

## **INSDIP**

### **Protocol Amending the Treaty Establishing the Caribbean Community (Protocol VIII: Competition Policy, Consumer Protection, Dumping and Subsidies)**

#### **PREAMBLE**

The States parties to the Treaty Establishing the Caribbean Community (hereinafter referred to as "**the Member States**"):

**Noting** that competition policy has become more important with the deepening of the integration arrangements and the liberalisation of the markets of the Region;

**Aware** that the benefits expected from the establishment of the CARICOM Single Market and Economy (CSME) may be frustrated by anti-competitive business conduct whose object or effect is to prevent, restrict, or distort competition.

**Determined** to promote and maintain competition through the establishment and enforcement of applicable laws and rules.

**Determined further** to promote consumer interest and welfare;

**Conscious** that the provision of subsidies by Member States and the practice of dumping could have an adverse impact on the promotion and development of competition in the CSME;

**Convinced** that the application and convergence of national competition policies and the cooperation of competition authorities in the Community would promote the objectives of the CSME,

**Have Agreed** as follows:

#### **PART I PRELIMINARY**

##### **Article I Use of Terms**

1. In this Protocol, unless the context otherwise requires:

"**anti-competitive business conduct**" has the meaning assigned to it in Article 30(i);

"**business**" means any activity carried on for gain or reward or in the course of which goods or services are produced, manufactured or supplied;

**"Commission"** means the Competition Commission established by Article 30(c);

**"Community"** includes the CARICOM Single Market and Economy to be established by the Protocols amending or replacing the Caribbean Common Market Annex to the Treaty;

**"Community Council of Ministers"** (hereinafter referred to as "the Community Council") means the Organ of the Community so named in Article 8 (1) of the Treaty;

**"competent authority"** means the authority legally authorised to perform a function;

**"Conference"** means the Conference of Heads of Government of the Community;

**"Council for Trade and Economic Development (COTED)"** means the Organ of the Community so named in Article 6(2)(a) of the Treaty, and for the purposes of this Protocol shall be deemed to include the interim Committee established pursuant to Rule 34 of the Rules of Procedure of the COTED;

**"Court"** means the Court established by Article III of the Agreement Establishing the Caribbean Court of Justice;

**"enterprise"** means any person or type of organisation involved in the production of or the trade in goods, or the provision of services (other than a non-profit organisation);

**"goods"** means all kinds of property other than real property, money, securities or choses in action;

**"Regional Judicial and Legal Services Commission"** means the Commission established by Article V of the Agreement Establishing the Caribbean Court of Justice;

**"rules of competition"** includes the rules set out in Articles 30(i), 30(h) and 30(k) of this Protocol and any other rules made pursuant to Article 30(b) 1(a)(i);

**"Secretary-General"** means the Secretary-General of the Community;

**"services"** means services provided against remuneration other than wages in an approved sector and "the provision of services" means the supply of services:

(a) from the territory of one Member State into the territory of another Member State;

(b) in the territory of one Member State to a service consumer of another Member State;

(c) by a service supplier of one Member State through commercial presence in the territory of another Member State; and

(d) by a service supplier of one Member State through the presence of natural persons of a Member State in the territory of another Member State;

**"subsidies"** includes the subsidies set out in Schedule V of Protocol IV - Trade Policy and shall apply only in relation to goods;

**"trade"** includes any business, industry, profession or occupation relating to the supply or acquisition of goods or services;

**"Treaty"** means the Treaty Establishing the Caribbean Community signed at Chaguaramas on the 4th day of July 1973 and includes any amendments thereto which take effect either provisionally or definitively (hereinafter referred to as "the Treaty").

2. Where in this Protocol there is a requirement for notification to be given, such notification shall be in writing.

## **Article II Amendment**

Replace Articles 19 and 30 of the Caribbean Common Market Annex to the Treaty with the following:

### **Article 30 Scope of Parts I, II and III**

The rules of competition shall not apply to -

(a) combinations or activities of employees for their own reasonable protection as employees;

(b) arrangements for collective bargaining on behalf of employers or employees for the purpose of fixing terms and conditions of employment;

(c) business conduct within the meaning of Article 30(i) duly notified to the COTED in accordance with Article 30(b);

(d) negative clearance rulings within the meaning of Article 30(l) or exemptions within the meaning of Articles 30(m) and 30(o);

(e) activities of professional associations designed to develop or enforce professional standards of competence reasonably necessary for the protection of the public and approved by the Commission.

### **Article 30(a) Objectives of Community Competition Policy**

1. The goal of the Community Competition Policy shall be to ensure that the benefits expected from the establishment of the CARICOM Single Market and Economy (CSME) are not frustrated by anti-competitive business conduct.

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

(a) promote and maintain competition and enhance economic efficiency in production, trade and commerce;

(b) subject to the Treaty, prohibit anti-competitive business conduct which prevents, restricts or distorts competition or which constitutes the abuse of a dominant position in the market;

(c) promote consumer welfare and protect consumer interest;

**Article 30(b)**  
**Implementation of Community Competition Policy**

1. In order to achieve the objectives of the Community Competition Policy,

(a) the Community shall:

(i) subject to the Treaty, establish appropriate norms and institutional arrangements to prohibit and penalise anti-competitive business conduct;

(ii) establish and maintain information systems to enable enterprises and consumers to be kept informed about the operation of markets within the CSME;

(b) Member States shall:

(i) take the necessary legislative measures to ensure consistency and compliance with the rules of competition and provide penalties for anti-competitive business conduct;

(ii) provide for the dissemination of relevant information to facilitate consumer choice;

(iii) establish and maintain institutional arrangements and administrative procedures to enforce competition laws;

(iv) take effective measures to ensure access by nationals of other Member States to competent enforcement authorities including the courts on an equitable, transparent and non-discriminatory basis.

2. A Member State shall establish and maintain a national competition authority for the purpose of facilitating the implementation of the rules of competition.

3. A Member State shall require its national competition authority to:

(a) co-operate with the Commission in achieving compliance with the rules of competition;

(b) investigate any allegations of anti-competitive business conduct being allegations referred to the authority by the Commission or another Member State .

(c) cooperate with other national competition authorities in the detection and prevention of anti-competitive business conduct, and the exchange of information relating to such conduct.

4. Nothing in this Article shall be construed as requiring a Member State to disclose confidential information, the disclosure of which would be prejudicial to the public

interest or to the legitimate commercial interests of enterprises, public or private. Confidential or proprietary information disclosed in the course of an investigation shall be treated on the same basis as that on which it was provided.

5. Within 24 months of the entry into force of this Protocol, Member States shall notify the COTED of existing legislation, agreements and administrative practices inconsistent with the provisions of this Protocol. Within 36 months of entry into force of this Protocol, the COTED shall establish a programme providing for the termination of such legislation, agreements and administrative practices.

## **PART II COMPETITION COMMISSION**

### **Article 30 (c) Establishment of the Competition Commission**

For the purposes of implementation of the Community Competition Policy, there is hereby established a Competition Commission (hereinafter called "the Commission") having the composition, functions and powers hereinafter set forth.

### **Article 30(d) Composition of the Commission**

1. The Commission shall comprise seven members appointed by the Regional Judicial and Legal Services Commission to serve on the Commission. The Regional Judicial and Legal Services Commission shall appoint a Chairman from among the members so appointed. Notwithstanding the foregoing, the Chairman and Members of the Commission shall be appointed by Conference on the recommendation of the COTED as long as the Parties to the Agreement Establishing the Caribbean Court of Justice are less than seven.
2. The Commission shall comprise persons, collectively having expertise or experience in commerce, finance, economics, law, competition policy and practice, international trade and such other areas of expertise or experience as may be necessary.
3. A Commissioner shall be appointed for a term of five years and such appointment may be renewed for a further period of not more than five years as determined by the Regional Judicial and Legal Services Commission.
4. A Commissioner may be removed from office only for inability to perform the functions of his office or for misbehaviour.
5. A Commissioner shall be removed only on the vote of the Judicial and Legal Services Commission that represents not less than three-quarters of all the Members of the Commission.
6. A Commissioner may at any time resign the office of Commissioner by writing under his hand addressed to the Chairman of the Judicial and Legal Services Commission.

7. A Commissioner shall not enter upon the duties of the office unless he has taken and subscribed before the Chairman of the Judicial and Legal Services Commission, the Oath of Office set out in [Annex V](#) to this Protocol.

**Article 30(e)**  
**Functions of the Commission**

1. The Commission shall:

(a) apply the rules of competition in respect of anti-competitive cross-border business conduct;

(b) promote competition in the Community and co-ordinate the implementation of the Community Competition Policy; and

(c) perform any other function conferred on it by any competent body of the Community.

2. In discharging the functions set out in paragraph 1, the Commission shall:

(a) monitor anti-competitive practices of enterprises operating in the CSME, and investigate and arbitrate cross-border disputes;

(b) keep the Community Competition Policy under review and advise and make recommendations to the COTED to enhance its effectiveness;

(c) promote the establishment of institutions and the development and implementation of harmonised competition laws and practices by Member States to achieve uniformity in the administration of applicable rules;

(d) review the progress made by Member States in the implementation of the legal and institutional framework for enforcement;

(e) co-operate with competent authorities in Member States;

(f) provide support to Member States in promoting and protecting consumer welfare;

(g) facilitate the exchange of relevant information and expertise; and

(h) develop and disseminate information about competition policy, and consumer protection policy.

3. The Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its functions to one or more of its members.

**Article 30(f)**  
**Powers of the Commission**

1. Subject to Articles 30(g) and 30(h), the Commission may, in respect of cross-border transactions or transactions with cross-border effects, monitor, investigate, detect, make

determinations or take action to inhibit and penalise enterprises whose business conduct prejudices trade or prevents, restricts or distorts competition within the CSME.

2. The Commission may, in accordance with applicable national laws, in the conduct of its investigations:

(a) secure the attendance of any person before it to give evidence;

(b) require the discovery or production of any document or part thereof; and

(c) take such other action as may be necessary in furtherance of the investigation.

3. The Commission may, on the basis of its investigations, make determinations regarding the compatibility of business conduct with the rules of competition and other related provisions of the Treaty.

4. The Commission shall, to the extent required to remedy or penalise anti-competitive business conduct referred to in Article 30(i):

(a) order the termination or nullification as the case may require, of agreements, conduct, activities or decisions prohibited by Article 30(i);

(b) direct the enterprise to cease and desist from anti-competitive business conduct and to take such steps as are necessary to overcome the effects of abuse of its dominant position in the market, or any other business conduct inconsistent with the principles of fair competition set out in this Protocol;

(c) order payment of compensation to persons affected; and

(d) impose fines for breaches of the rules of competition.

5. The Commission may enter into such arrangements for the provision of services as may be necessary for the efficient performance of its functions.

6. Member States shall enact legislation to ensure that determinations of the Commission are enforceable in their jurisdictions.

7. The Commission may establish its own rules of procedure.

**Article 30(g)**  
**Determination of Anti-Competitive Business Conduct:**  
**Procedure of Commission on Request**

1. A Member State may request an investigation referred to in paragraph 1 of Article 30(f) where it has reason to believe that business conduct by an enterprise located in another Member State prejudices trade and prevents, restricts or distorts competition in the territory of the requesting Member State.

2. Where the COTED has reason to believe that business conduct by an enterprise in the CSME prejudices trade and prevents, restricts or distorts competition within the CSME

and has or is likely to have cross-border effects, the COTED may request an investigation referred to in paragraph 1 of Article 30(f).

**3.** Requests under paragraphs 1 and 2 shall be in writing and shall disclose sufficient information for the Commission to make a preliminary assessment whether it should proceed with the investigation.

**4.** Upon receipt of a request mentioned in paragraph 3, the Commission shall consult with the interested parties and shall determine on the basis of such consultations whether:

(a) the investigation is within the jurisdiction of the Commission; and

(b) the investigation is justified in all the circumstances of the case.

**5.** The consultations shall be concluded within 30 days of the date of receipt of the request for investigation, unless the parties agree to continue the consultations for a longer period.

**6.** Where the Commission decides to conduct the investigation, the Commission shall:

(a) notify the interested parties and the COTED;

(b) complete the investigation within 120 days from the date of receipt of the request for the investigation; and

(c) where the circumstances so warrant, extend the time period for completion of the investigation and notify the interested Parties.

**7.** Where the Commission decides to conduct an enquiry following an investigation, the Commission shall afford any party complained of the opportunity to defend its interest.

**8.** At the conclusion of an enquiry, the Commission shall notify the interested parties of its determination.

**9.** Where the Commission determines that a party has engaged in anti-competitive business conduct, it shall also require the party to take the action necessary to remove the effects of the anti-competitive business conduct.

**10.** Where a specific course of action is required under paragraph 9, the enterprise concerned shall take the appropriate course of action within 30 days of the date of notification. If the concerned enterprise cannot comply, it shall notify the Commission and request an extension.

**11.** If the enterprise cannot comply within the time period specified and fails to inform the Commission, the Commission may apply to the Court for an order.

**12.** A party which is aggrieved by a determination of the Commission under paragraph 4 of Article 30(f) in any matter may apply to the Court for a review of that determination.



**Article 30(h)**  
**Determination of Anti-Competitive Business Conduct;**  
**Procedure of Commission *Proprio Motu***

1. Where the Commission has reason to believe that business conduct by an enterprise in the CSME prejudices trade and prevents, restricts, or distorts competition within the CSME and has cross-border effects, the Commission shall request the competent national authority to undertake a preliminary examination of the business conduct of the enterprise.
2. Where a request is made under paragraph 1, the national authority shall examine the matter and report its findings to the Commission within such time as may be determined by the Commission.
3. Where the Commission is not satisfied with the outcome of its request, the Commission may initiate its own preliminary examination into the business conduct of the enterprise referred to in paragraph 1.
4. Where the findings of the preliminary examination under paragraphs 2 and 3 require investigation, the Commission and the Member State concerned shall hold consultations to determine and agree on who should have jurisdiction to investigate.
5. If there is a difference of opinion between the Commission and the  
  
Member State regarding the nature and effects of the business conduct or the jurisdiction of the investigating authority, the Commission shall:
  - (a) cease any further examination of the matter; and
  - (b) refer the matter to the COTED for its decision.
6. Nothing in this Article shall prejudice the right of the Member State to initiate proceedings before the Court at any time.
7. Where there is a finding that the Commission has jurisdiction to investigate the matter, the Commission shall follow the procedures set out in paragraphs 5, 6, 7 and 8 of Article 30(g).

**PART III**  
**RULES OF COMPETITION**

**Article 30(i)**  
**Prohibition of Anti-Competitive Business Conduct**

1. A Member State shall, within its jurisdiction, prohibit as being anti-competitive business conduct, the following:
  - (a) agreements between enterprises, decisions by associations of enterprises, and concerted practices by enterprises which have as their object or effect the prevention, restriction or distortion of competition within the Community;

**(b)** actions by which an enterprise abuses its dominant position within the Community;  
or

**(c)** any other like conduct by enterprises whose object or effect is to frustrate the benefits expected from the establishment of the CSME.

**2.** Anti-competitive business conduct within the meaning of paragraph 1 includes the following:

**(a)** the direct or indirect fixing of purchase or selling prices,

**(b)** the limitation or control of production, markets, investment or technical development;

**(c)** the artificial dividing up of markets or restriction of supply sources;

**(d)** the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby placing them at a competitive disadvantage;

**(e)** making the conclusion of a contract subject to the acceptance by the other party to the contract of additional obligations which, by their nature or according to commercial practice, have no connection with the subject matter of the contract;

**(f)** unauthorised denial of access to networks or essential infrastructure;

**(g)** predatory pricing;

**(h)** price discrimination;

**(i)** loyalty discounts or concessions;

**(j)** exclusionary vertical restrictions; and

**(k)** bid-rigging.

**3.** Subject to Article 30, a Member State shall ensure that all agreements and decisions within the meaning of paragraph 1 of this Article shall be null and void within its jurisdiction.

**4.** An enterprise shall not be treated as engaging in anti-competitive business conduct if it establishes that the activity complained of:

**(a)** contributes to:

**(i)** the improvement of production or distribution of goods and services; or

**(ii)** the promotion of technical or economic progress while allowing consumers a fair share of the resulting benefit;

(b) imposes on the enterprises affected only such restrictions as are indispensable to the attainment of the objectives mentioned in sub-paragraph (a); or

(c) does not afford the enterprise engaged in the activity the possibility of eliminating competition in respect of a substantial part of the market for goods or services concerned.

#### **Article 30(j)** **Determination of Dominant Position**

For the purposes of this Protocol:

(a) an enterprise holds a dominant position in a market if by itself or together with an interconnected company, it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors;

(b) any two companies shall be treated as interconnected companies if one of them is a subsidiary of the other or both of them are subsidiaries of the same parent company.

#### **Article 30(k)** **Abuse of a Dominant Position**

1. Subject to paragraph 2 of this Article, an enterprise abuses its dominant position in a market if it prevents, restricts or distorts competition in the market and, in particular but without prejudice to the generality of the foregoing, it:

(a) restricts the entry of any enterprise into a market;

(b) prevents or deters any enterprise from engaging in competition in a market;

(c) eliminates or removes any enterprise from a market;

(d) directly or indirectly imposes unfair purchase or selling prices or other restrictive practices;

(e) limits the production of goods or services for a market to the prejudice of consumers;

(f) as a party to an agreement, makes the conclusion of such agreement subject to acceptance by another party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the agreement;

(g) engages in any business conduct that results in the exploitation of its customers or suppliers,

so as to frustrate the benefits expected from the establishment of the CSME.

2. In determining whether an enterprise has abused its dominant position, consideration shall be given to:

- (a) the relevant market defined in terms of the product and the geographic context;
- (b) the concentration level before and after the relevant activity of the enterprise measured in terms of annual sales volume, the value of assets and the value of the transaction;
- (c) the level of competition among the participants in terms of number of competitors, production capacity and product demand;
- (d) the barriers to entry of competitors; and
- (e) the history of competition and rivalry between participants in the sector of activity.

3. An enterprise shall not be treated as abusing its dominant position if it is established that:

- (a) its behaviour was directed exclusively to increasing efficiency in the production, provision or distribution of goods or services or to promoting technical or economic progress and that consumers were allowed a fair share of the resulting benefit;
- (b) the enterprise reasonably enforces or seeks to enforce a right under or existing by virtue of a copyright, patent, registered trade mark or design; or
- (c) the effect or likely effect of its behaviour on the market is the result of superior competitive performance of the enterprise concerned.

#### **Article 30(l) Negative Clearance Rulings**

1. In any case where a Member State is uncertain whether business conduct is prohibited by paragraph 1 of Article 30(i), such a Member State may apply to the Commission for a ruling on the matter. If the Commission determines that such conduct is not prohibited by paragraph 1 of Article 30(i), it shall issue a negative clearance ruling to this effect.

2. A negative clearance ruling shall be conclusive of the matters stated therein in any judicial proceedings in the Community.

#### **Article 30(m) De Minimis Rule**

The Commission may exempt from the provisions of this Part any business conduct referred to it if it considers that the impact of such conduct on competition and trade in the CSME is minimal.

**Article 30(n)**  
**Powers of the COTED Respecting Community**  
**Competition Policy and Rules**

Subject to the Treaty, the COTED shall develop and establish appropriate policies and rules of competition within the Community including special rules for particular sectors.

**Article 30(o)**  
**Exemptions**

1. Where the COTED determines, pursuant to Article 30(n), that special rules shall apply to specific sectors of the Community, it may suspend or exclude the application of Article 30(i) to such sectors pending adoption of the relevant rules.
2. The COTED may, on its own initiative or pursuant to an application by a Member State in that behalf, exclude or suspend the application of Article 30(i) to any sector or any enterprise or group of enterprises in the public interest.

**PART IV**  
**DUMPING AND SUBSIDIES**

**Article 30(p)**  
**Determination of a Subsidy**

For the purposes 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) 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; or
- (d) a government makes payments to a funding mechanism, or directs or entrusts to a private body the conduct of activities mentioned in sub-paragraphs (a), (b) and (c) which are normally conducted by governments; or
- (e) there is any form of income or price support,

and a benefit is thereby conferred.

**Article 30(p)(bis)**  
**Types of Subsidies**

1. Member States may take action against products from another Member State which benefit from a subsidy within the meaning of Article 30(p) being -

(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 Protocol a determination of whether a subsidy as defined in Article 30(p) is specific shall be governed by the following principles:

(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 Protocol as "certain enterprises") within the jurisdiction of the granting authority, the following principles 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 Protocol;

(c) any subsidy falling under the provisions of Article 30(p)(quater) 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 30(p)(ter)**  
**Entitlement to Take Action**  
**Against Subsidised Products**

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

(a) the products have benefitted from a prohibited subsidy;

(b) the subsidy is specific and has caused any of the effects referred to in Article 30(t); and

(c) the subsidy is specific and does not conform to the provisions of Article 30(z)

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 30(p)(bis)) 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 30(p)(bis);

(c) notified the COTED of the alleged subsidisation based on preliminary investigations and failure of consultations; and

(d) received authorisation from the 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](#) to this Protocol.

**Article 30(p)(quater)**  
**Prohibited Subsidies**

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

2. The following subsidies within the meaning of Article 30(p)(bis) 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 5 of Protocol IV - Trade Policy; 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 30(p)(quinquies) 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 its competent authority where the industry has reason to believe that a prohibited subsidy referred to in Article 30(p)(quater) 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. Wherever the term "domestic industry" is used in this Protocol, it shall mean domestic industry as defined in [Annex 1](#). A request for investigation by the domestic industry under this Article or under Article 30(u) or 30(aa) be accompanied by information set out in the Illustrative List at [Annex 111\(a\)](#).

### **Article 30(p)(sex) Request for Consultations Relating to Prohibited Subsidies**

1. Whenever a Member State has reason to believe, pursuant to Article 30(p)(quater) 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 the 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 30(q)**  
**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 30(p)(sex), 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 the 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 the 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 30(p)(quinquies), countermeasures to forestall injury or to prevent further injury to its domestic industry.

**Article 30(r)**  
**Investigation by COTED of**  
**Prohibited Subsidies**

1. Whenever the COTED decides to carry out an investigation pursuant to Article 30(q), such an investigation by the COTED shall proceed as expeditiously as possible. The COTED may appoint competent experts to advise whether the subsidy falls to be classified as a prohibited subsidy, in which case the COTED shall set a time limit for the examination of the evidence by the competent experts. The 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 30(q) 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 the COTED shall adopt the recommendations of the report.

3. If the 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 30(s), require the offending Member State to withdraw the subsidy within a specified time-frame.

Where the offending Member State fails to comply, the COTED shall authorise the aggrieved Member State to take counter-measures on the products which benefit from such a subsidy.

**Article 30(s)**  
**Withdrawal of Prohibited Subsidies**

1. Notwithstanding the investigation confirming the existence of a prohibited subsidy in paragraph 3 of Article 30(r), the COTED shall not impose a requirement for 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) 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, 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 the 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, the 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 Protocol 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 30(t)**  
**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 of:

- (a) the total ad valorem subsidisation of a product exceeding 5 per cent;
- (b) subsidies to cover operating losses sustained by an industry;
- (c) subsidies to cover operating losses sustained by an enterprise, other than one-time measures which are non-recurrent and cannot be repeated for that enterprise and which are given merely to provide time for the development of long-term solutions and to avoid acute social problems; or
- (d) 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 V.

**Article 30(u)**  
**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 30(t) 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 2 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.

#### **Article 30(v)**

##### **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 30(p) 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 30(p)(bis), the first-mentioned Member State may approach the Member States 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, 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 30(w)**

##### **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 the 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 the 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 30(x)**  
**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 30(w), the 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 30(y)**  
**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 the COTED, and the COTED is satisfied:

(a) of the existence of a subsidy within the meaning of Article 30(t); and

(b) that the subsidy has caused injury to the enterprise in the complaining Member State; or

(c) that the subsidy has impaired or nullified benefits expected of the complaining 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, the 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 the 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 the 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 the COTED may prescribe.

**Article 30(z)**  
**Types of Subsidies Causing Serious Adverse Effects**

**1.** 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 30(p)(bis); or

(b) subsidies which are specific within the meaning of Article 30(p)(bis) but which satisfy all of the conditions set out in this sub-paragraph hereunder:

(i) subsidies which are not specific, in terms of the granting authority or the enabling legislation it applies -

(a) not explicitly limiting access to such subsidies by certain enterprises;

(b) establishing objective criteria or conditions governing the eligibility for and the amount of, a subsidy where eligibility is automatic and such criteria and conditions are strictly adhered to; or

(c) not limiting a subsidy programme or its predominant or disproportionate use to certain enterprises;

(ii) 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:

(a) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);

(b) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;

(iii) subsidies granted to assist disadvantaged regions within the territory of a Member State given pursuant to a general framework of regional development and non-specific within eligible regions provided that:

(a) each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identify;

(b) 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;

(c) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors:

(i) 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;

(ii) unemployment rate, which must be at least 110 per cent of the average for the territory concerned;

(iv) 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 -

(a) are a one-time non-recurring measure; and

(b) are limited to 20 per cent of the cost of adaptation; and

(c) do not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms; and

(d) are directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and

(e) are available to all firms which can adopt the new equipment and/or production processes.

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

**Article 30(aa)**  
**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 30(z).

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 parties 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 parties to enable them to defend their interests

**Article 30(bb)**  
**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 benefitted from subsidies within the meaning of Article 30(z) 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 cooperate, the aggrieved Member State may refer the matter to the COTED and request the COTED to carry out an investigation.

**Article 30(cc)**  
**Investigation by COTED of Subsidies**  
**Causing Serious Adverse Effects**

1. The referral of the matter to the COTED for an investigation shall not prevent the aggrieved Member State from imposing on a provisional basis, which shall not be sooner than 60 days from the date of initiation of the preliminary investigation referred to in Article 30(aa), countermeasures to forestall or prevent further adverse effects.

2. If the COTED is satisfied that the investigation requested is justified, the 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 the COTED demonstrated that the subsidised imports caused serious adverse effects to the domestic industry of the aggrieved Member State requesting the investigation, the 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 30(dd)**  
**Consequences of Failure to Eliminate or**  
**Establish Adverse Effects of Subsidies**

1. If the offending Member State fails to implement the recommendations of the COTED within 6 months of the date of issue of the report referred to in paragraph 2 of Article 30(cc), the 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 30(z), 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, the 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 30(ee)**  
**Imposition of Provisional Measures**  
**and Countervailing Duties**

1. Notwithstanding anything to the contrary in this Protocol, 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 Protocol, a public notice has been given to that effect and interested parties 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/or undertaken, the 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 bond equal to the amount of the provisionally calculated amount of subsidisation;

(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 the 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 the 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 benefitting 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 the 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 the COTED and the determination and imposition of definitive countervailing duties shall be governed by the relevant provisions of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures.

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

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

**Article 30(ff)**  
**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 30(gg)**  
**Determination of Dumping**

1. For the purposes of this Protocol, a product is to be considered to be dumped, that is to say, 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 Protocol "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 30(hh) Determination of Injury**

**1.** For the purpose of Article 30(ff), 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:

(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 30(ii)**  
**Definition of Domestic Industry**

1. For the purposes of this Protocol, the term "domestic industry" shall mean "domestic industry" as defined in [Annex I](#).

**Article 30(jj)**  
**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 whom 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 the 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 Protocol, "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 the COTED shall include but shall not necessarily be limited to the information indicated in the Illustrative List attached to this Protocol as [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 the 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 30(kk) 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 30(jj), 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 30(II)**  
**Conduct of Investigations leading to**  
**Definitive Determination of Injury**

1. Whenever the COTED receives a request for investigation, referred to it under paragraph 9 of Article 30(jj), the 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 the 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 either initiated by a competent authority of a Member State or undertaken by the 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 the COTED, as the case may be.

3. 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 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 Single Market and Economy 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 the 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 30(mm)**  
**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 the 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 the 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 30(nn)**  
**Imposition of Anti-Dumping Measures**

1. The 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 cooperate 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, the 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. The COTED may authorise all affected Member States to impose similar anti-dumping duties for such time and under such conditions as the COTED may prescribe;
  - (b) in the imposition of anti-dumping duties, 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 the 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, the 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. The COTED shall keep under review all anti-dumping measures imposed by Member States and shall ensure that Member States observe the conditions and the timetable for review and withdrawal of anti-dumping measures that it may have authorised.

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

**PART V**  
**SUBSIDIES TO AGRICULTURE**

**Article 30(oo)**  
**Definition**

1. For the purposes of this Protocol an agricultural subsidy is defined as 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 or resource poor producers;

(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 Chapters 1-24 of the Harmonised System (HS) of Product Classification, not including fish and fish products, forestry and forest products, and including the products listed in [Annex IV](#).

**Article 30(pp)**  
**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, consistent with their obligations under international agreements and subject to the provisions of this Protocol.

**Article 30(qq)**  
**Obligations**

1. Notwithstanding the right to grant subsidies indicated in Article 30(pp), a Member State shall not use such subsidies in a manner to distort the production of and intraregional trade in the product or products benefitting 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, that 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 30(rr) 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 30(qq), 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 30(qq), 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 30(qq), 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 30(ss) Discipline**

1. Each Member State shall ensure that any subsidy in favour of agricultural producers conforms with the provisions of Article 30(qq) and Article 30(rr).

2. Any subsidy in favour of agricultural producers that cannot be shown to satisfy the provisions in Article 30(qq) and Article 30(rr), shall be subject to the provisions of Article 30(u) to Article 30(y) inclusive.

3. A subsidies programme undertaken in conformity with the provisions of this Part shall be subject to action based on Article 30(u) to 30(y) 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) nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;
- (ii) a significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importations;
- (iii) sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased subsidized exports to the importing country's market, taking into account the availability of other export markets to absorb any additional exports;
- (iv) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports;
- (v) inventories of the product being investigated.

**Article 30(tt)**  
**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 Protocol, the aggrieved Member State shall exercise due restraint in initiating any action in retaliation.

**Article 30(uu)**  
**Notification**

1. Member States shall notify the COTED of any subsidy programme pursuant to Article 30(oo) 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 30(qq) and Article 30(rr).
3. Any Member State may bring to the attention of the COTED any measure which it considers ought to have been notified by another Member State.

**Article 30(uu)(bis)**  
**Review**

1. The 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 Member States, as well as on the basis of any other documentation which the COTED may request to be prepared to facilitate its review.
2. Any Member State may bring to the attention of the COTED any measure which it considers ought to have been notified by another Member State.

**PART VI**  
**CONSUMER PROTECTION**

**Article 30(vv)**  
**Promotion of Consumer Interests**  
**in the Community**

**1.** Member States shall promote the interests of consumers in the Community by appropriate measures that:

- (a) provide for the production and supply of goods and the provision of services to ensure the protection of life, health and safety of consumers;
- (b) ensure that goods supplied and services provided in the CARICOM Single Market and Economy (CSME) satisfy regulations, standards, codes and licensing requirements established or approved by competent bodies in the Community;
- (c) provide, where the regulations, standards, codes and licensing requirements referred to in paragraph (b) do not exist, for their establishment and implementation;
- (d) encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (e) encourage fair and effective competition in order to provide consumers with greater choice among goods and services at lowest cost;
- (f) promote the provision of adequate information to consumers to enable the making of informed choices;
- (g) ensure the availability of adequate information and education programmes for consumers and suppliers;
- (h) protect consumers by prohibiting discrimination against producers and suppliers of goods produced in the Community and against service providers who are nationals of other Member States of the Community;
- (i) encourage the development of independent consumer organisations;
- (j) provide adequate and effective redress for consumers.

**2.** For the purpose of this Part,

"consumer" means any person:

- (a) to whom goods are supplied or intended to be supplied in the course of business; or
- (b) for whom services are supplied or intended to be supplied in the course of business, carried on by a supplier or potential supplier and who does not receive the goods or services in the course of a business carried on by him.

**Article 30(ww)**  
**Protection of Consumer Interests**  
**in the Community**

Member States shall enact harmonised legislation to provide, inter alia:

- (a) for the fundamental terms of a contract and the implied obligations of parties to a contract for the supply of goods or services;
- (b) for the prohibition of the inclusion of unconscionable terms in contracts for the sale and supply of goods or services to consumers;
- (c) for the prohibition of unfair trading practices particularly such practices relating to misleading or deceptive or fraudulent conduct;
- (d) for the prohibition of production and supply of harmful and defective goods and for the adoption of measures to prevent the supply or sale of such goods including measures requiring the removal of defective goods from the market;
- (e) that the provision of services is in compliance with the applicable regulations, standards, codes and licensing requirements;
- (f) that goods supplied to consumers are labelled in accordance with standards and specifications prescribed by the competent authorities;
- (g) that hazardous or other goods whose distribution and consumption are regulated by law are sold or supplied in accordance with applicable regulations;
- (h) that goods or materials the production or use of which is likely to result in potentially harmful environmental effects, are labelled and supplied in accordance with applicable standards and regulations;
- (i) that producers and suppliers are liable for defects in goods and for violation of product standards and consumer safety standards which occasion loss or damage to consumers;
- (j) that violations of consumer safety standards by producers / suppliers are appropriately sanctioned and relevant civil or criminal defences to such violations are available to defendants.

**Article 30(xx)**  
**Action by the Commission to Provide Support in the**  
**Promotion and Protection of Consumer Welfare**

1. The Commission shall, for the purpose of providing support to Member States in the enhancement of consumer education and consumer welfare:

- (a) promote in the Community the elaboration, publication and adoption of fair contract terms between suppliers and consumers of goods and services produced or traded in the CARICOM Single Market and Economy;

(b) take such measures as it considers necessary to ensure that Member States discourage and eliminate unfair trading practices, including misleading or deceptive conduct, false advertising, bait advertising, referral selling and pyramid selling;

(c) promote in Member States product safety standards as part of a programme of consumer education in order to assist the consumer to make informed choices concerning the purchase of consumer goods;

(d) keep under review the carrying on of commercial activities in Member States which relate to goods supplied to consumers in such States or produced with a view to their being so supplied, or which relate to services supplied for consumers with a view to identifying practices which may adversely affect the interest of consumers;

(e) educate and guide consumers generally in the practical resolution of their problems and in the best use of their income and credit, using such techniques and means of communications as are available;

(f) confer, on request, with consumer organisations of Member States and offer such advice and information as may be appropriate for the resolution of their consumer problems;

(g) establish the necessary co-ordination with government agencies and departments for the effective education and guidance of consumers having regard to the programmes, activities and resources of each agency or department;

(h) conduct research and collect and collate information in respect of matters affecting the interests of consumers;

(i) compile, evaluate and publicise enactments for the protection of consumers in such States and recommend to the COTED the enactment of legislation considered necessary or desirable for the protection of consumers;

(j) promote, after consultation with the competent standardising agency and other public and private agencies or organisations, the establishment of quality standards for consumer products;

(k) promote and monitor, after consultation with relevant agencies and departments of Government, the enforcement of legislation affecting the interests of consumers, including, but not limited to, legislation relating to weights and measures, food and drugs adulteration, the control of standards and price controls;

(l) make recommendations to the COTED for the enactment of legislation by the Member States for the effective enforcement of the rights of consumers.

## **2. The Commission shall:**

(a) draw to the attention of the COTED business conduct by enterprises which impact adversely on consumer welfare;

(b) collaborate with competent Organs of the Community to promote consumer education and consumer welfare.

**ARTICLE III  
Signature**

This Protocol shall be open for signature by any Member State.

**ARTICLE IV  
Ratification**

This Protocol shall be subject to ratification by signatory States in accordance with their respective constitutional procedures. Instruments of ratification shall be deposited with the Secretariat which shall transmit certified copies to the Government of each Member State.

**ARTICLE V  
Entry Into Force**

This Protocol shall enter into force one month after the date on which the last instrument of ratification is deposited with the Secretariat.

**ARTICLE VI  
Provisional Application**

1. A Member State may, upon the signing of this Protocol or at any later date before it enters into force, declare its intention to apply it provisionally.
2. Upon such declaration, the provisions of this Protocol shall be applied provisionally pending its entry into force in accordance with Article V.

**IN WITNESS WHEREOF** the undersigned duly authorised in that behalf by their respective Governments have executed this Protocol

**DONE** at -----on the ----- day  
of-----2000.

Signed by  
for the Government of Antigua and Barbuda on the  
day of 2000 at

Signed by  
for the Government of Barbados on the day of  
2000 at

Signed by  
For the Government of Belize on the day of  
2000 at



Signed by  
for the Government of the Commonwealth of Dominica on the  
day of 2000

Signed by  
for the Government of Grenada on the day of  
2000 at

Signed by  
for the Government of the Co-operative Republic of Guyana on  
the day of 2000 at

Signed by  
for the Government of Jamaica on the day of  
2000 at

Signed by  
for the Government of Montserrat on the day of  
2000 at

Signed by  
for the Government of St. Kitts and Nevis on the day of  
2000 at

Signed by  
for the Government of Saint Lucia on the day of  
2000 at

Signed by  
for the Government of St. Vincent and the Grenadines on the  
day of 2000 at

Signed by  
for the Government of The Republic of Suriname on the  
day of 2000 at

Signed by  
for the Government of The Republic of Trinidad and Tobago on the  
day of 2000 at

## **DECLARATION**

The representatives of the undermentioned Governments hereby declare their intention  
to apply provisionally the provisions of Protocol VIII:

Signed by  
or the Government of Antigua and Barbuda on the day of  
2000 at

Signed by

for the Government of Barbados on the day of  
2000 at

Signed by  
for the Government of the Belize on the day of  
2000 at

Signed by  
for the Government of The Commonwealth of Dominica on the  
day of 2000 at

Signed by  
for the Government of Grenada on the day of  
2000 at

Signed by  
for the Government of The Co-operative Republic of Guyana on the  
day of 2000 at

Signed by  
for the Government of Jamaica on the day of  
2000 at

Signed by  
for the Government of Montserrat on the day of  
2000 at

Signed by  
for the Government of St. Kitts and Nevis on the day of  
2000 at

Signed by  
for the Government of Saint Lucia on the day of  
2000 at

Signed by  
for the Government of St. Vincent and the Grenadines on the  
day of 2000 at

Signed by  
for the Government of The Republic of Suriname on the  
day of 2000 at

Signed by  
for the Government of The Republic of Trinidad and Tobago on the  
day of 2000 at

## **ANNEX I**

### **DEFINITION OF DOMESTIC INDUSTRY**

1. For the purposes of this Protocol, the term "domestic industry" shall, except as provided in paragraph 4, be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that when producers are related to the exporters or importers or are themselves importers of the allegedly subsidised or dumped product or a like product from other countries, the term "domestic industry" may be interpreted as referring to the rest of the producers.

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

3. When the domestic industry has been interpreted as referring to the producers in a certain area, i.e., a market as defined in paragraph 2, countervailing duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member State does not permit the levying of countervailing or anti-dumping on such a basis, the importing Member State may levy the relevant duties without limitation only if (a) the exporters shall have been given an opportunity to cease exporting at subsidised or dumped prices to the area concerned or otherwise give assurances pursuant to Article 30(cc) or 30(oo) and adequate assurances in this regard have not been promptly given, and (b) such duties cannot be levied only on products of specific producers which supply the area in question.

4. Whenever an investigation is being undertaken by the Community on behalf of the domestic industry which has alleged injury from extra-regional imports, the domestic industry in the CSME shall be taken to be the industry referred to in paragraphs 1 and 2 consistent with the provisions of paragraph 8(a) of Article XXIV of GATT 1994.

## ANNEX II

### CONSULTATIONS

1. As soon as possible after an application for an investigation is accepted and in any event before the initiation of any investigation, a Member State whose products may be subject to such investigation, shall be invited for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.

2. Furthermore, throughout the period of investigation, a Member State whose products are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.

3. Without prejudice to the obligation to afford reasonable opportunity for consultations, these provisions regarding consultations are not intended to prevent the authorities of a Member State from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.

4. The Member State which intends to initiate any investigation or is conducting such an investigation shall permit, upon request, the Member State whose products are subject to such investigation access to non-confidential evidence, including any non-confidential summary of confidential data being used for initiating or conducting the investigation

#### **ANNEX III(a)**

##### **ILLUSTRATIVE LIST OF INFORMATION REQUIRED BY ARTICLE 30 (JJ)**

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

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

(iii) evidence with regard to the existence, amount and nature of the subsidy in question;

(iv) evidence that alleged injury to a domestic industry is caused by subsidised imports through the effects of the subsidies; this evidence includes information on the evolution of the volume of the allegedly subsidised imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry.

#### **ANNEX III (b)**

##### **ILLUSTRATIVE LIST OF INFORMATION REQUIRED BY ARTICLE 30 (JJ)**

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

extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

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

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

(iv) Information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those referred to in Article 30(ii).

## ANNEX IV

### PRODUCT COVERAGE<sup>1</sup>

2. This Protocol shall cover the following products:

(i) HS Chapters 1-24 less fish and fish products, forestry and forest products plus\*;

(ii)

|                                   |   |
|-----------------------------------|---|
| <b>HS Code 2905.43</b>            | (mannitol)  |
| <b>HS Code 2905.44</b>            | (sorbitol)  |
| <b>HS Heading 3301</b>            | (essential oils)                                    |
| <b>HS Heading 35.01 to 35.05</b>  | (albuminoidal substances, modified starches, glues) |
| <b>HS Code 3809.10</b>            | (Fishing agents)                                    |
| <b>HS Code 3823.60</b>            | (Sorbitol n.e.p)                                    |
| <b>HS Headings 41.01 to 41.03</b> | (Hides and skins)                                   |
| <b>HS Headings 43.01</b>          | (raw furskins)                                      |
| <b>HS Headings 50.01 to 50.03</b> | (Raw silk and silk waste)                           |
| <b>HS Headings 52.01 to 52.03</b> | (Wool and animal hair)                              |
| <b>HS Headings 52.01 to 52.03</b> | (Raw cotton, waste and cotton carded or combed)     |
| <b>HS Heading 53.01</b>           | (Raw flax)  |
| <b>HS Heading 53.02</b>           | (Raw hemp)  |

## ANNEX V

### OATH OF OFFICE

I .. do hereby swear (or solemnly affirm) that I will faithfully exercise the office of Commissioner of the Competition Commission without fear or favour, affection or ill-will.

(so help me God (to be omitted in affirmation)).

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<sup>1</sup> The product coverage is the same as that of the WTO Agreement on Agriculture.

\* The product descriptions in round brackets are not necessarily exhaustive.