the imposition of non-discriminatory internal charges on any products or a substitute not produced in the importing Member State.*

3. *This Article does not apply to fees and similar charges commensurate with the cost of services rendered.*

4. *Nothing in paragraph 3 of this Article shall be construed to exclude from the application of paragraph 1 of this Article any tax or surtax of customs on any product or a substitute not produced in the importing State.*

#### **ARTICLE 88** **Prohibition of Export Duties**

1. *The Member States shall not apply any export duties on goods of Community origin traded within the Community.*

2. *Nothing in this Article shall prevent a Member State from taking such measures as are necessary to prevent evasion of export duties which are applied to products destined for export outside of the Community where such products are re-exported through another Member State.*

3. *For the purposes of this Article, "export duties" means any duties or charges with equivalent effect imposed on or in connection with the exportation of goods.*

#### **ARTICLE 89** **Export Drawback**

1. *A Member State may refuse to treat as of Community origin goods which benefit from export drawback allowed by other Member States. In applying this paragraph, a Member State shall accord the same treatment to such goods consigned from all other Member States.*

2. *Whenever a Member State intends to apply an export drawback within the meaning of paragraph 6, it shall notify COTED.*

3. *The Member State shall, at the time of notification, set out the circumstances which justify the need to apply an export drawback, the products which will benefit therefrom, the nature and proposed duration of the measures, and such other information as COTED may prescribe from time to time.*

4. *COTED shall give its earliest consideration to the notification referred to in paragraph 3 and make a determination of the appropriateness of the measures and, if it is not satisfied, may recommend that the Member State which intends to apply an export drawback, modify the programme.*

5. *COTED shall review annually all export drawback programmes maintained by Member States.*

6. *For the purposes of this Article -*

- (a) *'export drawback' means any arrangement for the refund or remission, wholly or in part, of import duties applicable to imported materials: provided that the arrangement, expressly or in effect, allows refund or remission if certain goods or materials are exported, but not if they are retained for home use;*
- (b) *'remission' includes exemption for materials brought into free ports and other places which have similar customs privileges;*
- (c) *'duties' means:*
  - (i) *all charges on or in connection with importation, except fiscal charges to which Article 80 applies; and*
  - (ii) *any protective element in such fiscal charges;*
- (d) *'materials' shall have the meaning assigned to it in Rule I of Schedule I to this Treaty.*

#### **ARTICLE 90** **Internal Taxes and Other Fiscal Charges**

1. *Save as otherwise provided in this Treaty, Member States shall not:*

- (a) *apply directly or indirectly to imported goods of Community origin any fiscal charges in excess of those applied directly or indirectly to like domestic goods, or otherwise apply such charges so as to protect like domestic goods; or*

- (b) *apply fiscal charges to imported goods of Community origin of a kind which they do not produce, or which they do not produce in substantial quantities, in such a way as to protect the domestic production of substitutes which enter into direct competition with them and which do not bear, directly or indirectly, in the country of importation, fiscal charges of equivalent incidence.*

2. *A Member State shall notify COTED of all fiscal charges applied by it where, although the rates of charge, or the conditions governing the imposition or collection of the charge, are not identical in relation to the imported goods and to the like domestic goods, the Member State applying the charge considers that the charge is, or has been made, consistently with sub-paragraph (a) of paragraph 1 of this Article. A Member State shall, at the request of any other Member State, supply information about the application of paragraph 1 of this Article.*

3. *For the purposes of this Article 'fiscal charges' means internal taxes and other internal charges with equivalent effect on goods.*

#### **ARTICLE 91** **Quantitative Restrictions**

1. *Save as otherwise provided in this Treaty, and in particular Articles 88, 89 and 90, and in Schedules II, III and IV, a Member State shall not apply any quantitative restrictions on the importation of goods which are of Community origin.*

2. *Except as otherwise provided in this Treaty, and particularly in Articles 89 and 90, and in Schedule III, a Member State shall not apply any quantitative restrictions on exports to any other Member State.*

3. *This Article shall not prevent any Member State from taking such measures as are necessary to prevent evasion of any prohibitions or restrictions which it applies to imports from or exports to third States provided that less favourable treatment is not granted to Member States than to countries outside the Community.*

4. *"Quantitative restrictions" means prohibitions or restrictions on imports into, or exports from, any other Member State, as the case may be, whether made effective through quotas, import licences or other measures with equivalent effect, including administrative measures and requirements restricting imports or exports.*

#### **ARTICLE 92** **Difficulties Occasioned by Particular Imports**

1. *Subject to Article 150, wherever imports of any product, including any primary agricultural product, into a Member State cause serious injury or the threat of serious injury to domestic producers of like or directly competitive products in any industry or specific sector of any industry, the importing Member State shall be free to impose restrictions in respect of such product if:*

- (a) *the import of the product in question results in a substantial decrease in demand for the like or directly competitive product produced within its jurisdiction; and*
- (b) *the decrease in demand is directly linked to an increase in imports consigned from another Member State.*

2. *Where a Member State decides to exercise its rights under paragraph 1, it may provisionally, until a determination by COTED is made:*

- (a) *limit imports of the product of Community origin by means of quantitative restrictions at a rate not less than the rate of such imports during any period of 12 months which ended 12 months before the date on which the restrictions entered into force;*
- (b) *take such other measures either instead of or in addition to quantitative restrictions in accordance with sub-paragraph (a) as COTED may authorise.*

3. *In applying the restrictions in accordance with paragraph 2, a Member State shall not discriminate among the sources of supply or the nationality of suppliers, and shall give consideration to the proportionate share of the market previously enjoyed by each Member State.*

4. *Where a Member State:*

- (a) *intends to act in accordance with paragraph 2, it shall, prior to taking such action, enter into consultations with affected Member States and notify COTED of that intention and the nature of the action;*
- (b) *is unable to comply with sub-paragraph (a) of this paragraph, it shall, in taking the action, immediately notify COTED of the application and the nature of the action.*

5. *The Member State at the time of taking such action in accordance with paragraph 2 shall submit to COTED:*

- (a) *such information as is reasonably available, including:*
  - (i) *the identity of the producers and the length of time during which the producers of the like or directly competitive product have been in production;*
  - (ii) *a complete description of the product and the annual volume of production;*
  - (iii) *an estimate of the size by volume of the domestic market, the share by volume in the domestic market of the domestic product, imports from other Member States and from third States;*
  - (iv) *information on changes in the level of sales and employment for the periods comparable to the periods during which imports have increased; and*
  - (v) *any other information as COTED may from time to time prescribe;*
- (b) *a programme setting out the measures to be taken to assist the domestic producers to alleviate the difficulties they face and to restore their position in the domestic market.*

6. *COTED shall give its earliest consideration to the submission made under paragraph 5, and:*

- (a) *make a determination of the appropriateness of the restrictions and whether they shall be continued;*
- (b) *where it decides that the restrictions shall be continued, determine the adequacy of the programme and the period for which the restrictions shall continue.*

7. *Restrictions applied by a Member State pursuant to paragraph 2 shall be confined to those necessary to forestall a threat of serious injury or otherwise eliminate injury.*

8. *The Member States in applying restrictions pursuant to paragraph 2 shall not discriminate and:*

- (a) shall progressively relax them as the relevant conditions improve;*
- (b) may maintain them only to the extent that the conditions mentioned in paragraph 1 of this Article continue to justify their application.*

9. *If a Member State has demonstrated that the imposition of measures by another Member State under paragraph 2 has caused injury or the threat of serious injury to domestic producers in its jurisdiction, then the first mentioned Member State may request consultation with the Member State maintaining the restrictions and notify COTED accordingly.*

10. *Where the consultations do not result in a mutually agreed solution, the matter may be referred to COTED for a determination.*

11. *If COTED is not satisfied that the Member States applying restrictions are acting in accordance with the provisions of paragraph 7, it may recommend to the Member State adversely affected thereby, alternative arrangements to the same end.*

### **ARTICLE 93**

#### **Government Assistance to Economic Development**

1. *Except as otherwise provided in this Treaty, a Member State shall not maintain or introduce:*

- (a) the forms of assistance to export of goods to any other part of the Community which are described in Schedule V; or*
- (b) any other forms of assistance, the main purpose or effect of which is to frustrate the benefits expected from such removal or absence of duties and quantitative restrictions as is required by this Treaty.*

2. *If the application of any type of assistance by a Member State, although not contrary to paragraph 1(b) of this Article, nevertheless frustrates the benefits expected from such removal or absence of duties and quantitative restrictions as is required by this Treaty, COTED may authorise any Member State to suspend, in relation to the Member State which is applying the assistance, the application of such obligations under this Treaty as the COTED considers appropriate.*

3. *COTED may amend the provisions of Schedule V.*

### **ARTICLE 94**

#### **Public Undertakings**

1. *Except as otherwise provided in this Treaty, Member States shall ensure the elimination in the practices of public undertakings of :*

- (a) measures the effect of which is to afford protection to domestic production and which would be inconsistent with this Treaty if achieved by means of a duty or charge with equivalent effect or quantitative restrictions or Government assistance; or*
- (b) trade discrimination on grounds of territorial origin in so far as it frustrates the benefits expected from the removal or absence of such charges, duties and quantitative restrictions as is required by this Treaty.*

2. *In so far as Article 92 is relevant to the activities of public undertakings, that Article*

*shall apply to them in the same way as it applies to other enterprises.*

3. *Where a public undertaking has introduced a measure or practice which:*

- (a) is inconsistent with paragraph 1; or*
- (b) in law or in effect, results in limiting access to any market, distorts competition or fair trade, or otherwise nullifies or impairs benefits expected from the establishment of the CSME,*

*then, in such a case, the aggrieved Member State may request consultations with the offending Member State and promptly notify COTED of the request.*

4. *The Member State alleged to have introduced a measure or practice within the meaning of paragraph 3 shall give favourable consideration to a request for consultations by the aggrieved Member State with a view to resolving their differences and arriving at a mutually acceptable solution.*

5. *If no mutually acceptable solution is reached within 30 days of the date of request for consultations, the aggrieved Member State may refer the matter to COTED, which shall cause an investigation to be carried out into the circumstance giving rise to the complaint; the investigation is to be completed within 60 days of the date of receipt of the complaint by COTED.*

6. *COTED shall, upon receipt of the report arising from the investigation, make available the report to the Member States concerned to facilitate consultations and to permit them to reach a mutually acceptable solution.*

7. *If no mutually acceptable solution is reached at the end of 15 days starting from the date of submission of the report by COTED to the parties concerned and COTED is satisfied that the rights of the aggrieved Member States under paragraph 1 have been unreasonably denied, then COTED shall request the offending Member State to withdraw the measure or practice, as the case may be.*

8. *If the offending Member State referred to in paragraph 7 fails to comply with the request of COTED within 60 days of the date thereof, then COTED may authorise the Member States to suspend, in relation to the Member State which is applying the measure or practice, the application of such provisions of this Treaty as COTED may decide.*

9. *The Member States shall ensure that new practices of the kind described in paragraph 3 of this Article are not introduced.*

10. *For the purposes of this Article, 'public undertakings' means central, regional, or local government authorities, public enterprises and any other organisation by means of which a Member State by law or in practice controls or appreciably influences imports from, or exports to any other part of the Community.*

## **ARTICLE 95**

### **Co-operation in Customs Administration**

1. *The Member States shall co-operate with each other to ensure that their interpretation and application of Articles 82, 83, 84, 86, 87, 88, 89, 90, 93 and Schedule I are effectively and harmoniously applied, particularly with respect to provisions relating to:*

- (a) effective customs systems and procedures governing the movement of goods, people and conveyances across customs borders;*
- (b) maximising the effectiveness of co-operation among customs administrations and with international agencies to combat customs and*

*other cross-border offences.*

2. *The Member States undertake to establish harmonised customs legislation and customs procedures in accordance with the provisions of this Chapter.*

3. *COTED shall establish procedures for co-operation in customs administration as described in paragraph 1 of this Article.*

## **PART THREE SUBSIDIES**

### **ARTICLE 96 Determination of a Subsidy**

*For the purpose of this Part, a subsidy shall be deemed to exist if there is a financial contribution by a Government or any public body within the territory of a Member State (hereinafter referred to as "government") where:*

- (a) a government practice involves direct transfer of funds (e.g., grants, loans and equity infusion) or potential direct transfer of funds or liabilities (e.g., loan guarantees);*
- (b) government revenue that is otherwise due is foregone or not collected (e.g., fiscal incentives, such as tax credits);*
- (c) a government purchases goods or provides goods or services other than general infrastructure;*
- (d) a government makes payments to a funding mechanism, or directs or entrusts to a private body the conduct of activities mentioned in subparagraphs (a), (b) and (c) which are normally conducted by governments;*
- (e) there is any form of income or price support,*

*and a benefit is thereby conferred.*

### **ARTICLE 97 Types of Subsidies**

1. *A subsidy within the meaning of Article 96 shall be categorised as follows:*

- (a) a prohibited subsidy;*
- (b) a subsidy which:*
  - (i) causes injury to a domestic industry; or*
  - (ii) results in nullification or impairment of benefits accruing directly or indirectly to any Member State; or*
  - (iii) seriously prejudices the interests of any Member State; or*
- (c) a subsidy which causes serious adverse effects to a domestic industry of any Member State such as to cause damage which would be difficult to repair:*

*Provided that the subsidy is specific to an enterprise or industry or group of enterprises or industries within the jurisdiction of the granting Member State.*

2. *For the purpose of this Chapter a determination of whether a subsidy as defined in Article 92 is specific shall be governed by the following:*

- (a) *in order to determine whether a subsidy referred to in paragraph 1 of this Article is specific to an enterprise or industry or group of enterprises or industries (referred to in this Part as “certain enterprises”) within the jurisdiction of the granting authority, the following criteria shall apply:*
  - (i) *where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such a subsidy shall be specific;*
  - (ii) *where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;*
  - (iii) *if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in sub-sub-paragraphs (i) and (ii), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use of certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In applying this sub-paragraph, 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;*
- (b) *a subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Part;*
- (c) *any subsidy falling under the provisions of Article 99 shall be deemed to be specific;*
- (d) *any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.*

**ARTICLE 98**  
**Entitlement to Take Action**  
**Against Subsidised Products**

1. *A Member State may take action against subsidised products where:*

- (a) *the products have benefited from a prohibited subsidy;*
- (b) *the subsidy is specific and has caused any of the effects referred to in Article 112; and*
- (c) *the subsidy is specific and does not conform to the provisions of Article 108.*

2. *Notwithstanding the provisions of paragraph 1, a Member State shall not take definitive action against products which are believed to be benefitting from subsidies referred to in Article 97 if the Member State aggrieved thereby has not:*

- (a) *promulgated legislation to permit the introduction of counter measures or countervailing duties against subsidised imports;*
- (b) *consulted with the Member State which is alleged to have introduced or to be maintaining subsidies identified in Article 97;*
- (c) *notified COTED of the alleged subsidisation based on preliminary investigations and failure of consultations; and*
- (d) *received authorisation from COTED to introduce countervailing duties or countermeasures as a result of a definitive determination of the existence of prohibited subsidies which cause nullification, impairment, serious prejudice or adverse effects caused by subsidisation.*

3. *Consultations for the purposes of this Part shall follow the procedures set out in Annex II.*

## **ARTICLE 99**

### **Prohibited Subsidies**

1. *Subject to this Treaty, a Member State shall neither grant nor maintain subsidies referred to in paragraph 2.*

2. *The following subsidies within the meaning of Article 96 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 listed in Schedule V; and*
- (b) *subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.*

3. *Nothing in this Article shall be construed as applying to agricultural commodities produced in the Community.*

## **ARTICLE 100**

### **Preliminary Investigation of Prohibited Subsidies**

1. *An application for an investigation may be made in writing by or on behalf of a domestic industry to the competent authority where the industry has reason to believe that a prohibited subsidy referred to in Article 99 has been granted or maintained by another Member State. The authority shall examine the application and determine, on the basis of the facts available, whether to initiate an investigation.*

2. *An investigation initiated pursuant to paragraph 1 of this Article shall be deemed to be a preliminary investigation. The authority shall give public notice of the preliminary investigation to inform the concerned Member State, other Member States and the interested parties all of whom shall be afforded adequate time to submit information required and to make comments.*

3. *The authority shall make a preliminary determination whether a prohibited subsidy has been granted or maintained and, where the determination is affirmative, invite the concerned Member States and interested parties to defend their interests.*

4. *A request for investigation by the domestic industry under this Article or under Article 106 or 112 shall be accompanied by information set out in the Illustrative List at Annex 111(a).*

5. *Wherever the term “domestic industry” is used in this Chapter, it shall mean domestic industry as defined in Annex I.*

**ARTICLE 101**  
**Request for Consultations Relating**  
**to Prohibited Subsidies**

1. *Whenever a Member State has reason to believe, pursuant to Article 99 that a prohibited subsidy has been granted or is maintained by a Member State, the aggrieved or any other Member State may request consultations with the Member State believed to be granting or maintaining the subsidy. The aggrieved Member State shall notify COTED of the request for consultations. A request for consultations shall include a statement of the available evidence with regard to the existence and nature of the alleged prohibited subsidy.*

2. *Upon receipt of a request for consultations under paragraph 1, the Member State believed to be granting or maintaining the subsidy shall reply within 10 days and shall furnish the relevant information requested and shall promptly enter into consultations which shall be concluded within 30 days of the date of request for such consultations unless the parties agree to extend the consultations to a mutually agreed date. The purpose of the consultations shall be to clarify the facts relating to the existence and type of the alleged subsidy and to arrive at a mutually agreed solution.*

**ARTICLE 102**  
**Reference to COTED to Investigate**  
**Prohibited Subsidies**

1. *If no mutually agreed solution is reached at the completion of 30 days from the date of the request for the consultations referred to in Article 101, or at such time as the parties agree, or if the Member State believed to be granting or maintaining the subsidy refuses to co-operate, the Member State requesting consultations or any other Member State interested in such consultations may refer the matter to COTED which shall carry out an investigation to establish whether the subsidy in question is a prohibited subsidy.*

2. *The referral of the matter to COTED for an investigation shall not prevent the aggrieved Member State from taking, on a provisional basis, which shall not be sooner than 60 days from the date of initiation of investigations under paragraph 1 of Article 103 counter-measures to forestall injury or to prevent further injury to its domestic industry.*

**ARTICLE 103**  
**Investigation by COTED of**  
**Prohibited Subsidies**

1. *Whenever COTED decides to carry out an investigation pursuant to Article 102, such an investigation by COTED shall proceed as expeditiously as possible. COTED may appoint competent experts to advise whether the subsidy falls to be classified as a prohibited subsidy, in which case COTED shall set a time limit for the examination of the evidence by the competent experts. COTED shall make its determination and issue its report which shall, unless extenuating circumstances arise, not exceed 90 days from the date of receipt of request for the investigation.*

2. *The results of an investigation carried out pursuant to Article 102 shall be made available to all Member States for information and to afford the concerned Member States an*

opportunity to arrive at a mutually agreed solution within 30 days from the date of issue of the report failing which COTED shall adopt the recommendations of the report.

3. If COTED is satisfied, based on the results of the investigation, that the subsidy in question is a prohibited subsidy and that the concerned Member States cannot reach a mutually agreed solution, it shall, subject to Article 104, require the offending Member State to withdraw the subsidy within a specified time-frame. Where the offending Member State fails to comply, COTED shall authorise the aggrieved Member State to take counter-measures on the products which benefit from such a subsidy.

#### **ARTICLE 104**

##### **Withdrawal of Prohibited Subsidies**

1. Notwithstanding the investigation confirming the existence of a prohibited subsidy in paragraph 3 of Article 103, COTED shall not impose a requirement for the Member States to withdraw such a subsidy sooner than specified in this paragraph as follows:

- (a) with respect to subsidies contingent upon export performance:
  - (i) the Member States with per capita GNP of less than one thousand United States dollars shall be allowed to maintain such subsidies; and
  - (ii) other Member States shall be allowed to maintain such subsidies until 1 January 2003;
- (b) with respect to subsidies contingent upon the use of domestic over imported inputs, the Member States with per capita GNP of less than one thousand United States dollars shall be allowed to maintain such subsidies until 2003.

2. Whenever the results of an investigation by COTED prove that the alleged subsidy is not a prohibited subsidy, any provisional countervailing measures which might have been imposed shall be promptly withdrawn and any bond or deposit which might have been effected, released or refunded, as the case may be. If the provisional measures referred to in this paragraph have materially retarded the exports of the Member State which was wrongfully alleged to have introduced or maintained prohibited subsidies, COTED shall, upon application from such a Member State, assess the effects of the provisionally applied measures and determine the nature and extent of compensation which is warranted and recommend compensation in accordance with its assessment.

3. From the date of entry into force of this Treaty until the expiration of the dates mentioned in paragraph 1, no provisional measures shall be imposed where it has been determined by preliminary investigations that prohibited subsidies are maintained.

#### **ARTICLE 105**

##### **Subsidies Causing Injury, Nullification, Impairment or Serious Prejudice**

A Member State may take action against subsidised imports from any other Member State where it can be established, based on an investigation, that the effect of the subsidy has been:

- (a) injury to its domestic industry;
- (b) nullification or impairment of benefits which it expects under this Treaty; or
- (c) serious prejudice to its interests.

2. Serious prejudice shall be deemed to exist in the case where:

- (a) *the total ad valorem subsidisation of a product exceeds 5 per cent;*
- (b) *subsidies cover operating losses sustained by an industry;*
- (c) *subsidies 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; or*
- (d) *subsidies are granted in the form of forgiveness of government-held debt and government grants to cover debt repayment.*

3. *Notwithstanding the provisions of this Article, serious prejudice shall not be found if the Member State granting the subsidy in question demonstrates that the effect of the subsidy has not been:*

- (a) *to displace or impede the imports of like products from the Member State exporting to the Member State which has introduced or maintains the subsidy;*
- (b) *to displace or impede the exports of a like product from the affected exporting Member State into the market of a third Member State;*
- (c) *a significant price undercutting by the subsidised product as compared with the price of a like product of another Member State in the same market or a significant price suppression or price depression;*
- (d) *lost sales of another Member State in the same market; or*
- (e) *an increase in its market share within the CSME.*

4. *The provisions of this Article shall not apply to Part Three.*

#### **ARTICLE 106**

#### ***Preliminary Investigation of Subsidies Causing Injury, Nullification, Impairment or Serious Prejudice***

1. *An application for an investigation may be made in writing by or on behalf of a domestic industry to the national authority where the industry has reason to believe that a subsidy referred to in Article 105 has been granted or is maintained by another Member State and has caused injury, or resulted in nullification, impairment or serious prejudice to its interests.*

2. *An application under paragraph 1 shall include sufficient information about the existence of a subsidy and, if possible, its amount, injury and a causal link between the subsidised products and the alleged injury.*

3. *An application to initiate an investigation shall be considered to have been made by or on behalf of a domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product by that proportion of the domestic industry expressing support for or opposition to the application. The investigation shall not be initiated where the domestic producers expressly supporting the application account for less than 25 per cent of the total production of the like product produced by the domestic industry.*

4. *Upon receipt of a request for such an investigation, the authority shall examine the application and determine, on the basis of the facts available, whether to initiate an investigation. If the authority decides to initiate an investigation, it shall issue a public notice to that effect, invite the concerned Member State, other interested Member States and interested parties to submit required information and comments.*

5. *An investigation initiated pursuant to paragraph 1 shall be deemed to be a preliminary investigation. The authority shall inform the concerned Member State and all interested parties of the results of the investigation.*

6. *For the purpose of this Part, "like product" shall be interpreted to mean a product which is identical, i.e., alike in all respects to the product under consideration, or in the absence of such a product, another product, which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.*

**ARTICLE 107**  
***Request for Consultations Relating to Subsidies Causing Injury, Nullification, Impairment or Serious Prejudice***

1. *Whenever a Member State has reason to believe that a subsidy within the meaning of Article 96 has been granted or is maintained by another Member State, and that imports from such a Member State have resulted in any of the effects mentioned in paragraph 1(b) of Article 97, the first-mentioned Member State may approach the Member State believed to be granting a subsidy with a request for consultations.*

2. *A request for consultations shall include a statement of available evidence with regard to -*

- (a) the existence and nature of the subsidy; and*
- (b) the injury caused to the domestic industry; or*
- (c) the impairment or nullification of benefits of exporting to other Member States in the Community; or*
- (d) serious prejudice to its interests.*

3. *Upon receipt of a request for consultations under paragraph 1, the Member State believed to be granting or maintaining the subsidy shall reply within 10 days, and shall furnish relevant information and enter into consultations within 30 days of the date of the request. The purpose of the consultations shall be to clarify the facts relating to the existence, type and effect of the alleged subsidy and to arrive at a mutually agreed solution.*

**ARTICLE 108**  
***Reference to COTED to Investigate Subsidies Causing Injury, Nullification, Impairment or Serious Prejudice***

1. *If no mutually agreed solution is reached at the completion of 60 days from the date of request for consultations, or on a date mutually agreed, the Member State requesting consultations may refer the matter to COTED which shall initiate an investigation, make a determination to resolve the dispute and issue a report within 120 days of the date of the request for an investigation by the aggrieved Member State.*

2. A decision by COTED to initiate an investigation shall not prevent the aggrieved Member State from taking, on a provisional basis, countermeasures which shall not be sooner than 60 days from the date of initiation of a preliminary investigation by the national authority to forestall or prevent further adverse effects.

**ARTICLE 109**  
**Investigation by COTED of Subsidies Causing Injury,  
Nullification, Impairment or Serious Prejudice**

1. In order to arrive at a determination of the existence, degree and effect of subsidisation, and remedial action which may be taken pursuant to the referral of a complaint of alleged subsidisation mentioned in Article 108, COTED shall -

- (a) carry out an investigation into the circumstances relating to the alleged grant or maintenance of the subsidy by the offending Member State; the investigation is to be completed within 120 days of the date of receipt of a complaint regarding alleged subsidisation by an offending Member State; and
- (b) upon receipt of the report arising from the investigation, promptly make available the report to the concerned Member States to facilitate consultation and to permit the Member states concerned to arrive at a mutually acceptable solution.

**ARTICLE 110**  
**Consequences of Failure to Remove Subsidies Causing  
Injury, Nullification, Impairment or Serious Prejudice**

1. If no mutually acceptable solution is reached within 30 days of the date of issue of the report by COTED, and COTED is satisfied:

- (a) of the existence of a subsidy within the meaning of Article 105; and
- (b) that the subsidy has caused injury to the enterprise in the aggrieved Member State; or
- (c) that the subsidy has impaired or nullified benefits expected of the aggrieved Member State with respect to its exports to the Community; or
- (d) that the effect of the subsidy was to seriously prejudice the interests of the Member State,

then in such a case, COTED shall request the Member State which has granted or maintained the subsidy to take appropriate steps to remedy the effects of the subsidy within six months of the date of the issue of the report by COTED.

2. If, at the end of the period of six months allowed by COTED to the Member State granting or maintaining the subsidy to remedy the effects of the subsidy, the Member State fails to comply and in the absence of agreement on compensation COTED shall authorise the aggrieved Member State to impose countervailing duties at a rate equivalent to the amount of subsidisation for such time and under such conditions as COTED may prescribe.

**ARTICLE 111**  
**Types of Subsidies Causing Serious Adverse Effects**

1. The Member States shall not ordinarily impose or introduce countervailing duties or take countermeasures on products which benefit from:

- (a) *subsidies which are not specific within the meaning of Article 97; or*
- (b) *subsidies which are specific within the meaning of Article 97 but which satisfy all of the conditions set out in this sub-paragraph hereunder:*
  - (i) *subsidies granted for research activities conducted by enterprises or by higher education or research establishments on a contract basis with firms if the assistance covers not more than 75 per cent of the costs of industrial research or 50 per cent of the costs of pre-competitive development activity and provided that such assistance is limited exclusively to:*
    - (aa) *costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);*
    - (bb) *costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;*
    - (cc) *costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;*
    - (dd) *additional overhead costs incurred directly as a result of the research activity;*
    - (ee) *other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.*
- (c) *subsidies granted to assist disadvantaged regions within the territory of a Member State given pursuant to a general framework of regional development and that are non-specific within eligible regions provided that:*
  - (i) *each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity;*
  - (ii) *the Region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;*
  - (iii) *the criteria shall include a measurement of economic development which shall be based on at least one of the following factors:*
    - (aa) *one of either income per capita or household income per capita, or GDP per capita, which must not be above 85 per cent of the average for the territory concerned;*
    - (bb) *unemployment rate, which must be at least 110 per cent of the average for the territory concerned;*
- (d) *subsidies granted to assist entities in the adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which*

*result in greater constraints and financial burden on enterprises provided that the subsidies -*

- (i) are a one-time non-recurring measure; and*
  - (ii) are limited to 20 per cent of the cost of adaptation; and*
  - (iii) do not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms; and*
  - (iv) are directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and do not cover any manufacturing cost savings which may be achieved; and*
  - (v) are available to all firms which can adopt the new equipment and/or production processes.*
- (e) subsidies granted to assist enterprises to undertake training or retraining of employees, whether or not the enterprise is new, and the upgrading of existing facilities to facilitate transition to competitive status within the Community, provided that such subsidies are not specific.*

*2. The Member States shall notify COTED of any subsidy mentioned in paragraph 1. Any Member State may request further information regarding a notified subsidy programme and COTED shall review annually all notified subsidies referred to in paragraph 1.*

#### **ARTICLE 112**

##### **Preliminary Investigation of Subsidies Causing Serious Adverse Effects**

*1. A domestic industry may submit to the competent authority an application for an investigation to verify that serious adverse effects have been caused by imports which benefit from subsidies referred to in Article 111.*

*2. Upon receipt of an application for an investigation to verify adverse effects, the authority shall examine the application, and, on the basis of the available facts, determine whether to initiate an investigation.*

*3. The investigation referred to in paragraph 2 shall be deemed a preliminary investigation. The authority shall give public notice of its decision to initiate a preliminary investigation and the concerned Member State, other interested Member States, and the interested persons shall all be invited to provide relevant information and make comments.*

*4. The results of the preliminary investigation shall be made available to the concerned Member State, other interested Member States and the interested persons to enable them to defend their interests.*

#### **ARTICLE 113**

##### **Request for Consultations Relating to Subsidies Causing Serious Adverse Effects**

*1. Whenever a Member State has reason to believe that imports from another Member State benefited from subsidies within the meaning of Article 111 and such imports have resulted in serious adverse effects to a domestic industry so as to cause damage which would be difficult to repair, the Member State aggrieved may request consultations with the Member State granting or maintaining the subsidy.*

2. The Member State alleged to be granting the subsidy which caused adverse effects shall reply within 10 days of the date of the request for consultations and shall enter into the consultations requested by the aggrieved Member State. If there is no mutual agreement within 60 days of the date of the request for such consultations or on a later date which was mutually agreed or if the Member State refuses to co-operate, the aggrieved Member State may refer the matter to COTED and request COTED to carry out an investigation.

**ARTICLE 114**  
**Investigation by COTED of Subsidies**  
**Causing Serious Adverse Effects**

1. The referral of the matter to COTED for an investigation shall not prevent the aggrieved Member State from imposing on a provisional basis not sooner than 60 days from the date of initiation of the preliminary investigation referred to in Article 106, countermeasures to forestall or prevent further adverse effects.

2. If COTED is satisfied that the investigation requested is justified, COTED shall carry out the investigation, make a determination and issue a report within 120 days from the date when the request was referred.

3. Where the results of the investigation carried out by COTED demonstrate that the subsidised imports caused serious adverse effects to the domestic industry of the aggrieved Member State requesting the investigation, COTED shall recommend that the offending Member State modify the programme of subsidies in such a way as to remove the adverse effects complained of.

**ARTICLE 115**  
**Consequences of Failure to Eliminate or**  
**Establish Adverse Effects of Subsidies**

1. If the offending Member State fails to implement the recommendations of COTED within 6 months of the date of issue of the report referred to in paragraph 2 of Article 114, COTED shall authorise the aggrieved Member State to impose appropriate countervailing duties commensurate with the nature and degree of serious adverse effects determined to exist.

2. Whenever the results of an investigation by COTED prove that serious adverse effects have not been caused by subsidised imports referred to in paragraph 1 of Article 111, the Member State alleging that its domestic industry has suffered serious adverse effects shall promptly refund any duties which might have been provisionally imposed and where such provisional duties had materially retarded the exports of the Member State complained against, COTED shall, upon application from such State, assess the effects of the provisionally applied duties and determine the nature and extent of compensation which is warranted and require compensation in accordance with its assessment.

**ARTICLE 116**  
**Imposition of Provisional Measures**  
**and Countervailing Duties**

1. Notwithstanding anything to the contrary in this Chapter, a Member State aggrieved by the application or maintenance of prohibited subsidies or by subsidies which cause injury, or result in nullification, impairment, or serious prejudice, or cause serious adverse effects, as the case may be, shall introduce provisional measures only on the basis of the following rules:

- (a) Provisional measures may be applied only if -
  - (i) a preliminary investigation has been initiated in accordance with the provisions of this Chapter, a public notice has been given to that effect and interested persons have been given adequate

*opportunities to submit information and make comments;*

- (ii) an affirmative preliminary determination has been made of the existence of a prohibited subsidy, or a subsidy causing injury, nullification, impairment, serious prejudice, or a subsidy causing serious adverse effects, as the case may be;*
- (iii) consultations were requested and undertaken, COTED was notified and requested to investigate and the authorities concerned judge such measures necessary to prevent injury being caused during the investigation;*
- (b) Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the subsidisation calculated on a provisional basis;*
- (c) Provisional measures shall not be applied sooner than 60 days from the date of initiation of the preliminary investigation;*
- (d) The application of provisional measures shall be limited to as short a period as possible, not exceeding 120 days.*

*2. Where investigations by COTED continue beyond the period allowed for the maintenance of provisional measures under sub-paragraph 1(d), the Member State imposing the measures may continue with such measures until a definitive determination is made by COTED.*

*3. The Member States which are parties to an investigation to verify the existence and the effect of alleged subsidisation, may seek or accept, as the case may be, undertakings from the Member State alleged to have granted or to be maintaining a subsidy. Undertakings may take the form of:*

- (a) withdrawal, or limiting the amount of, the subsidy to such an extent that injury, nullification, impairment, serious prejudice or serious adverse effects, as the case may be, are eliminated; or*
- (b) a guarantee from the exporter benefiting from the subsidy to raise his price to such an extent that the injurious effect is eliminated.*

*4. If a Member State accepts a voluntary guarantee pursuant to sub-paragraph 3(b), then the accepting Member State shall notify COTED and promptly suspend proceedings, and any provisional measures which may have been imposed shall be withdrawn with immediate effect.*

*5. In the event that investigations to determine subsidisation have been concluded and the evidence proves injury, nullification, impairment or serious prejudice, or serious adverse effects, as the case may be, a Member State may impose countervailing duties retroactively to account for the entire period during which provisional measures have been in force. Such retroactively applied duties shall take into account the definitively assessed countervailing duties and the amount guaranteed by cash deposit or bond and:*

- (a) where the definitive countervailing duties are higher than the provisional duties, the difference shall not be collected;*
- (b) where the definitive countervailing duties are lower than the provisional duties, the excess of the deposit shall be refunded or the bond released promptly.*

*6. No Member State shall impose countervailing duties other than provisional countervailing duties without prior authorisation from COTED and the determination and imposition*

*of definitive countervailing duties shall be governed by the relevant provisions of the WTO Agreement on Subsidies and Countervailing Measures.*

7. *COTED shall keep under review all counter-measures imposed by the Member States and shall ensure that the Member States observe the conditions and timetable for review and withdrawal of counter-measures that it may have authorised.*

8. *The Member States undertake to co-operate in establishing harmonised legislation and procedures in accordance with the provisions of this Chapter.*

## **PART FOUR SUBSIDIES TO AGRICULTURE**

### **ARTICLE 117 Definition**

1. *For the purpose of this Part, an agricultural subsidy means any form of domestic support, financial or otherwise, including revenue foregone, provided by government or any public agency in favour of the producers of a specific agricultural product or to the agricultural sector as a whole. This includes:*

- (a) assistance provided by government or any public agency to foster agricultural and rural development or to assist low income producers or producers with deficient resources;*
- (b) financial concessions granted by government or a public agency to offset the cost of agricultural inputs or to encourage investments in agriculture;*
- (c) any other financial concession which has the effect of providing price or income support to producers of agricultural products which is administered either through direct payments to the producers or processors of an agricultural product or indirectly through government or other publicly funded programmes;*
- (d) payments in kind to agricultural producers.*

2. *“Agricultural products” refers to the products listed in Annex IV.*

### **ARTICLE 118 Rights**

*Having regard to the general use of subsidies in Member States to encourage agricultural and rural development, to promote investments in agriculture generally and to assist low-income or resource-poor producers, Member States may grant subsidies to meet those objectives, consistently with their obligations under international agreements and subject to the provisions of this Part.*

### **ARTICLE 119 Obligations**

1. *Notwithstanding the right to grant subsidies indicated in Article 118, a Member State shall not use such subsidies in a manner to distort the production of and intra-regional trade in the product or products benefiting from such subsidies.*

2. *Accordingly, subsidies provided by a Member State to agriculture shall not involve*

*transfers from consumers, or direct payments to producers or processors which would have the effect of providing price support to producers.*

3. *Subsidies provided by a Member State to agriculture shall be made through publicly funded programmes which benefit the agricultural sector generally, in areas such as research, training, extension and advisory services, pest and disease control, inspection services, marketing and promotion services and infrastructural services.*

4. *Where a Member State makes direct payments of a subsidy to agricultural producers or processors through such schemes as crop insurance, disaster relief, income safety-net programmes, regional assistance programmes and structural adjustment assistance programmes, the Member State shall ensure that these payments, whether financial or otherwise, have no or minimal production and trade distortion effect and do not constitute price support to producers of the product or products benefitting from the use of such schemes.*

## **ARTICLE 120**

### **Regulation**

1. *Any subsidy provided by a Member State in favour of the production of an agricultural product entering regional trade, except for the provision of general services programmes or direct payments satisfying the conditions stated in Article 119, shall not exceed 10 per cent of the total value of that Member State's annual production of such tradeable agricultural product in any one year.*

2. *Any subsidy provided by a Member State in favour of agricultural producers or processors in general, except for the provision of general services programmes or direct payments satisfying the conditions stated in Article 119, shall not exceed 10 per cent of the total value of that Member State's annual total agricultural output, in any one year.*

3. *Where a Member State provides a subsidy, except for the provision of general services programmes or direct payments satisfying the conditions stated in Article 119, in excess of the levels prescribed in paragraphs 1 and 2, such a subsidy shall be considered as a subsidy causing injury, nullification, impairment or serious prejudice.*

## **ARTICLE 121**

### **Discipline**

1. *Each Member State shall ensure that any subsidy in favour of agricultural producers conforms with the provisions of Article 119 and Article 120.*

2. *Any subsidy in favour of agricultural producers that cannot be shown to satisfy the provisions in Article 119 and Article 120, shall be subject to the provisions of Article 106 to Article 110 inclusive.*

3. *A subsidies programme undertaken in conformity with the provisions of this Part shall be subject to action based on Article 106 to 110 inclusive where a determination of injury or threat thereof is made in accordance with the provisions of this Part.*

4. *In the determination of a threat of injury, the investigating authorities shall consider, inter alia, such factors as:*

- (i) the nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;*
- (ii) a significant rate of increase of subsidised imports into the domestic market indicating the likelihood of substantially increased importations;*
- (iii) sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased subsidised*

*exports to the importing country's market, taking into account the availability of other export markets to absorb any additional exports;*

- (iv) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports;*
- (v) inventories of the product being investigated.*

#### **ARTICLE 122** **Due Restraint**

*Where it has been determined that a subsidy causes injury or threatens to cause such injury, in accordance with the provisions of this Part, the aggrieved Member State shall exercise due restraint in initiating any action in retaliation.*

#### **ARTICLE 123** **Notification**

*1. The Member States shall notify COTED of any subsidy programme pursuant to Article 117 prior to implementation.*

*2. In addition to the notification to be submitted under this Article, any new subsidy or modification of an existing measure shall be notified promptly. This notification shall contain details of the new or modified subsidy and its conformity with the agreed criteria as set out in Article 116 and Article 120.*

*3. Any Member State may bring to the attention of COTED any measure which it considers ought to have been notified by another Member State.*

#### **ARTICLE 124** **Review**

*COTED shall undertake a review of the implementation of the provisions on subsidies to agriculture on the basis of notifications of the subsidies programmes submitted by the Member States, as well as on the basis of any other documentation which the COTED may request to be prepared to facilitate its review.*

### **PART FIVE** **DUMPING**

#### **ARTICLE 125** **Action Against Dumping**

*A Member State may take action against dumped imports if such imports cause injury or pose a serious threat of injury to a domestic industry.*

#### **ARTICLE 126** **Determination of Dumping**

*1. For the purpose of this Part, a product is to be considered to be a dumped import where it is introduced into the commerce of another country at less than its normal value if the export*

*price of the product exported from one Member state to another Member State is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting Member State.*

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

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

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

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

6. *For the purpose of this Part, "like product" shall be interpreted to mean a product which is identical, i.e., alike in all respects to the product under consideration, or in the absence of such a product, another product, which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.*

## **ARTICLE 127**

### **Determination of Injury**

1. *For the purpose of this Part, injury shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.*

2. *A determination of injury within the meaning of paragraph 1 shall be based on positive evidence and involve an objective examination of:*

- (a) *the volume of the dumped imports and the effect of such imports on prices in the domestic market for like products; and*
- (b) *the consequent impact of the dumped imports on domestic producers of*

such products.

3. In making a determination regarding the existence of a threat of material injury, the competent authorities shall consider, *inter alia*:

- (e) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- (b) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market taking into account the availability of other export markets to absorb any additional exports;
- (c) 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
- (d) inventories of the product being investigated.

#### **ARTICLE 128** **Definition of Domestic Industry**

For the purpose of this Part, the term "domestic industry" means "domestic industry" as defined in Annex I.

#### **ARTICLE 129** **Initiation of Preliminary Investigations**

1. If a domestic industry in a Member State has reason to believe that it is being injured or faces the threat of injury as a result of dumped imports, an application may be submitted in writing by the industry or on its behalf by an association representing the industry or by employees employed by the producers of the like product to the competent authority to initiate an investigation in order to verify the existence of dumped imports and injury caused or the existence of a serious threat of injury as the case may be.

2. The application shall be considered to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the request. However, no investigation shall be initiated when domestic producers expressly supporting the request account for less than 25 per cent of total production of the like product produced by the domestic industry.

3. The authority shall examine the application and determine if an investigation is justified and if it is satisfied, it shall issue a public notice to that effect and request the concerned Member State, other interested Member States and the interested parties, all of which may be requested to and shall be afforded an opportunity to provide required information and comments.

4. A decision by the authority to initiate an investigation shall be considered a decision to initiate a preliminary investigation, the results of which shall be made available by a public notice.

5. Where a preliminary investigation provides sufficient evidence that dumped imports have entered into the commerce of the Member State and such imports seriously threaten or have injured a domestic industry, it may submit to the competent authority of the exporting Member State a request for consultations which shall be notified to COTED.

6. The purpose of the request for consultations shall be to establish whether imports have been dumped and injury has been caused or there is a serious threat of injury and if the injury or the serious threat thereof is directly the result of dumped imports.

7. Interested parties who have been requested to provide information shall be allowed 30 days from the date of submission of the application by or on behalf of a domestic industry under paragraph 2 to reply unless the authorities concerned agree to a later date.

8. For the purpose of this Part, "interested parties" shall include:

- (a) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association, a majority of the members of which are producers, exporters or importers of such product;
- (b) the government of the exporting Member State; and
- (c) a producer of the like product in the importing Member State or a trade and business association, a majority of the members of which produce the like product in the territory of the importing Member State.

9. A request for investigations to be undertaken by the competent authority of a Member State or by COTED shall include but shall not necessarily be limited to the information indicated in the Illustrative List set out in Annex III(b). If, however, an aggrieved Member State is satisfied that the offending party had not made satisfactory efforts to afford consultations, to provide requested information or otherwise unreasonably impede an investigation which has been initiated, the competent authority of the Member State aggrieved may impose on a provisional basis anti-dumping measures and may refer the request for investigation to COTED. A public notice of the imposition of provisional anti-dumping measures shall be issued by the Member State which has imposed such measures.

### **ARTICLE 130** **Provisional Measures**

1. Provisional measures may be applied only if -

- (a) an investigation has been initiated in accordance with the provisions of paragraph 4 of Article 129, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;
- (b) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and
- (c) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.

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

3. Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation by a competent authority.

4. The application of provisional measures shall be limited to as short a period as possible, not exceeding 120 days or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding 180 days. When authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be 180 and 270 days, respectively.

**ARTICLE 131**  
**Conduct of Investigations leading to**  
**Definitive Determination of Injury**

1. Whenever COTED receives a request for investigation, referred to it under paragraph 9 of Article 126, COTED shall determine whether the information accompanying the request justifies the continuation of investigations and if it is satisfied, cause an investigation to be completed within 12 months but not longer than 18 months after the date of receipt of the request. If COTED is not satisfied that there is sufficient justification to initiate an investigation, it shall inform the applicant in writing of its refusal to investigate.

2. Investigations initiated either by a competent authority of a Member State or undertaken by COTED shall be terminated promptly whenever:

- (a) the margin of dumping is determined to be less than two per cent; and
- (b) the volume of dumped imports from a particular country is less than three per cent of imports of the like product in the importing Member State, unless countries which individually account for less than three per cent of the imports of the like product into the importing Member State collectively account for more than seven per cent of the imports of the like product in the importing Member State,

and a public notice of the termination of investigations under this paragraph shall be made by the Member State terminating investigations or by COTED, as the case may be.

3. The Member States recognise that an investigation into the circumstances of alleged dumping based on a request by another Member State on behalf of a domestic industry will require the full co-operation of the competent authority and the parties alleged to be responsible for dumped imports, in the Member State from which such imports originated, all of whom shall provide relevant information in the time specified in this Article.

4. In the conduct of an investigation to determine the existence and effect of dumped imports, competent authorities of the Member States and the parties concerned shall observe the rights of the parties providing information with regard to confidentiality of any information provided and shall not disclose any such information without the prior written approval of the parties providing the information.

5. Where an industry within the CSME has suffered injury or faces the threat of serious injury based on evidence of dumped imports by third States, the competent authority for requesting investigation on behalf of the affected industry shall be COTED.

6. Nothing in this Article shall be construed so as to prevent an injured party or a Member State from initiating and proceeding with an investigation into alleged dumping having regard to the rights of such parties under international agreements to which they are signatories.

**ARTICLE 132**  
**Co-operation by Competent Authorities**  
**and Interested Parties**

1. Where an applicant for an investigation who receives information pursuant to dumping investigations requires verification of the information, the competent authority and the parties alleged to be responsible for dumped imports shall co-operate in allowing the applicant to carry out verifications in the offending Member State.

2. The results of any investigations carried out by a competent authority of a Member State aggrieved or by COTED shall be disclosed promptly to the competent authority and the parties alleged to be responsible for dumped imports in the offending Member State. A public notice of the conclusions of the investigations shall be issued by the Member State or by COTED, as the case may

be.

3. *The purpose of the disclosure referred to in paragraph 2 shall be to present the facts of the case and to allow the parties alleged to be responsible for the dumped imports to defend their interests.*

**ARTICLE 133**  
***Imposition of Anti-Dumping Measures***

1. *COTED shall, after consideration of the available evidence and having been satisfied of the existence of dumped imports, injury caused by dumped imports or the threat of serious injury from dumped imports, authorise the Member State aggrieved to take anti-dumping action:*

- (a) *if the parties alleged to be responsible for dumped imports refuse to co-operate within the time specified so as to frustrate or otherwise impede an investigation;*
  - (b) *if there is a serious threat of injury or if injury has resulted.*
2. *In authorising the imposition of anti-dumping measures, COTED shall set the date, duration and conditions for the imposition of the measures as the case may require.*
3. *Anti-dumping action taken pursuant to this Article, shall be based on the calculated margin of dumping and may be applied as follows:*
- (a) *if the evidence arising from definitive investigations of dumping proves the existence of dumping and that injury was caused by dumping, a Member State may impose anti-dumping duties sufficient to eliminate the margin of dumping. COTED may authorise all affected Member States to impose similar anti-dumping duties for such time and under such conditions as COTED may prescribe;*
  - (b) *in the imposition of anti-dumping duties, the Member States imposing the measure shall not discriminate among the sources of all dumped imports based on country of origin or nationality of the exporters;*
  - (c) *an exporter whose exports are the subject of anti-dumping duties may request at any time the Member State imposing the duties to review the application of the duties against the relevant exports;*
  - (d) *if an applicant for review of anti-dumping duties applied to exports mentioned in sub-paragraph (c) is not satisfied that the competent authorities in the importing Member States have given adequate consideration to the request for review within 30 days of the receipt of the request, the applicant may refer the request to COTED which shall recommend to the Member State maintaining the anti-dumping duty to take the appropriate action if it is satisfied that the application for review is justified;*
  - (e) *in the event that investigations have been concluded and the evidence proves that injury has been caused, a Member State may impose anti-dumping duties retroactively to account for the entire period during which provisional anti-dumping duties have been in force preceding the date of imposition of definitive anti-dumping duties. If, however, the definitive anti-dumping duties are higher than the provisional duties paid or payable or the amount estimated for the purpose of security, the difference shall not be collected. If the definitive duties are lower than the provisional duties payable, or the amount estimated for the purpose of security, the difference shall be reimbursed or the duties recalculated as the case may require;*
  - (f) *if however the investigations reveal that injury was not caused by dumped imports as alleged, but the provisional measures have materially retarded exports of the Member State complained against, COTED shall, upon application by such State, assess the effects of the provisionally applied duties and determine the nature and extent of compensation which is warranted and require the Member State applying provisional measures to withdraw the measure and pay compensation in accordance with its assessment;*
  - (g) *a Member State may accept a voluntary price guarantee from an exporter who is believed to be exporting dumped products, to raise the price of the export sufficiently to forestall a serious threat of injury or to eliminate injury*

*caused by dumped imports;*

- (h) if a Member State has initiated investigations based on evidence of dumped imports and the Member State had imposed provisional measures, the Member State may, upon the receipt of a voluntary guarantee from the exporter referred to in sub-paragraph (g), promptly suspend the investigation and withdraw any provisional measures it may have imposed as appropriate.*

*4. COTED shall keep under review all anti-dumping measures imposed by the Member States and shall ensure that the Member States observe the conditions and the timetable for review and withdrawal of anti-dumping measures that it may have authorised.*

*5. The Member States undertake to co-operate in the establishment of harmonised anti-dumping legislation and procedures in accordance with the provisions of this Protocol.*

## **CHAPTER SIX TRANSPORT POLICY**

### **ARTICLE 134**

#### **Objectives of the Community Transport Policy**

*1. The goal of the Community Transport Policy shall be the provision of adequate, safe and internationally competitive transport services for the development and consolidation of the CSME.*

*2. In fulfilment of the goal set out in paragraph 1 of this Article, the Community shall pursue the following objectives:*

- (a) the organisation of efficient, reliable, affordable transport services throughout the Community;*
- (b) the development and expansion of air and maritime transport capabilities in the Community;*
- (c) the promotion of co-operative arrangements for the provision of transport services;*
- (d) the development of efficient internationally competitive ancillary transport services;*
- (e) the development of human resources for employment in all areas and at all levels of the transport sector;*
- (f) the implementation of standards for the development of safe road, riverine, sea and air transport services.*