

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

L/4822

27 August 1979

Limited Distribution

Original: English/
French

ANTI-DUMPING LEGISLATION OF THE EUROPEAN COMMUNITIES

The following communication, dated 10 August 1979, has been received from the Commission of the European Communities.

I have the honour to advise you that under Regulation (EEC) No. 1681/79 of 1 August 1979 the Community has amended the provisions governing anti-dumping matters.

In accordance with Article 15 of the Anti-Dumping Code, I am forwarding herewith a copy of Regulation No. 1681/79 together with a consolidated version of the provisions as thus amended in French and in English.

I would draw your attention in particular to the last preambular paragraph of Regulation (EEC) No. 1681/79 which stipulates that the latter does not prejudice any subsequent adaptation of the Community's anti-dumping regulations which could result from the Tokyo Round of multilateral trade negotiations.

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1681/79

of 1 August 1979

amending Regulation (EEC) No 459/68 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas Council Regulation (EEC) No 459/68⁽¹⁾, as last amended by Regulation (EEC) No 1411/77⁽²⁾, sets out common rules on protection against dumping or the granting of bounties or subsidies by countries which are not members of the Community, in conformity with existing international obligations and, in particular, with those resulting from Article VI of GATT and from the anti-dumping code;

Whereas the application of certain of these rules demonstrates that it is expedient to clarify certain concepts which are contained in the said rules, taking account *inter alia* of the established practice of the Community's major trading partners;

Whereas, in particular, the term 'normal value' should be incorporated in the rules on the determination of dumping;

Whereas, in situations where the price of the like product on the domestic market does not permit a proper comparison, it is appropriate to introduce the term 'constructed value' and to confirm the Community's position with regard to the question of the profit to be added when calculating the constructed value;

Whereas it is appropriate to give examples of situations in which sales may be considered as not having

been made in the ordinary course of trade, in particular with regard to cases where a product is sold at prices which are less than the costs of production, and to list the possible methods of determining normal value;

Whereas it is appropriate to codify the Community's established practice in the case of imports from non-market-economy countries;

Whereas it is expedient to define the export price and to enumerate the necessary allowances to be made in those cases where reconstruction of such price from the first open-market price is required;

Whereas, in so far as allowances applicable in making comparisons between export price and normal value are concerned, it is advisable to draw attention to the fact that the burden of proof falls on the person claiming the allowances and to list the circumstances which may justify adjustments;

Whereas the term 'dumping margin' should be more clearly defined and the Community's established practice for methods of calculation where prices of margins vary should be codified;

Whereas it is appropriate to clarify the rules regarding the determination of injury and, in particular, to ensure that injuries caused by other factors may not be attributed to dumping;

Whereas it is appropriate to clarify the conditions under which interested parties may have access to information used in the course of investigations and may ask to be informed of the essential facts and considerations on the basis of which it is intended to recommend definitive measures;

⁽¹⁾ OJ No L 93, 17. 4. 1968, p. 1.

⁽²⁾ OJ No L 160, 30. 6. 1977, p. 4.

Whereas, in order to discourage dumping, it is appropriate to provide, in cases where the facts as finally established show that there is dumping and injury, for the possibility of definitive collection of provisional duties even if the imposition of a definitive anti-dumping duty is not decided on, on particular grounds;

Whereas it is appropriate to modify certain of the rules governing the extension of provisional anti-dumping measures which have proved impracticable in cases involving a number of importers or exporters;

Whereas it is appropriate to establish a simplified procedure for examining applications for refunds of anti-dumping duties;

Whereas the modifications contained in this Regulation do not prejudice any subsequent adaptation of the Community's anti-dumping Regulations which could result from the multilateral trade negotiations within the framework of GATT,

HAS ADOPTED THIS REGULATION:

Article 1

Article 3 of Regulation (EEC) No 459/68 is replaced by the following:

Article 3

1. A product introduced into Community trade shall be considered to have been dumped if its export price to the Community is less than the normal value of the like product.

2. (a) For the purposes of this Article, the normal value shall be:

(aa) the comparable price actually paid or payable in the ordinary course of trade for the like product intended for consumption in the exporting country or country of origin; or

(bb) when there are no sales of the like product in the ordinary course of trade on the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison:

(i) the comparable price of the like product when exported to any third

country, which may be the highest such export price but should be a representative price, or

(ii) the constructed value, i.e. the cost of production — including overheads — in the country of origin, plus a reasonable profit margin; as a general rule, and provided that a profit is normally realized on sales of products of the same general category on the domestic market of the country of origin, the addition for profit shall not exceed such normal profit. In other cases, the addition shall be determined on any reasonable basis, using available information.

(b) Whenever there are reasonable grounds for believing or suspecting that the price at which a product is actually sold for consumption in the country of origin is less than its cost of production, sales at such prices may be considered as not having been made in the ordinary course of trade if they:

(aa) have been made over an extended period of time and in substantial quantities; and

(bb) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

In such circumstances, the normal value may be determined on the basis of the remaining sales on the domestic market made at a price which is not less than the cost of production or on the basis of export sales to third countries, on the basis of the constructed value or by adjusting the sub-production-cost price referred to above in order to eliminate loss and provide for a reasonable profit. Such normal-value calculations shall be based on available information.

(c) In the case of imports from non-market economy countries and, in particular, those to which Regulations (EEC) No 2532/78⁽¹⁾ and (EEC) No 925/79⁽²⁾ apply, normal value shall be determined in an appropriate and not unreasonable manner on the basis of one of the following criteria:

⁽¹⁾ OJ No L 306, 31. 10. 1978, p. 1.

⁽²⁾ OJ No L 131, 29. 5. 1979, p. 1.

- (aa) the price at which the like product of a market economy third country is actually sold :
 - (i) for consumption on the domestic market of that country, or
 - (ii) to other countries, including the Community ; or
 - (bb) the constructed value of the like product in a market economy third country ; or
 - (cc) if neither price nor constructed value as established under (aa) or (bb) above provides an adequate basis, the price actually paid or payable in the Community for the like product, duly adjusted, if necessary, to include a reasonable profit margin.
- (d) Where a product is not imported directly from the country of origin but is exported to the Community from an intermediate country, the normal value shall be the comparable price actually paid or payable for the like product on the domestic market of either the country of export or the country of origin. The latter basis might be appropriate *inter alia*, where the product is merely transhipped through the country of export, where such products are not produced in the country of export or where no comparable price for it exists in the country of export.
3. (a) The export price shall be the price actually paid or payable for the product sold for export to the Community.
- (b) In cases where there is no export price or where it appears that there is an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the product is not resold to an independent buyer, or not resold in the condition imported, on any reasonable basis. In such cases, allowance shall be made for all costs incurred between importation and resale, including all duties and taxes, and for a reasonable profit margin.

Such allowances shall include, in particular, the following :

- (aa) usual transport, insurance, handling, loading and ancillary costs ;
 - (bb) customs duties, any anti-dumping duties and other taxes payable in the importing country by reason of the importation or sale of the goods ;
 - (cc) a reasonable margin for overheads and profit and/or any commission usually paid or agreed.
4. (a) For the purposes of a fair comparison, the export price and the normal value shall be compared at the same level of trade, normally at the ex-factory level, and as nearly as possible at the same time.
- (b) Due allowance shall be made in each case, on its merits, for differences in conditions and terms of sale, for differences in taxation and for other differences affecting price comparability, provided that interested parties claiming such allowances can satisfactorily prove that their claim is justified.

The following guidelines shall apply in determining these allowances :

- (aa) differences in merchandise : allowance for such differences shall normally be based on the effect on the market value in the country of origin or export ; however, where domestic pricing data in that country are not available or do not permit a fair comparison, the calculation shall be based on those production costs accounting for such differences ;
- (bb) differences in quantities : allowances shall be made when the amount of any price differential is wholly or partly due to either :
 - (i) price discounts for quantity sales which have been made freely available in the normal course of trade over a representative preceding period of time, usually not less than six months, and in respect of a substantial proportion, usually not less than 20 %, of the total sales of the product under consideration made on the domestic market or, where applicable, on a third-

country market; deferred discounts may be recognized if they are based on consistent practice in prior periods, or on an undertaking to comply with the conditions required to qualify for the deferred discount, or

- (ii) to savings in the cost of producing different quantities.

However, when the export price is based on quantities which are less than the smallest quantity sold on the domestic market or, if applicable, to third countries, then the allowance shall be determined in such a manner as to reflect the higher price for which the smaller quantity would be sold on the domestic market or, if applicable, on a third-country market;

- (cc) differences in conditions and terms of sale: allowances shall be limited, in general, to those differences which bear a direct relationship to the sales under consideration and include, for example, differences in credit terms, guarantees, warranties, technical assistance, servicing and commissions; the amount of these allowances shall normally be determined by the cost of such differences to the seller, though consideration may also be given to their effect on the value of the product;

- (dd) allocation of costs: in general, all cost calculations shall be based on available accounting data, normally allocated, where necessary, in proportion to the turnover for each product and market under consideration.

- (c) No product shall be considered to have been dumped by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or export, or by reason of the refund of such duties or taxes.

5. "Dumping margin" means the amount by which the normal value exceeds the export price.

Where prices vary, the dumping margin may be established on a transaction-by-transaction basis or by reference to the most frequently occurring, representative or weighted average prices.

Where dumping margins vary, weighted averages may be established.

Article 2

Article 4 (1), (2) and (3) of Regulation (EEC) No 459/68 is replaced by the following:

1. The evaluation of the effect of the dumped imports on the industry in question shall be based on examination of all factors having a bearing on the state of the industry, such as developments and prospects with regard to turnover, market share, profits, prices (including the extent to which the delivered duty-paid price is lower or higher than the most representative comparable price of the like product prevailing in the ordinary course of trade within the Community), employment, volume of dumped and other imports, utilization of capacity of Community industry, productivity and restrictive trade practices. No one or several of these factors can necessarily give decisive guidance.

2. In order to establish whether dumped imports are causing injury, all other factors which, individually or in combination, are known to be adversely affecting the Community industry shall also be taken into consideration. The factors to be considered are, among others, the volume and prices of other imports of the product in question, competition between the Community producers themselves, contraction in demand due *inter alia* to substitution of other products or to changes in consumer tastes and export performance.

3. (a) No injury may be attributed to dumping unless the dumped imports are demonstrably the principal cause of such injury. For the purpose of such demonstration, the consequences of dumping positively found to be such shall be weighed against each of the other known factors which at the same time may be injuring the industry. The injuries caused by such other factors shall not be attributed to the dumped imports.

(b) Determination of injury shall in all cases be based on positive findings and not merely on allegation, conjecture or remote possibility. In the case of threatened injury, the change in circumstances which would create a situation in which dumping would cause injury shall be clearly foreseen and imminent.

Article 3

Article 10 (4) of Regulation (EEC) No 459/68 is replaced by the following:

4. (a) The complainant and the importers and exporters known to be concerned, as well as the representatives of the exporting country, may inspect all information made available to the Commission by any party to an investigation as distinct from internal documents prepared by the authorities of the Community or its Member States, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 11 and that it is used by the Commission in the anti-dumping investigation. To this end, they shall address a written request to the Commission, indicating the information required.

(b) Exporters and importers of the product subject to investigation may request to be informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive duties or the definitive collection of amounts secured by way of a provisional duty.

(c) (aa) Requests for information pursuant to (b) shall:

(i) be addressed to the Commission in writing,

(ii) specify the particular issues on which information is sought,

(iii) be received not later than one month after publication of the notice of initiation of the investigation or, in the cases where a provisional duty has been imposed, within two weeks of the date of publication of the imposition of such duties, whichever is the earlier.

(bb) The information may be given either orally or in writing, as considered appropriate by the Commission. It shall not prejudice any subsequent decision which may be taken by the Commission or the Council. Confidential information shall be treated in accordance with the provisions of Article 11.

(cc) Information shall be given no later than 15 days prior to the submission by the Commission of any proposal for final action pursuant to Article 17. Representations made after the information is given shall be taken into consideration only if received not later than 10 days following the giving of such information.

Article 4

Article 14 (2) (a) of Regulation (EEC) No 459/68 is replaced by the following:

2. (a) Anti-dumping procedures may be terminated without imposition of anti-dumping duties or provisional measures where, during examination of the matter, exporters give a voluntary undertaking to revise their prices so that the dumping margin is eliminated or to stop their exports of the product in question to the Community, provided that the Commission, after hearing the opinions expressed within the Committee, considers this acceptable. Such termination shall be decided in accordance with the procedure laid down in the foregoing paragraph. It shall not preclude the definitive collection of amounts secured by way of provisional duties pursuant to Article 17 (2).

Article 5

Article 16 (2) of Regulation (EEC) No 459/68 is replaced by the following:

2. Not less than one month before expiry of the period of validity of the provisional duty, the Commission shall submit a proposal to the Council, either for definitive Community action or, if exporters and importers representing a significant proportion of the trade involved so request or do not object and if examination of the matter has not yet been completed, for the extension of the provisional measures for a period not exceeding three months.

The Council shall act by a qualified majority

Article 6

Article 17 of Regulation (EEC) No 459/68 is replaced by the following:

Article 17

1. Where the facts as finally established show that there is dumping and injury and the interests of the Community call for Community intervention, the Commission shall, after hearing the opinions expressed within the Committee, submit a proposal to the Council. The Council shall act by a qualified majority.

2. (a) Where a provisional duty has been applied, the Council shall decide, irrespective of whether a definitive anti-dumping duty is to be imposed, what proportion of the provisional duty is to be definitively collected. The Council shall act by a qualified majority on a proposal from the Commission.

(b) The definitive collection of such amount shall not be decided upon unless the facts as finally established show that there has been dumping and material injury (and not merely a threat of material injury or material retardation of the establishment of a Community industry) or that such injury would have been caused if provisional action had not been taken.

Article 7

Article 19 (4) of Regulation (EEC) No 459/68 is replaced by the following:

4. (a) Where an importer can show that the duty collected exceeds the actual dumping margin, consideration being given to any application to dumping margins of

weighted averages, the amount in excess of the margin shall be returned to him; where provisional measures were taken, the same shall apply in respect of the release of securities.

(b) For this purpose, the importer may, within three months of the date on which the products were entered for consumption, submit an application to the Member State in the territory of which they were so entered. That Member State shall forward the application to the Commission as soon as possible, either with or without an opinion as to its merits. The Commission shall inform the other Member States forthwith and give its opinion on the matter. If the Member States agree with the opinion given by the Commission or do not object to it within one month of being informed, the Member State in question may decide in accordance with the said opinion. In all other cases, the Commission shall, after consultations within the Committee, decide whether and to what extent the Member State should grant the application.

Article 8

The reference 'Article 3 (5)' in Article 22 of Regulation (EEC) No 459/68 is replaced by 'Article 3 (4) (c)'.

Article 9

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 August 1979.

For the Council

The President

M. O'KENNEDY

REGULATION (EEC) No. 459/68 OF THE COUNCIL
of 5 April 1968^{1/}

on protection against dumping or the granting of bounties or
subsidies by countries which are not members of the
European Economic Community

modified by Regulation (EEC) No. 2011/73 of 24.7.1973^{2/} by
Regulation (EEC) No. 1411/77 of 27.6.1977^{3/} and by
Regulation (EEC) No. 1681/79 of 1.8.1979^{4/}

Article 1

1. The provisions of this Regulation shall apply for the purposes of protection against dumping or the granting of bounties or subsidies by countries which are not members of the Community, but without prejudice to any special rules laid down in agreements concluded between the Community and such countries.
2. Provided that such action does not run counter to obligations under the GATT, the provisions of Articles 2 to 5 and 22 to 24 shall not preclude the adoption of special measures.
3. This Regulation shall apply to all products. It shall preclude neither the application of the Community Regulations in the agricultural sector nor the application of Regulations Nos. 160/66/EEC, 189/66/EEC and 170/67/EEC. This Regulation shall operate by way of complement to those Regulations and in derogation from any provisions thereof which preclude the application of anti-dumping or countervailing duties.

^{1/} OJ No. L 93 of 17.4.1968

^{2/} OJ No. L 206 of 27.7.1973

^{3/} OJ No. L 160 of 30.6.1977

^{4/} OJ No. L 196 of 2.8.1979

TITLE I

Dumping; Anti-Dumping Duties

Article 2

1. An anti-dumping duty may be applied to any dumped product whose introduction into Community commerce causes, or threatens to cause, material injury to an established Community industry or materially retards the setting up of an industry whose early establishment in the Community is envisaged.
2. Where in this Regulation the term "injury" is used without qualification, it shall be interpreted as referring to the three cases mentioned above.

Article 3

1. A product introduced into Community trade shall be considered to have been dumped if its export price to the Community is less than the normal value of the like product.
2. (a) For the purposes of this Article, the normal value shall be:
 - (aa) the comparable price actually paid or payable in the ordinary course of trade for the like product intended for consumption in the exporting country or country of origin; or
 - (bb) when there are no sales of the like product in the ordinary course of trade on the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison:
 - (i) the comparable price of the like product when exported to any third country, which may be the highest such export price but should be a representative price, or
 - (ii) the constructed value, i.e. the cost of production - including overheads - in the country of origin, plus a reasonable profit margin; as a general rule, and provided that a profit is normally realized on sales of products of the same general category on the domestic market of the country of origin, the addition for profit shall not exceed such normal profit. In other cases, the addition shall be determined on any reasonable basis, using available information.

- (b) Whenever there are reasonable grounds for believing or suspecting that the price at which a product is actually sold for consumption in the country of origin is less than its cost of production, sales at such prices may be considered as not having been made in the ordinary course of trade if they:
- (aa) have been made over an extended period of time and in substantial quantities; and
 - (bb) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

In such circumstances, the normal value may be determined on the basis of the remaining sales on the domestic market made at a price which is not less than the cost of production or on the basis of export sales to third countries, on the basis of the constructed value or by adjusting the sub-production cost price referred to above in order to eliminate loss and provide for a reasonable profit. Such normal-value calculations shall be based on available information.

- (c) In the case of imports from non-market economy countries and, in particular, those to which Regulations (EEC) No. 2532/78^{1/} and (EEC) No. 925/79^{2/} apply, normal value shall be determined in an appropriate and not unreasonable manner on the basis of one of the following criteria:
- (aa) the price at which the like product of a market economy third country is actually sold:
 - (i) for consumption on the domestic market of that country, or
 - (ii) to other countries, including the Community; or
 - (bb) the constructed value of the like product in a market economy third country; or

^{1/} OJ No. L 306, 31.10.1978, page 1.

^{2/} OJ No. L 131, 29.5.1979, page 1.

- (cc) if neither price nor constructed value as established under (aa) or (bb) above provides an adequate basis, the price actually paid or payable in the Community for the like product, duly adjusted, if necessary, to include a reasonable profit margin.
 - (d) Where a product is not imported directly from the country of origin but is exported to the Community from an intermediate country, the normal value shall be the comparable price actually paid or payable for the like product on the domestic market of either the country of export or the country of origin. The latter basis might be appropriate inter alia where the product is merely trans-shipped through the country of export, where such products are not produced in the country of export or where no comparable price for it exists in the country of export.
3. (a) The export price shall be the price actually paid or payable for the product sold for export to the Community.
- (b) In cases where there is no export price or where it appears that there is an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the product is not resold to an independent buyer, or not resold in the condition imported, on any reasonable basis. In such cases, allowance shall be made for all costs incurred between importation and resale, including all duties and taxes, and for a reasonable profit margin.

Such allowances shall include, in particular, the following:

- (aa) usual transport, insurance, handling, loading and ancillary costs;
- (bb) customs duties, any anti-dumping duties and other taxes payable in the importing country by reason of the importation or sale of the goods;
- (cc) a reasonable margin for overheads and profit and/or any commission usually paid or agreed.

4. (a) For the purposes of a fair comparison, the export price and the normal value shall be compared at the same level of trade, normally at the ex-factory level, and as nearly as possible at the same time.
- (b) Due allowance shall be made in each case, on its merits, for differences in conditions and terms of sale, for differences in taxation and for other differences affecting price comparability, provided that interested parties claiming such allowances can satisfactorily prove that their claim is justified.

The following guidelines shall apply in determining these allowances:

- (aa) differences in merchandise: allowance for such differences shall normally be based on the effect on the market value in the country of origin or export; however, where domestic pricing data in that country are not available or do not permit a fair comparison, the calculation shall be based on those production costs accounting for such differences;
- (bb) differences in quantities: allowances shall be made when the amount of any price differential is wholly or partly due to either:
- (i) price discounts for quantity sales which have been made freely available in the normal course of trade over a representative preceding period of time, usually not less than six months, and in respect of a substantial proportion, usually not less than 20 per cent, of the total sales of the product under consideration made on the domestic market or, where applicable, on a third-country market; deferred discounts may be recognized if they are based on consistent practice in prior periods, or on an undertaking to comply with the conditions required to qualify for the deferred discount, or
- (ii) to savings in the cost of producing different quantities.

However, when the export price is based on quantities which are less than the smallest quantity sold on the domestic market or, if applicable, to third countries, then the allowance shall be determined in such a manner as to reflect the higher price for which the smaller quantity would be sold on the domestic market or, if applicable, on a third-country market;

- (cc) differences in conditions and terms of sale: allowances shall be limited, in general, to those differences which bear a direct relationship to the sales under consideration and include, for example, differences in credit terms, guarantees, warranties, technical assistance, servicing and commissions; the amount of these allowances shall normally be determined by the cost of such differences to the seller, though consideration may also be given to their effect on the value of the product;

(dd) allocation of costs: in general, all cost calculations shall be based on available accounting data, normally allocated, where necessary, in proportion to the turnover for each product and market under consideration.

(c) No product shall be considered to have been dumped by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or export, or by reason of the refund of such duties or taxes.

5. "Dumping margin" means the amount by which the normal value exceeds the export price.

Where prices vary, the dumping margin may be established on a transaction-by-transaction basis or by reference to the most frequently occurring, representative or weighted average prices.

Where dumping margins vary, weighted averages may be established.'

Article 4

1. The evaluation of the effect of the dumped imports on the industry in question shall be based on examination of all factors having a bearing on the state of the industry, such as developments and prospects with regard to turnover, market share, profits, prices (including the extent to which the delivered duty-paid price is lower or higher than the most representative comparable price of the like product prevailing in the ordinary course of trade within the Community), employment, volume of dumped and other imports, utilization of capacity of Community industry, productivity and restrictive trade practices. No one or several of these factors can necessarily give decisive guidance.

2. In order to establish whether dumped imports are causing injury, all other factors which, individually or in combination, are known to be adversely affecting the Community industry shall also be taken into consideration. The factors to be considered are, among others, the volume and prices of other imports of the product in question, competition between the Community producers themselves, contraction in demand due inter alia to substitution of other products or to changes in consumer tastes and export performance.

3. (a) No injury may be attributed to dumping unless the dumped imports are demonstrably the principal cause of such injury. For the purpose of such demonstration, the consequences of dumping positively found to be such shall be weighed against each of the other known factors which at the same time may be injuring the industry. The injuries caused by such other factors shall not be attributed to the dumped imports.

(b) Determination of injury shall in all cases be based on positive findings and not merely on allegation, conjecture or remote possibility. In the case of threatened injury, the change in circumstances which would create a situation in which dumping would cause injury shall be clearly foreseen and imminent.'

4. The effect of the dumped imports shall be assessed in relation to the Community production of the like product when available data permit the separate identification of production on the basis of such criteria as: the production process, the producers' realizations and profits. When the Community production of the like product has no separate identity in these terms, the effect of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products which includes the like product for which the necessary information can be obtained.

5. (a) For the purposes of this title^{*}, the term "Community industry" shall be interpreted as referring to the Community 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 Community production of those products except that:

- when producers are also importers of the allegedly dumped product the term "Community industry" may be interpreted as referring only to the rest of the producers;
- in exceptional circumstances the Community may, for the product in question, be divided into two or more competitive markets and the producers within each market regarded as a Community industry, if, because of transport costs, all the producers within such a market sell all or almost all their production of the product in question in that market and none, or almost none, of the product in question produced elsewhere in the Community is sold in that market or if there exist special regional marketing conditions which result in an equal degree of isolation of the producers in such a market from the rest of the industry, provided, however, that injury may be found in such circumstances only if there is injury to all or almost all of the total production of the product in the market as defined.

(b) The provisions of paragraph 4 shall be applicable to this paragraph.

^{*}Modified by Regulation (EEC) 2011/73 of 24 July 1973.

Article 5

For the purposes of this title*, the term "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 product, another product which has characteristics closely resembling those of the product under consideration.

Article 6

1. Any natural or legal person, or any association not having legal personality, acting on behalf of a Community industry which considers itself injured or threatened by dumping may lodge a complaint, which shall fulfil the conditions set out below. Such complaints shall be submitted in writing.
2. (a) The complaint may be submitted to any member State in which the Community industry in question is carried on, irrespective of which member State may be affected by the dumping complained of. A copy of the complaint shall be sent to the Commission by each member State receiving such complaint.
- (b) If a complaint is submitted to the Commission, the latter shall forward it to the member States forthwith.

Article 7

The complaint shall give:

- (a) a description of the allegedly dumped product;
- (b) the name of the exporting country;
- (c) where possible, the names of the country of origin, the producer and the exporter of the product in question;
- (d) evidence both of dumping and of injury resulting therefrom for the industry which considers itself injured or threatened.

* Modified by Regulation (EEC) 2011/73 of 24 July 1973.

Article 8

1. 'Where a member State is satisfied that a complaint contains the particulars specified in Article 7, it shall at once inform the Commission, either by letter or orally during the consultations provided for in Article 12. It shall forward to the Commission any other information it considers necessary for an examination of the matter at Community level.'
2. Where, in the absence of any complaint, a member State is in possession of sufficient evidence both of dumping and of injury resulting therefrom for a Community industry, it shall immediately communicate such evidence to the Commission.
3. The Commission shall in either case forward the information received to the other member States forthwith.

Article 9

'Where a member State finds that the complaint does not contain the particulars specified in Article 7 or that the margin of dumping, the volume of dumped imports, actual or potential, or the injury is negligible, it shall so inform the Commission, either by letter or orally during the consultations provided for in Article 12. The latter shall immediately advise the other member States. If, within a period of ten working days from the date on which the Commission was informed, the latter has not raised any objection, whether at the request of a member State or on its own initiative, the complaint shall be rejected forthwith by the member State to whom it was sent, or by the Commission if the complaint was submitted to the Commission under Article 6(2)(b); in all other cases, Article 10(1) shall apply.'

Article 10

1. On receipt of information sent pursuant to paragraph 1 or to paragraph 2 of Article 8, or as soon as an objection has been raised to the rejection of a complaint pursuant to Article 9, the Commission, acting in accordance with the provisions of this Article and in co-operation with the member States, shall immediately commence examination of the matter at Community level. Such examination shall cover both dumping and injury.

2. Where the information received by the Commission shows that protective measures against dumping may be necessary, the Commission, without prejudice to the continued examination of the matter, shall officially, advise the representatives of the exporting country and the exporters and importers known to be concerned. The Commission shall at the same time publish a notice in the Official Journal of the European Communities indicating the product in question and the country of origin or of export, as the case may be. The notice shall also state that all relevant information is to be communicated to the Commission and shall set the period within which interested parties may apply to be heard by the Commission in accordance with the provisions of paragraph 6.
3. (a) In carrying out its duties under paragraph 1, the Commission is authorized to obtain all necessary information from importers, exporters, traders and producers, and from trade associations and organizations.

(b) 'However, when it is necessary to carry out investigations in countries which are not members of the Community in order to verify information collected or to obtain further details, the Commission shall hear the opinions expressed within the Committee referred to in Article 12 before either proceeding itself, when a rapid and direct examination of the matter is desirable and there are no special objections, or before requesting the member States to proceed, in accordance with paragraph 5. The investigations of the Commission may be carried out only if the undertakings concerned give their consent and the government of the country in question has been officially notified and raises no objection. The Commission shall be assisted by officials of one or more member States if the latter have so requested, in all investigations conducted on the spot.'
- '4. (a) The complainant and the importers and exporters known to be concerned, as well as the representatives of the exporting country, may inspect all information made available to the Commission by any party to an investigation as distinct from internal documents prepared by the authorities of the Community or its member States, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 11 and that it is used by the Commission in the anti-dumping investigation. To this end, they shall address a written request to the Commission, indicating the information required.

- (b) Exporters and importers of the product subject to investigation may request to be informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive duties or the definitive collection of amounts secured by way of a provisional duty.
- (c) (aa) Requests for information pursuant to (b) shall:
 - (i) be addressed to the Commission in writing,
 - (ii) specify the particular issues on which information is sought,
 - (iii) be received not later than one month after publication of the notice of initiation of the investigation or, in the cases where a provisional duty has been imposed, within two weeks of the date of publication of the imposition of such duties, whichever is the earlier.
- (bb) The information may be given either orally or in writing, as considered appropriate by the Commission. It shall not prejudice any subsequent decision which may be taken by the Commission or the Council. Confidential information shall be treated in accordance with the provisions of Article 11.
- (cc) Information shall be given no later than fifteen days prior to the submission by the Commission of any proposal for final action pursuant to Article 17. Representations made after the information is given shall be taken into consideration only if received not later than ten days following the giving of such information.'

5. (a) For the purposes of determining correctly the margin of dumping and the injury caused, the Commission shall request member States:
- to supply information;
 - to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers;
 - to carry out investigations in countries which are not members of the Community: where the purpose of such investigations is to verify information provided or to obtain further details from within the undertaking concerned, they may be carried out only if the undertakings concerned give their consent and the government of the country in question has been officially notified and raises no objection.

- (b) Member States shall take whatever steps are necessary in order to give effect to requests from the Commission. They shall send to the Commission the information requested together with the results of all inspections, checks or investigations carried out.
 - (c) The Commission shall forward this information to the other member States forthwith.
 - (d) Officials of the Commission shall be authorized, if the Commission or a member State so requests, to assist the officials of member States in carrying out their duties.
6. (a) The Commission may hear the interested parties. It shall so hear them if they have, within the period prescribed in the notice published in the Official Journal of the European Communities, made a written request for a hearing showing that they may be directly affected by the result of the examination of the matter. In such case, the Commission shall give the parties an opportunity to make known their views in writing within a period which it shall set. The Commission shall, furthermore, give the parties directly interested who have so requested in writing and can show a sufficient interest an opportunity to express their views orally.
- (b) Furthermore, the Commission shall, on request, give the parties directly concerned an opportunity to meet, so that opposing views may be presented and any rebuttal argument put forward. In providing this opportunity the Commission shall take account of the need to preserve confidentiality and of the convenience of the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.
7. (a) The provisions of this Article shall not preclude either the Council or the Commission from reaching preliminary determinations, or from taking an expedited decision applying provisional measures under Article 15.
- (b) In cases in which any interested party withholds the necessary information or where the government of a country which is not a member of the Community objects to an investigation within the meaning of paragraph 5(a) being held in its territory, a final finding may be made on the basis of the facts available.

Article 11

1. Information received in pursuance of this Regulation shall be used only for the purpose for which it was requested.

2. Neither the Council, nor the Commission, nor member States, nor the officials of any of these, shall reveal any information of a confidential nature received in pursuance of this Regulation, or any information provided on a confidential basis by a party to an anti-dumping investigation, without specific permission from the party submitting such information.

3. However, if it appears that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the information in question may be disregarded, unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.

4. The provisions of paragraphs 1 to 3 shall not preclude the publication of general information pursuant to Article 10(2), and of the reasons for measures taken in pursuance of this recommendation. Such publication must take into account the legitimate interest of the interested parties that their commercial secrets should not be divulged.

Article 12

1. Consultations may take place at any time. They shall be held immediately on request by a member State or on the initiative of the Commission.

2. Consultation shall take place within an advisory committee (hereinafter called the 'Committee'), which shall consist of representatives of each member State with a representative of the Commission as Chairman.

3. The Committee shall meet when convened by its Chairman. He shall provide the member States, as promptly as possible, with all relevant information.

4. Where necessary, consultation may be in writing only; in such case the Commission shall notify the member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation.'

Article 13

Consultation shall in particular cover:

- (a) the existence and margin of dumping;
- (b) the existence and extent of injury;
- (c) the measures which, having regard to all the circumstances, are appropriate to remedy the effects of dumping, and the ways and means for putting such measures into effect.

Article 14

1. (a) If it becomes apparent from consultation as provided for in Article 13 that protective measures are unnecessary, then where no objection is raised within the Committee the proceeding shall stand terminated. In all other cases the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal that the proceeding be terminated. If the Council, acting by a qualified majority, approves the proposal from the Commission, the proceeding shall stand terminated. It shall likewise stand terminated if within one month the Council has taken no decision or made no request by a qualified majority to the Commission asking it to resume its examination of the matter.
 - (b) The Commission shall inform the representatives of the exporting country and the directly interested parties of the termination of the proceeding; it shall inform them of the reasons for termination and of the criteria applied. Where a notice was published in the Official Journal of the European Communities under Article 10 (2), then, unless there are special reasons against so doing, the Commission shall immediately announce the termination in that same Journal.
2. (a) Anti-dumping procedures may be terminated without imposition of anti-dumping duties or provisional measures where, during examination of the matter, exporters give a voluntary undertaking to revise their prices so that the dumping margin is eliminated or to stop their exports of the product in question to the Community, provided that the Commission, after hearing the opinions expressed within the Committee, considers this acceptable. Such termination shall be decided in accordance with the procedure laid down in the foregoing paragraph. It shall not preclude the definitive collection of amounts secured by way of provisional duties pursuant to Article 17 (2).
 - (b) Where the Commission, acting in accordance with the provisions of the foregoing sub-paragraph, accepts the undertaking referred to therein, the investigation of injury shall nevertheless be completed if the exporters so desire or if, after hearing the opinions expressed within the Committee, the Commission so decides. If the Commission, after hearing the opinions expressed within the Committee, makes a determination of no injury, the undertaking given by the exporters shall automatically lapse unless the exporters state that it is not so to lapse.

- (c) The fact that exporters do not offer to give such undertakings, or do not accept an invitation made by the Commission to do so, shall in no way be prejudicial to the consideration of the case. However, the Commission shall be free to determine that a threat of injury is more likely to be realized if the dumped imports continue.
- (d) Where the Commission finds that the undertaking of exporters is being evaded or no longer observed or has been withdrawn and that, as a result, protective measures might be necessary, it shall forthwith so inform the member States and shall recommence the examination of the facts in accordance with Article 10.
- (e) The provisions of Article 18 (1) shall apply mutatis mutandis to the undertakings given by exporters on the basis of this Article. Any modification of such undertakings shall be made in accordance with the procedure laid down in this Article.'

Article 15

- 1. (a) Where preliminary examination of the matter shows that there is dumping and there is sufficient evidence of injury and the interests of the Community call for immediate intervention, the Commission, acting at the request of a member State or on its own initiative, shall:
 - having due regard to the provisions of Article 19 (3), fix an amount to be secured by way of provisional anti-dumping duty, collection of which shall be determined by the subsequent decision of the Council under Article 17;
 - indicate, using the description required under Article 20, the products covered by this measure;
 - stipulate that entry of such products for Community consumption shall be conditional upon the provision of security for the aforementioned amount.
- (b) The Commission shall take such provisional action after hearing the opinions expressed in the Committee or, in cases of extreme urgency, after informing the member States. In this latter case, consultations shall take place within the Committee ten days at the latest after notification to the member States of the action taken by the Commission.

- (c) Where a member State requests immediate intervention by the Commission, the Commission shall, within a maximum of five working days of receipt of the request, decide whether a provisional anti-dumping duty should be imposed. If the Commission decides not to accede to such a request from a member State, it shall forthwith communicate its decision to the Council, which may, acting by a qualified majority, decide differently. A decision by the Commission not to impose a provisional duty shall not preclude the imposition of such duty at a later date, either at the request of a member State, if new factors arise, or on the initiative of the Commission.
2. (a) Without prejudice to the provisions of Articles 16 and 18, provisional measures shall continue to operate until the entry into force of a decision taken by the Council under Article 17, subject, however, to a maximum of three months.
- (b) After the period of validity of such measures has expired, the security shall be released, to the extent of the amount secured that the Council has not decided to collect definitively under Article 17. Where the provisional duty is retroactively cancelled or reduced under Article 16 or under Article 18, the security unduly obtained shall be released as promptly as possible.

Article 16

1. The Commission shall communicate to the Council forthwith its decision to introduce provisional measures. The Council, acting by a qualified majority, may either confirm these measures or decide that different action be taken. The period of validity of the Council's decision shall not exceed three months, reckoned from the date of the entry into force of the provisional measures taken by the Commission.

2. Not less than one month before expiry of the period of validity of the provisional duty, the Commission shall submit a proposal to the Council either for definitive Community action or, if exporters and importers representing a significant proportion of the trade involved so request or do not object and if examination of the matter has not yet been completed, for the extension of the provisional measures for a period not exceeding three months.

The Council shall act by a qualified majority.'

Article 17

1. Where the facts as finally established show that there is dumping and injury and the interests of the Community call for Community intervention, the Commission shall, after hearing the opinions expressed within the Committee, submit a proposal to the Council. The Council shall act by a qualified majority.
2. (a) Where a provisional duty has been applied, the Council shall decide, irrespective of whether a definitive anti-dumping duty is to be imposed, what proportion of the provisional duty is to be definitively collected. The Council shall act by a qualified majority on a proposal from the Commission.
(b) The definitive collection of such amount shall not be decided upon unless the facts as finally established show that there has been dumping and material injury (and not merely a threat of material injury or material retardation of the establishment of a Community industry) or that such injury would have been caused if provisional action had not been taken.

Article 18

1. (a) While the measures referred to in Articles 15, 16 and 17 are in operation, consultations shall be held within the Committee, either at the request of a member State or on the initiative of the Commission. The purpose of such consultations shall be:
 - to examine the effects of those measures; and
 - to ascertain whether the conditions for their application are satisfied.(b) Requests for such consultations to be held, accompanied by supporting evidence, may be made by exporters or by importers of the product in question, either to a member State or to the Commission. A member State receiving any such request shall inform the Commission, which shall notify the other member States. Where the Commission receives the request, it shall inform the other member States thereof.
2. If, after hearing the opinions expressed in the Committee, the Commission decides that the measures in question should be amended, or revoked either with or without retroactive effect, then:
 - (a) where measures are enforced under Article 15 and the Council has taken no decision under Article 16 or 17, or where measures have been taken under the transitional provisions of the Act of Accession, the Commission shall itself amend, or revoke with or

without retroactive effect, the measures in force under Article 15 or introduced under the transitional provisions of the Act of Accession and shall immediately report on this to the Council; the latter may, acting by a qualified majority, decide that different action be taken;'

- (b) in all other cases it shall propose to the Council either that measures in force under Article 15 or under Article 16 be amended, or revoked with or without retroactive effect, or that measures in force under Article 17 be amended or revoked. The Council shall decide on such proposals by a qualified majority.

Article 19

1. Anti-dumping duties, whether provisional or definitive, shall be imposed by Regulation.
2. (a) Without prejudice to the provisions of Article 17 (2), such duties shall be neither imposed nor increased with retroactive effect.

(b) Such duties shall apply to all the products specified in the Council or the Commission measure which, after entry into force of such measure, are entered for Community consumption. For this purpose, the date of acceptance by the customs authorities of the declarant's statement of his intention to enter the goods for consumption shall be determinant.

(c) Where a product is imported into the Community from more than one country, duty shall be levied at an appropriate amount on a non-discriminatory basis on all imports of such product found to be dumped and causing injury.
3. The amount of an anti-dumping duty, whether definitive or provisional, shall not exceed the margin of dumping established or, in the case of a provisional duty, the margin of dumping provisionally determined: it should be less than the margin if such lesser duty would be adequate to remove the injury.
4. (a) Where an importer can show that the duty collected exceeds the actual dumping margin, consideration being given to any application to dumping margins of weighted averages, the amount in excess of the margin shall be returned to him; where provisional measures were taken, the same shall apply in respect of the release of securities.

(b) For this purpose, the importer may, within three months of the date on which the products were entered for consumption, submit an application to the member State in the territory of which they

were so entered. That member State shall forward the application to the Commission as soon as possible, either with or without an opinion as to its merits. The Commission shall inform the other member States forthwith and give its opinion on the matter. If the member States agree with the opinion given by the Commission or do not object to it within one month of being informed, the member State in question may decide in accordance with the said opinion. In all other cases, the Commission shall, after consultations within the Committee, decide whether and to what extent the member State should grant the application.'

5. Where the second indent of Article 4 (5) has been applied, the Commission shall, after hearing the opinions expressed within the Committee, give exporters an opportunity to cease dumping on the competitive market concerned. In such cases, if an adequate undertaking is promptly given, the Commission shall not take provisional measures and shall not submit a proposal of the kind provided for in Article 17. However, if such an undertaking is not given promptly or is not fulfilled, the Commission may, in respect of the Community as a whole, impose a provisional duty or propose the imposition of a definitive duty.

6. Anti-dumping proceedings shall not constitute a bar to customs clearance of the product concerned.

Article 20

1. The description of any product covered by a measure provided for in the foregoing Articles shall include:

- (a) tariff description;
- (b) commercial description;
- (c) country of origin or export;
- (d) name of supplier.

2. If several suppliers from the same country are involved, and it is impracticable to name them all, the product may be described by the particulars referred to in (a), (b) and (c) of the foregoing paragraph. If several suppliers from more than one country are involved, it shall be sufficient to give, in addition to the particulars set out in (a) and (b), details either of all the suppliers involved, or, if this is impracticable, of all the supplying countries involved.

3. In the absence of any special provisions to the contrary adopted when a definitive or provisional anti-dumping duty was imposed, the rules on the common definition of the concept of origin and the relevant common implementing provisions shall apply.

Article 21

Anti-dumping duties shall be collected by member States in the form, at the rate and according to the other criteria laid down when the duties were imposed, and independently of the customs duties, taxes and other charges normally imposed on imports.

TITLE II

Bounties, Subsidies and Countervailing Duties

Article 22

Countervailing duties may be imposed on products in respect of which bounties or subsidies are granted in their countries of origin or export if their introduction into Community commerce causes or threatens material injury to an established Community industry or materially retards the establishment of such an industry. The provisions of Article 3(4)(c) shall apply correspondingly.

Article 23

The amount of any countervailing duty, whether definitive or provisional, shall not exceed an amount equal to the estimated, or, in the case of a provisional duty, the provisionally estimated, bounty or subsidy granted directly or indirectly in the country of origin or export on the manufacture, production or export of the product concerned, including any special subsidy to the transportation of the product.

Article 24

No product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from the granting of any bounty or subsidy.

Article 25

The provisions of Article 6 to 21 shall apply correspondingly to this Title.