UNCTAD/DITE/2 (Vol. VI)
Sales No. E.01.II.D.34

International Investment Instruments:

A Compendium

Volume VI

PART TWO

INTERREGIONAL AND REGIONAL INSTRUMENTS

UNITED NATIONS

REVISED OECD DECLARATION ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES, COMMENTARY ON THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES, AND COMMENTARY ON THE IMPLEMENTATION PROCEDURES OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES*

(ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT)

The OECD Declaration on International Investment and Multinational Enterprises was adopted by the Governments of OECD member countries on 21 June 1976. It was reviewed in 1979, 1982, 1984, 1991 and 2000. The previous version is reproduced in volume II of this *Compendium*. The Declaration has two Annexes, one containing the OECD Guidelines for Multinational Enterprises and the other dealing with general considerations and practical approaches concerning conflicting requirements imposed on TNCs. The implementation of the Declaration is dealt with in the four procedural Decisions by the OECD Council. Commentaries have been prepared by the Committee on International Investment and Multinational Enterprises that provide further explanations of the Guidelines texts and of the Council Decision on Implementation of the Guidelines. The Commentaries are not part of the Declaration on International Investment and Multinational Enterprises or of the Council Decision on the OECD Guidelines for Multinational Enterprises. As of 27 June 2000, the countries adhering to the Declaration were the 30 OECD members as well as Argentina, Brazil and Chile.

FOREWORD

The OECD has long been a focal point for co-operation among Member countries in the area of international direct investment and multinational enterprises. This co-operation is based on the 1976 Declaration on International Investment and Multinational Enterprises and its associated Decisions of the OECD Council which have been strengthened in various ways over the past twenty-four years. These instruments reflect a consensus based on a shared philosophy and a common approach among twenty-nine OECD and four non-OECD Member countries (Argentina, Brazil, Chile and the Slovak Republic[1]) and contain four inter-related elements:

- **The Guidelines for Multinational Enterprises** provide voluntary principles and standards for responsible business conduct addressed to multinational enterprises themselves;

* *Source*: Organisation for Economic Co-operation and Development (2000). "The OECD Declaration and Decisions on International Investment and Multinational Enterprises", November 2000, DAFFE/IME(2000)20. [Note added by the editor.]

[1] On 28 September 2000, Slovakia signed an Agreement setting out the terms under which it will become the thirtieth member of the OECD. The Agreement will now be submitted to the Slovak Parliament for ratification, a process that is expected to take approximately two months.

- **The National Treatment Instrument** sets out member countries' commitment to accord to foreign-controlled enterprises operating in their territories treatment no less favourable than that accorded to domestic enterprises in like situations;

- An instrument on **International Investment Incentives and Disincentives** provides for efforts among member countries to improve co-operation on measures affecting international direct investment; and

- An instrument on **Conflicting Requirements** calls on Member countries to avoid or minimise conflicting requirements imposed on multinational enterprises by governments of different countries.

The OECD Declaration and Decisions have periodically been reviewed[2] (1979, 1982, 1984, 1991). The most recent review concerned the Guidelines for Multinational Enterprises and was completed in June 2000. In comparison with the earlier reviews the changes to the text of the Guidelines are far-reaching and reinforce the core elements – economic, social and environmental – of the sustainable development agenda[3]. They have been developed in constructive dialogue with the business community, labour representatives and non-governmental organisations. The revisions to the implementation procedures maintain the focus on the National Contact Points (NCPs), as the key government institution responsible for furthering effective implementation of the Guidelines; however, they provided more guidance to National Contact Points in fulfilling their role and has also clarified the CIME's role.

In welcoming the updated Guidelines for Multinational Enterprises, OECD Ministers[4] noted that "the Guidelines provide a robust set of recommendations for responsible corporate behaviour worldwide consistent with existing legislation. They are part of the OECD Declaration on International Investment and Multinational Enterprises which provides a balanced framework to improve the international investment climate and encourage the positive contributions multinational enterprises can make to economic, social and environmental goals".

Ministers also noted that "OECD will continue its analytical work in the field of investment policy, including work on maximising the benefits of investment liberalisation, its social and environmental dimensions and on harmful forms of policy-based competition to attract investment. OECD will encourage non-members to adhere to the Declaration on International Investment and Multinational Enterprises".

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[2] See the Review reports: *International Investment and Multinational Enterprises: Review of the 1976 Declaration and Decisions* (OECD Paris, 1979); *Mid-Term Report on the 1976 Declaration and Decisions* (OECD Paris, 1982); 1984 *Review of the 1976 Declaration and Decisions* (OECD Paris, 1984); The *OECD Declaration and Decisions on International Investment and Multinational Enterprises, 1991 Review* (OECD Paris, 1992).

[3] With the addition of recommendations relating to the elimination of child and forced labour, all internationally recognised core labour standards are now covered by the Guidelines. The environment section now encourages enterprises to raise their environmental performance, through such measures as improved internal environmental management, stronger disclosure of environmental information, and better contingency planning for environmental impacts. A recommendation on human rights has been introduced. New chapters on combating corruption and on consumer protection have also been added. The chapter on disclosure and transparency has been updated to reflect the *OECD Principles on Corporate Governance* and to recognise and encourage progress in enhancing firms' social and environmental accountability.

[4] Extract from the final news release at the OECD Ministerial, June 2000 [http://www.oecd.org/media/release/nw00-70a.htm (paragraph 26)].

The effectiveness of the Declaration and its constituent elements depends on the follow-up which adhering countries will give to it, both nationally and within the procedures set up at the level of OECD.

The ongoing support and involvement of the business community represented by the Business and Industry Advisory committee (BIAC), labour, represented by the Trade Union Advisory Committee (TUAC) and other non-governmental organisations will also be crucial.

I. DECLARATION ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES

27 June 2000

ADHERING GOVERNMENTS[5]

CONSIDERING:

- That international investment is of major importance to the world economy, and has considerably contributed to the development of their countries;

- That multinational enterprises play an important role in this investment process;

- That international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations;

- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments;

DECLARE:

Guidelines for Multinational Enterprises

I. That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, set forth in Annex 1 hereto[6], having regard to the considerations and understandings that are set out in the Preface and are an integral part of them;"

5. As at 27 June 2000 adhering governments are those of all OECD Members, as well as Argentina, Brazil, Chile and the Slovak Republic. The European Community has been invited to associate itself with the section on National Treatment on matters falling within its competence.
6. The text of the Guidelines for Multinational Enterprises is reproduced in Annex 1 of this booklet.

National Treatment

II.1. That adhering governments should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government (hereinafter referred to as "Foreign-Controlled Enterprises") treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as "National Treatment");

2. That adhering governments will consider applying "National Treatment" in respect of countries other than adhering governments;

3. That adhering governments will endeavour to ensure that their territorial subdivisions apply "National Treatment";

4. That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises;

Conflicting Requirements

III. That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto[7].

International Investment Incentives and Disincentives

IV.1. That they recognise the need to strengthen their co-operation in the field of international direct investment;

2. That they thus recognise the need to give due weight to the interests of adhering governments affected by specific laws, regulations and administrative practices in this field (hereinafter called "measures") providing official incentives and disincentives to international direct investment;

3. That adhering governments will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;

Consultation Procedures

V. That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council;

Review

VI. That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises.

7. The text of General considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises is reproduced in Annex 2 of this booklet.

Annex 1

THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

Preface

1. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The *Guidelines* are part of the *OECD Declaration on International Investment and Multinational Enterprises* the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives.

2. International business has experienced far-reaching structural change and the *Guidelines* themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries, service and technology enterprises have entered the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.

3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services.

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join OECD economies to each other and to the rest of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital in host countries.

5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.

6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate standards and principles of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.

7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. These efforts have also promoted social dialogue on what constitutes good business conduct. The *Guidelines* clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises. Thus, the *Guidelines* both complement and reinforce private efforts to define and implement responsible business conduct.

8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The post-war period has seen the development of this framework, starting with the adoption in 1948 of the Universal Declaration of Human Rights. Recent instruments include the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21 and the Copenhagen Declaration for Social Development.

9. The OECD has also been contributing to the international policy framework. Recent developments include the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and of the OECD Principles of Corporate Governance, the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, and ongoing work on the OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations.

10. The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of firms, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the *Guidelines* are committed to continual improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

I. Concepts and Principles

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable

laws. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable.

2. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country.

3. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the *Guidelines*.

4. The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant to both.

5. Governments wish to encourage the widest possible observance of the *Guidelines*. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the *Guidelines* nevertheless encourage them to observe the *Guidelines* recommendations to the fullest extent possible.

6. Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.

7. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.

8. Governments adhering to the *Guidelines* set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.

9. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.

10. Governments adhering to the *Guidelines* will promote them and encourage their use. They will establish National Contact Points that promote the *Guidelines* and act as a forum for

discussion of all matters relating to the *Guidelines*. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the *Guidelines* in a changing world.

II. General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.

2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.

4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.

5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.

6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.

7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.

8. Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.

9. Refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.

10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*.

11. Abstain from any improper involvement in local political activities.

III. Disclosure

1. Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along

business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

2. Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.

3. Enterprises should disclose basic information showing their name, location, and structure, the name, address and telephone number of the parent enterprise and its main affiliates, its percentage ownership, direct and indirect in these affiliates, including shareholdings between them.

4. Enterprises should also disclose material information on:

   1. The financial and operating results of the company;

   2. Company objectives;

   3. Major share ownership and voting rights;

   4. Members of the board and key executives, and their remuneration;

   5. Material foreseeable risk factors;

   6. Material issues regarding employees and other stakeholders;

   7. Governance structures and policies.

5. Enterprises are encouraged to communicate additional information that could include:

   a) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated;

   b) Information on systems for managing risks and complying with laws, and on statements or codes of business conduct;

   c) Information on relationships with employees and other stakeholders.

IV. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

1. a) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions;

   b) Contribute to the effective abolition of child labour;

   c) Contribute to the elimination of all forms of forced or compulsory labour;

   d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

2. a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements;

   b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment;

   c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.

3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

4. a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;

   b) Take adequate steps to ensure occupational health and safety in their operations.

5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.

6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.

7. In the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the

whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

V. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:

   a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;

   b) Establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and

   c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.

2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:

   a) Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and

   b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety,

not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.

5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.

6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:

a) Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;

b) Development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;

c) Promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise; and

d) Research on ways of improving the environmental performance of the enterprise over the longer term.

7. Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.

8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

VI. Combating Bribery

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channelling payments to public officials, to employees of business partners or to their relatives or business associates.

2. Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.

3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.

4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.

5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of "off the books" or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.

6. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.

VII. Consumer Interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.

2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.

3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.

4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.

5. Respect consumer privacy and provide protection for personal data.

6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.

VIII. Science and Technology

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.

2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.

3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.

4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term development prospects of the host country.

5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

IX. Competition

Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner. In particular, enterprises should:

1. Refrain from entering into or carrying out anti-competitive agreements among competitors:

   a) To fix prices;

   b) To make rigged bids (collusive tenders);

   c) To establish output restrictions or quotas; or

   d) To share or divide markets by allocating customers, suppliers, territories or lines of commerce.

2. Conduct all of their activities in a manner consistent with all applicable competition laws, taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.

3. Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.

4. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

IX. Taxation

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

Annex 2

GENERAL CONSIDERATIONS AND PRACTICAL APPROACHES CONCERNING CONFLICTING REQUIREMENTS IMPOSED ON MULTINATIONAL ENTERPRISES [8]

GENERAL CONSIDERATIONS

1. In contemplating new legislation, action under existing legislation or other exercise of jurisdiction which may conflict with the legal requirements or established policies of another Member country and lead to conflicting requirements being imposed on multinational enterprises, the Member countries concerned should:

a) Have regard to relevant principles of international law;

b) Endeavour to avoid or minimise such conflicts and the problems to which they give rise by following an approach of moderation and restraint, respecting and accommodating the interests of other Member countries[9];

c) Take fully into account the sovereignty and legitimate economic, law enforcement and other interests of other Member countries;

d) Bear in mind the importance of permitting the observance of contractual obligations and the possible adverse impact of measures having a retroactive effect.

2. Member countries should endeavour to promote co-operation as an alternative to unilateral action to avoid or minimise conflicting requirements and problems arising therefrom. Member countries should on request consult one another and endeavour to arrive at mutually acceptable solutions to such problems.

8 The General Considerations and Practical Approaches were endorsed by the Ministers in May 1984. They were annexed to the 1976 Declaration as a result of the 1991 Review exercise.

9 Applying the principle of comity, as it is understood in some Member countries, includes following an approach of this nature in exercising one's jurisdiction. This text is an integral part of the negotiated instruments.

PRACTICAL APPROACHES

3. Member countries recognised that in the majority of circumstances, effective co-operation may best be pursued on a bilateral basis. On the other hand, there may be cases where the multilateral approach could be more effective.

4. Member countries should therefore be prepared to:

a) Develop mutually beneficial, practical and appropriately safeguarded bilateral arrangements, formal or informal, for notification to and consultation with other Member countries;

b) Give prompt and sympathetic consideration to requests for notification and bilateral consultation on an ad hoc basis made by any Member country which considers that its interests may be affected by a measure of the type referred to under paragraph 1 above, taken by another Member country with which it does not have such bilateral arrangements;

c) Inform the other concerned Member countries as soon as practicable of new legislation or regulations proposed by their Governments for adoption which have significant potential for conflict with the legal requirements or established policies of other Member countries and for giving rise to conflicting requirements being imposed on multinational enterprises;

d) Give prompt and sympathetic consideration to requests by other Member countries for consultation in the Committee on International Investment and Multinational Enterprises or through other mutually acceptable arrangements. Such consultations would be facilitated by notification at the earliest stage practicable;

e) Give prompt and full consideration to proposals which may be made by other Member countries in any such consultations that would lessen or eliminate conflicts.

These procedures do not apply to those aspects of restrictive business practices or other matters which are the subject of existing OECD arrangements.

II. DECISIONS OF THE OECD COUNCIL

1. The OECD Guidelines for Multinational Enterprises

DECISION OF THE COUNCIL

June 2000

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the OECD Declaration on International Investment and Multinational Enterprises (the "Declaration"), in which the Governments of adhering countries ("adhering countries") jointly recommend to multinational enterprises operating in or from their territories the observance of Guidelines for Multinational Enterprises (the "Guidelines");

Recognising that, since operations of multinational enterprises extend throughout the world, international co-operation on issues relating to the Declaration should extend to all countries;

Having regard to the Terms of Reference of the Committee on International Investment and Multinational Enterprises, in particular with respect to its responsibilities for the Declaration [C(84)171(Final), renewed in C/M(95)21];

Considering the Report on the First Review of the 1976 Declaration [C(79)102(Final)], the Report on the Second Review of the Declaration [C/MIN(84)5(Final)], the Report on the 1991 Review of the Declaration [DAFFE/IME(91)23], and the Report on the 2000 Review of the Guidelines [C(2000)96];

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1];

Considering it desirable to enhance procedures by which consultations may take place on matters covered by these Guidelines and to promote the effectiveness of the Guidelines;

On the proposal of the Committee on International Investment and Multinational Enterprises:

DECIDES:

To repeal the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1], and replace it with the following:

I. National Contact Points

1. Adhering countries shall set up National Contact Points for undertaking promotional activities, handling inquiries and for discussions with the parties concerned on all matters

covered by the Guidelines so that they can contribute to the solution of problems which may arise in this connection, taking due account of the attached procedural guidance. The business community, employee organisations, and other interested parties shall be informed of the availability of such facilities.

2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.

3. National Contact Points shall meet annually to share experiences and report to the Committee on International Investment and Multinational Enterprises.

II. The Committee on International Investment and Multinational Enterprises

1. The Committee on International Investment and Multinational Enterprises ("CIME" or "the Committee") shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the Guidelines and the experience gained in their application.

2. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), and the Trade Union Advisory Committee to the OECD (TUAC) (the "advisory bodies"), as well as other non-governmental organisations to express their views on matters covered by the Guidelines. In addition, exchanges of views with the advisory bodies on these matters may be held at their request.

3. The Committee may decide to hold exchanges of views on matters covered by the Guidelines with representatives of non-adhering countries.

4. The Committee shall be responsible for clarification of the Guidelines. Clarification will be provided as required. If it so wishes, an individual enterprise will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests. The Committee shall not reach conclusions on the conduct of individual enterprises.

5. The Committee shall hold exchanges of views on the activities of National Contact Points with a view to enhancing the effectiveness of the Guidelines.

6. In fulfilling its responsibilities for the effective functioning of the Guidelines, the Committee shall take due account of the attached procedural guidance.

7. The Committee shall periodically report to the Council on matters covered by the Guidelines. In its reports, the Committee shall take account of reports by National Contact Points, the views expressed by the advisory bodies, and the views of other non-governmental organisations and non-adhering countries as appropriate.

III. Review of the Decision

This Decision shall be periodically reviewed. The Committee shall make proposals for this purpose.

Procedural Guidance

I. National Contact Points

The role of National Contact Points (NCP) is to further the effectiveness of the Guidelines. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

A. Institutional Arrangements

Consistent with the objective of functional equivalence, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, employee organisations, and other interested parties, which includes non-governmental organisations.

Accordingly, the National Contact Point:

1. May be a senior government official or a government office headed by a senior official. Alternatively, the National Contact Point may be organised as a co-operative body, including representatives of other government agencies. Representatives of the business community, employee organisations and other interested parties may also be included.

2. Will develop and maintain relations with representatives of the business community, employee organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.

B. Information and Promotion

National Contact Points will:

1. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.

2. Raise awareness of the Guidelines, including through co-operation, as appropriate, with the business community, employee organisations, other non-governmental organisations, and the interested public.

3. Respond to enquiries about the Guidelines from:

   (a) Other National Contact Points;

   (b) The business community, employee organisations, other non-governmental organisations and the public; and

(c) Governments of non-adhering countries.

C Implementation in Specific Instances

The NCP will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them.

2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:

(a) Seek advice from relevant authorities, and/or representatives of the business community, employee organisations, other non-governmental organisations, and relevant experts;

(b) Consult the National Contact Point in the other country or countries concerned;

(c) Seek the guidance of the CIME if it has doubt about the interpretation of the Guidelines in particular circumstances;

(d) Offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist in dealing with the issues.

3. If the parties involved do not reach agreement on the issues raised, issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines.

4. (a) In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure.

(b) After consultation with the parties involved, make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.

5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

D. Reporting

1. Each National Contact Point will report annually to the Committee.

2. Reports should contain information on the nature and results of the activities of the National Contact Point, including implementation activities in specific instances.

II. Committee on International Investment and Multinational Enterprises

1. The Committee will discharge its responsibilities in an efficient and timely manner.

2. The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the Guidelines in particular circumstances.

3. The Committee will:

(a) Consider the reports of NCPs.

(b) Consider a substantiated submission by an adhering country or an advisory body on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances.

(c) Consider issuing a clarification where an adhering country or an advisory body makes a substantiated submission on whether an NCP has correctly interpreted the Guidelines in specific instances.

(d) Make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the Guidelines.

4. The Committee may seek and consider advice from experts on any matters covered by the Guidelines. For this purpose, the Committee will decide on suitable procedures.

ANNEX

COMMENTARIES

COMMENTARY ON THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

(27 June 2000)

Commentary on General Policies

1 The General Policies chapter of the *Guidelines* is the first to contain specific recommendations to enterprises. As such it is important for setting the tone and establishing common fundamental principles for the specific recommendations in subsequent chapters.

2. Obeying domestic law is the first obligation of business. The *Guidelines* are not a substitute for nor should they be considered to override local law and regulation. They represent supplementary principles and standards of behaviour of a non-legal character, particularly concerning the international operations of these enterprises. While the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.

3. Enterprises are encouraged to co-operate with governments in the development and implementation of policies and laws. Considering the views of other stakeholders in society, which includes the local community as well as business interests, can enrich this process. It is also recognised that governments should be transparent in their dealings with enterprises, and consult with business on these same issues. Enterprises should be viewed as partners with government in the development and use of both voluntary and regulatory approaches (of which the *Guidelines* are one element) to policies affecting them.

4. There should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development, and the *Guidelines* are meant to foster complementarities in this regard. Indeed, links among economic, social and environmental progress are a key means for furthering the goal of sustainable development.[1] On a related issue, while promoting and upholding human rights is primarily the responsibility of governments, where corporate conduct and human rights intersect enterprises do play a role, and thus MNEs are encouraged to respect human rights, not only in their dealings with employees, but also with respect to others affected by their activities, in a manner that is consistent with host governments' international obligations and commitments. The Universal Declaration of Human Rights and other human rights obligations of the government concerned are of particular relevance in this regard.

5. The *Guidelines* also acknowledge and encourage the contribution that MNEs can make to local capacity building as a result of their activities in local communities. Similarly, the recommendation on human capital formation is an explicit and forward-looking recognition of the contribution to individual human development that MNEs can offer their employees, and encompasses not only hiring practices, but training and other employee development as well. Human capital formation also incorporates the notion of non-discrimination in hiring practices as well as promotion practices, life-long learning and other on-the-job training.

6. Governments recommend that, in general, enterprises avoid efforts to secure exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation and financial incentives among other issues, without infringing on an enterprise's right to seek changes in the statutory or regulatory framework. The words "or accepting" also draw attention to the role of the sate in offering these exemptions. While this sort of provision has been traditionally directed at governments, it is also of direct relevance to MNES. Importantly, however, there are instances where specific exemptions from laws or other policies can be consistent with these laws for legitimate public policy reasons. The environment and competition policy chapters are examples.

7. The paragraph devoted to the role of MNEs in corporate governance gives further impetus to the recently adopted OECD Principles of Corporate Governance. Although primary

[1] One of the most broadly accepted definitions of sustainable development is in the 1987 World Commission on Environment and Development (the Brundtland Commission): "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs".

responsibility for improving the legal and institutional regulatory framework lies with governments, enterprises also have an interest in good governance.

8. An increasing network of non-governmental self-regulatory instruments and actions address aspects of corporate behaviour and the relationships between business and society. Enterprises recognise that their activities often have social and environmental implications. The institution of self-regulatory practices and management systems by enterprises sensitive to reaching these goals -- thereby contributing to sustainable development -- is an illustration of this. In turn, developing such practices can further constructive relationships between enterprises and the societies in which they operate.

9. Following from effective self-regulatory practices, as a matter of course, enterprises are expected to promote employee awareness of company policies. Safeguards to protect *bona fide* "whistle-blowing" activities are also recommended, including protection of employees who, in the absence of timely remedial action or in the face of reasonable risk of negative employment action, report practices that contravene the law to the competent public authorities. While of particular relevance to anti-bribery and environmental initiatives, such protection is also relevant to other recommendations in the *Guidelines.*

10. Encouraging, where practicable, compatible principles of corporate responsibility among business partners serves to combine a re-affirmation of the standards and principles embodied in the *Guidelines* with an acknowledgement of their importance to suppliers, contractors, subcontractors, licensees and other entities with which MNEs enjoy a working relationship. It is recognised that there are practical limitations to the ability of enterprises to influence the conduct of their business partners. The extent of these limitations depends on sectoral, enterprise and product characteristics such as the number of suppliers or other business partners, the structure and complexity of the supply chain and the market position of the enterprise vis-à-vis its suppliers or other business partners. The influence enterprises may have on their suppliers or business partners is normally restricted to the category of products or services they are sourcing, rather than to the full range of activities of suppliers or business partners. Thus, the scope for influencing business partners and the supply chain is greater in some instances than in others. Established or direct business relationships are the major object of this recommendation rather than all individual or ad hoc contracts or transactions that are based solely on open market operations or client relationships. In cases where direct influence of business partners is not possible, the objective could be met by means of dissemination of general policy statements of the enterprise or membership in business federations that encourage business partners to apply principles of corporate conduct compatible with the *Guidelines*.

11. Finally, it is important to note that self-regulation and other initiatives in a similar vein, including the *Guidelines*, should not unlawfully restrict competition, nor should they be considered a substitute for effective law and regulation by governments. It is understood that MNEs should avoid potential trade or investment distorting effects of codes and self-regulatory practices when they are being developed.

Commentary on Disclosure

12. The purpose of this chapter is to encourage improved understanding of the operations of multinational enterprises. Clear and complete information on enterprises is important to a variety of users ranging from shareholders and the financial community to other constituencies such as employees, local communities, special interest groups, governments and society at large. To

improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their operations and responsive to the public's increasingly sophisticated demands for information. The information highlighted in this chapter may be a supplement to disclosure required under the national laws of the countries in which the enterprise operates.

13. This chapter addresses disclosure in two areas. The first set of disclosure recommendations is identical to disclosure items outlined in the *OECD Principles of Corporate Governance*. The *Principles* call for timely and accurate disclosure on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. Companies are also expected to disclose sufficient information on the remuneration of board members and key executives (either individually or in the aggregate) for investors to properly assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to performance. The *Principles* contain annotations that provide further guidance on the required disclosures and the recommendations in the *Guidelines* should be construed in relation to these annotations. They focus on publicly traded companies. To the extent that they are deemed applicable, they should also be a useful tool to improve corporate governance in non-traded enterprises; for example, privately held and state owned enterprises.

14. The *Guidelines* also encourage a second set of disclosure or communication practices in areas where reporting standards are still emerging such as, for example, social, environmental, and risk reporting. Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to socially acceptable practices. In some cases, this second type of disclosure -- or communication with the public and with other parties directly affected by the firms' activities -- may pertain to entities that extend beyond those covered in the enterprises' financial accounts. For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners.

15. Many enterprises have adopted measures designed to help them comply with the law and standards of business conduct, and to enhance the transparency of their operations. A growing number of firms have issued voluntary codes of corporate conduct, which are expressions of commitments to ethical values in such areas as environment, labour standards or consumer protection. Specialised management systems are being developed with the aim of helping them respect these commitments - these involve information systems, operating procedures and training requirements. Enterprises are co-operating with NGOs and intergovernmental organisations in developing reporting standards that enhance enterprises' ability to communicate how their activities influence sustainable development outcomes (*e.g.* the Global Reporting Initiative).

16. The *OECD Principles of Corporate Governance* support the development of high quality internationally recognised standards of accounting, financial and non-financial disclosure, and audit, which can serve to improve the comparability of information among countries. Financial audits conducted by independent auditors provide external and objective assurance on the way in which financial statements have been prepared and presented. The transparency and effectiveness of non-financial disclosure may be enhanced by independent verification. Techniques for independent verification of non-financial disclosure are emerging.

17. Enterprises are encouraged to provide easy and economical access to published information and to consider making use of information technologies to meet this goal. Information that is made available to users in home markets should also be available to all interested users. Enterprises may take special steps to make information available to communities that do not have access to printed media (*e.g.* poorer communities that are directly affected by the enterprise's activities).

18. Disclosure requirements are not expected to place unreasonable administrative or cost burdens on enterprises. Nor are enterprises expected to disclose information that may endanger their competitive position unless disclosure is necessary to fully inform the investment decision and to avoid misleading the investor.

Commentary on Employment and Industrial Relations.

19. This chapter opens with a chapeau that includes a reference to "applicable" law and regulations, which is meant to acknowledge the fact that multinational enterprises, while operating within the jurisdiction of particular countries, may be subject to *national*, *sub-national*, as well as *supra-national* levels of regulation of employment and industrial relations matters. The terms "prevailing labour relations" and "employment practices" are sufficiently broad to permit a variety of interpretations in light of different national circumstances - for example, different bargaining options provided for employees under national laws and regulations.

20. The International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognised in its 1998 Declaration on Fundamental Principles and Rights at Work of the International Labour Organisation (ILO). The *Guidelines*, as a non-binding instrument, have a role to play in promoting observance of these standards and principles among multinational enterprises. The provisions of the *Guidelines* chapter echo relevant provisions of the 1998 Declaration, as well as the ILO's 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The Tripartite Declaration sets out principles in the fields of employment, training, working conditions, and industrial relations, while the OECD Guidelines cover all major aspects of corporate behaviour. The OECD Guidelines and the ILO Tripartite Declaration refer to the behaviour expected from enterprises and are intended to parallel and not conflict with each other. The ILO Tripartite Declaration can therefore be of use in understanding the *Guidelines* to the extent that it is of a greater degree of elaboration. However, the responsibilities for the follow-up procedures under the Tripartite Declaration and the *Guidelines* are institutionally separate.

21. The first paragraph of this chapter is designed to echo all four fundamental principles and rights at work which are contained in the ILO's 1998 Declaration, namely the freedom of association and right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour, and non-discrimination in employment and occupation. These principles and rights have been developed in the form of specific rights and obligations in ILO Conventions recognised as fundamental.

22. The chapter recommends that multinational enterprises contribute to the effective abolition of child labour in the sense of the ILO 1998 Declaration and ILO Convention 182 concerning the worst forms of child labour. Long-standing ILO instruments on child labour are Convention 138 and Recommendation 146 (both adopted in 1973) concerning minimum ages for employment. Through their labour management practices, their creation of high quality, well paid jobs and their contribution to economic growth, multinational enterprises can play a positive

role in helping to address the root causes of poverty in general and of child labour in particular. It is important to acknowledge and encourage the role of multinational enterprises in contributing to the search for a lasting solution to the problem of child labour. In this regard, raising the standards of education of children living in host countries is especially noteworthy.

23. The chapter also recommends that enterprises contribute to the elimination of all forms of compulsory labour, another principle derived from the 1998 ILO Declaration. The reference to this core labour right is based on the ILO Conventions 29 of 1930 and 105 of 1957. C 29 requests that governments “suppress the use of forced or compulsory labour in all its forms within the shortest possible period”, while C. 105 requests of them to "suppress and not to make use of any form of forced or compulsory labour" for certain enumerated purposes (*e.g.* as a means of political coercion or labour discipline), and “to take effective measures to secure [its] immediate and complete abolition". At the same time, it is understood that the ILO is the competent body to deal with the difficult issue of prison labour, in particular when it comes to the hiring-out of prisoners to (or their placing at the disposal of) private individuals, companies or associations.

24. The principle of non-discrimination with respect to employment and occupation is considered to apply to such terms and conditions as hiring, discharge, pay, promotion, training and retirement. The list of non-permissible grounds for discrimination which is taken from ILO Convention 111 of 1958 considers that any distinction, exclusion or preference on these grounds is in violation of the Convention. At the same time, the text makes clear that the terms do not constitute an exhaustive list. Consistent with the provisions in paragraph l d), enterprises are expected to promote equal opportunities for women and men with special emphasis on equal criteria for selection, remuneration, and promotion, and equal application of those criteria, and prevent discrimination or dismissals on the grounds of marriage, pregnancy or parenthood.

25. The reference to consultative forms of employee participation in paragraph two of the *Guidelines* is taken from ILO Recommendation 94 of 1952 concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking. It also conforms to a provision contained in the 1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Such consultative arrangements should not substitute for employees' right to bargain over terms and conditions of employment. A recommendation on consultative arrangements with respect to employment arrangements is also part of paragraph eight.

26. In paragraph three of this chapter, information provided by companies to their employees is expected to provide a "true and fair view" of performance. It relates to the following: the structure of the enterprise, its economic and financial situation and prospects, employment trends, and expected substantial changes in operations, taking into account legitimate requirements of business confidentiality. Considerations of business confidentiality may mean that information on certain points may not be provided, or may not be provided without safeguards.

27. In paragraph four, employment and industrial relations standards are understood to include compensation and working-time arrangements. The reference to occupational health and safety implies that MNEs are expected to follow prevailing regulatory standards and industry norms to minimise the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment. This encourages enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even

where this may not be formally required by existing regulations in countries in which they operate. It also encourages enterprises to respect employees' ability to remove themselves from a work situation when there is reasonable justification to believe that it presents an imminent and serious risk to health or safety. Reflecting their importance and complementarities among related recommendations, health and safety concerns are echoed elsewhere in the *Guidelines*, most notably in chapters on Consumer Interests and the Environment.

28. The recommendation in paragraph five of the chapter encourages MNEs to recruit an adequate workforce share locally, including managerial personnel, and to provide training to them. Language in this paragraph on training and skill levels complements the text in paragraph four of the General Policies chapter on encouraging human capital formation. The reference to local personnel complements the text encouraging local capacity building in paragraph three of the General Policies chapter.

29. Paragraph six recommends that enterprises provide reasonable notice to the representatives of employees and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their employees, in particular the closure of an entity involving collective layoffs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in the industrial relations laws and practices of adhering countries, although the approaches taken to ensuring an opportunity for meaningful co-operation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful co-operation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented.

Commentary on the Environment

30. The text of the Environment Chapter broadly reflects the *principles* and objectives contained in the Rio Declaration on Environment and Development, in Agenda 21 (within the Rio Declaration). It also takes into account the (Aarhus) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters and reflects *standards* contained in such instruments as the ISO Standard on Environmental Management Systems.

31. Sound environmental management is an important part of sustainable development, and is increasingly being seen as both a business responsibility and a business *opportunity.* Multinational enterprises have a role to play in both respects. Managers of these enterprises should therefore give appropriate attention to environmental issues within their business strategies. Improving environmental performance requires a commitment to a systematic approach and to continual improvement of the system. An environmental management system provides the internal framework necessary to control an enterprise's environmental impacts and to integrate environmental considerations into business operations. Having such a system in place should help to assure stockholders, employees and the community that the enterprise is actively working to protect the environment from the impacts of its activities.

32. In addition to improving environmental performance, instituting an environmental management system can provide economic benefits to companies through reduced operating and insurance costs, improved energy and resource conservation, reduced compliance and liability charges, improved access to capital, improved customer satisfaction, and improved community and public relations.

33. In the context of these *Guidelines*, "sound environmental management" should be interpreted in its broadest sense, embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities over the long-term, and involving both pollution control and resource management elements.

34. In most enterprises, an internal control system is needed to manage the enterprise's activities. The environmental part of this system may include such elements as targets for improved performance and regular monitoring of progress towards these targets.

35. Information about the activities of enterprises and associated environmental impacts is an important vehicle for building confidence with the public. This vehicle is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders such as employees, customers, suppliers, contractors, local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest.

36. Normal business activity can involve the ex ante assessment of the potential environmental impacts associated with the enterprise's activities. Enterprises often carry out appropriate environmental impact assessments, even if they are not required by law. Environmental assessments made by the enterprise may contain a broad and forward-looking view of the potential impacts of an enterprise's activities, addressing relevant impacts and examining alternatives and mitigation measures to avoid or redress adverse impacts. The *Guidelines* also recognise that multinational enterprises have certain responsibilities in other parts of the product life cycle.

37. Several instruments already adopted by countries adhering to the *Guidelines*, including Principle 15 of the Rio Declaration on Environment and Development, enunciate a "precautionary approach". None of these instruments is explicitly addressed to enterprises, although enterprise contributions are implicit in all of them.

38. The basic premise of the *Guidelines* is that enterprises should act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible environmental damages resulting from their activities. However the fact that the *Guidelines* are addressed to enterprises means that no existing instrument is completely adequate for expressing this recommendation. The *Guidelines* therefore draw upon, but do not completely mirror, any existing instrument.

39. The *Guidelines* are not intended to reinterpret any existing instruments or to create new commitments or precedents on the part of governments -- they are intended only to recommend how the precautionary approach should be implemented at the level of enterprises. Given the early stage of this process, it is recognised that some flexibility is needed in its application, based on the specific context in which it is carried out. It is also recognised that governments determine the basic framework in this field, and have the responsibility to periodically consult with stakeholders on the most appropriate ways forward.

40. The *Guidelines* also encourage enterprises to work to raise the level of environmental performance in all parts of their operations, even where this may not be formally required by existing practice in the countries in which they operate.

41. For example, multinational enterprises often have access to technologies or operating procedures which could, if applied, help raise environmental performance overall. Multinational enterprises are frequently regarded as leaders in their respective fields, so the potential for a "demonstration effect" on other enterprises should not be overlooked. Ensuring that the environment of the countries in which multinational enterprises operate also benefits from available technologies is an important way of building support for international investment activities more generally.

42. Enterprises have an important role to play in the training and education of their employees with regard to environmental matters. They are encouraged to discharge this responsibility in as broad a manner as possible, especially in areas directly related to human health and safety.

Commentary on Combating Bribery

43. Bribery and corruption are not only damaging to democratic institutions and the governance of corporations, but they also impede efforts to reduce poverty. In particular, the diversion of funds through corrupt practices undermines attempts by citizens to achieve higher levels of economic, social and environmental welfare. Enterprises have an important role to play in combating these practices.

44. Progress in improving the policy framework and in heightening enterprises' awareness of bribery as a management issue has been significant. The OECD *Convention of Combating Bribery of Foreign Public Officials* (*the Convention*) has been signed by 34 countries and entered into force on 15 February 1999. The *Convention*, along with the 1997 revised *Recommendation on Combating Bribery in International Business Transactions* and the 1996 *Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials*, are the core instruments through which members of the anti bribery group co-operate to stop the flow of bribes for the purpose of obtaining or retaining international business. The three instruments target the offering side of the bribery transaction. They aim to eliminate the "supply" of bribes to foreign public officials, with each country taking responsibility for the activities of its companies and what happens on its own territory.[2] A monitoring programme has been established to assure effective and consistent implementation and enforcement of the Convention.

45. To address the demand side of bribery, good governance practices are important elements to prevent companies from being asked to pay bribes. In addition, governments should assist companies confronted with solicitation of bribes.

[2] For the purpose of the Convention, a "bribe" is defined as an "… offer, promise, or giv(ing) of any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refraim from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business". The Commentaries to the Convention (paragraph 9) clarify that "(s)mall 'facilitation' payments do not constitute payments made 'to obtain or retain business or other improper advantage' within the meaning of paragraph 1 and, accordingly, are also not an offence. Such payments, which, in some countries, are made to induce public officials to perform their functions, such as issuing licences or permits, are generally illegal in the foreign country concerned. Other countries can and should address this corrosive phenomenon by such means as support for programmes of good governance. …."

46. Another important development has been the International Chamber of Commerce's recent update of its *Report on Extortion and Bribery in Business Transactions*. The *Report* contains recommendations to governments and international organisations on combating extortion and bribery as well as a code of conduct for enterprises that focuses on these issues.

47. Transparency in both the public and private domains is a key concept in the fight against bribery and extortion. The business community, non-governmental organisations and governments and inter-governmental organisations have all co-operated to strengthen public support for anti-corruption measures and to enhance transparency and public awareness of the problems of corruption and bribery. The adoption of appropriate corporate governance practices is a complementary element in fostering a culture of ethics within the enterprise.

Commentary on Consumer Interests

48. A brief reference to "consumer interests" was first introduced into the *Guidelines* in 1984, to reflect increasingly international aspects of consumer policies and the impact that the expansion of international trade, product packaging, marketing and sales and product safety can have on those policies. Since that time, the development of electronic commerce and the increased globalisation of the marketplace have substantially increased the reach of MNEs and consumer access to their goods and services. In recognition of the increasing importance of consumer issues, a substantial percentage of enterprises in their management systems and codes of conduct include references to consumer interests and protections.

49. In light of these changes, and with an eye to helping enhance consumer safety and health, a chapter on *consumer interests* has been added to the *Guidelines* as a result of the current Review. Language in this chapter draws on the work of the OECD Committee on Consumer Policy, as well as that embodied in various individual and international corporate codes (such as those of the ICC), the UN Guidelines on Consumer Policy, and the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce.

50. A variety of consumer protection laws exist that govern business practices. The emerging framework is intended to both protect consumer interests and foster economic growth and places a growing emphasis on the use of self-regulatory mechanisms. As noted, many existing national and international corporate codes of conduct include a reference to some aspect of consumer protection and amplify the commitment of industry to help protect health and safety and build consumer confidence in the marketplace. Ensuring that these sorts of practices provide consumers with effective and transparent protection is essential to help build trust that encourages consumer participation and market growth.

51. The emphasis on alternative dispute resolution in paragraph 3 of the chapter is an attempt to focus on what may in many cases be a more practicable solution to complaints than legal action which can be expensive, difficult and time consuming for everyone involved. It is particularly important that complaints relating to the consumption or use of a particular product that results in serious risks or damages to public health should be resolved in a fair and timely manner without undue cost or burden to the consumer.

52. Regarding paragraph 5, enterprises could look to the OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data as a helpful basis for protecting personal data.

Commentary on Science and Technology

53. In a knowledge-based and globalised economy where national borders matter less, even for small or domestically oriented enterprises, the ability to access and utilise technology and know-how is essential for improving firm performance. Such access is also important for the realisation of the economy-wide effects of technological progress, including productivity growth and job creation, within the context of sustainable development. Multinational enterprises are the main conduit of technology transfer across borders. They contribute to the national innovative capacity of their host countries by generating, diffusing, and even enabling the use of new technologies by domestic enterprises and institutions. The R&D activities of MNEs, when well connected to the national innovation system, can help enhance the economic and social progress in their host counties. In turn, the development of a dynamic innovation system in the host country expands commercial opportunities for MNEs.

54. The chapter thus aims to promote, within the limits of economic feasibility, competitiveness concerns and other considerations, the diffusion by multinational enterprises of the fruits of research and development activities among the countries where they operate, contributing thereby to the innovative capacities of host countries. In this regard, fostering technology diffusion can include the commercialisation of products which imbed new technologies, licensing of process innovations, hiring and training of S&T personnel and development of R&D co-operative ventures. When selling or licensing technologies, not only should the terms and conditions negotiated be reasonable, but also MNEs may want to consider the long-term developmental, environmental and other impacts of technologies for the home and host country. In their activities, multinational enterprises can establish and improve the innovative capacity of their international subsidiaries and subcontractors. In addition, MNEs can call attention to the importance of local scientific and technological infrastructure, both physical and institutional. In this regard, MNEs can usefully contribute to the formulation by host country governments of policy frameworks conducive to the development of dynamic innovation systems.

Commentary on Competition

55. These *Guidelines* are intended to emphasise the importance of competition laws and policies to the efficient operation of both domestic and international markets, to reaffirm the importance of compliance with those laws and policies by domestic and multinational enterprises, and to ensure that all enterprises are aware of developments concerning the number, scope, and severity of competition laws and in the extent of co-operation among competition authorities. The term "competition" law is used to refer to laws, including both "antitrust" and "antimonopoly" laws, that prohibit collective or unilateral action to (a) abuse market power or dominance, (b) acquire market power or dominance by means other than efficient performance, or (c) engage in anti-competitive agreements.

56. In general, competition laws and policies prohibit (a) hard core cartels; (b) other agreements that are deemed to be anti-competitive; (c) conduct that exploits or extends market dominance or market power; and (d) anti-competitive mergers and acquisitions. Under the 1998 Recommendation of the OECD Council Concerning Effective Action Against Hard Core Cartels, C(98)35/Final, the anti-competitive agreements referred to in sub (a) constitute hard core cartels, but the Recommendation incorporates differences in Member countries' laws, including differences in the laws' exemptions or provisions allowing for an exception or authorisation for activity that might otherwise be prohibited. These *Guidelines* should not be interpreted as

suggesting that enterprises should not avail themselves of such exemptions or provisions. The categories sub (b) and (c) are more general because the effects of other kinds of agreements and of unilateral conduct are more ambiguous, and there is less consensus on what should be considered anti-competitive.

57. The goal of competition policy is to contribute to overall social welfare and economic growth by creating and maintaining market conditions in which the nature, quality, and price of goods and services are determined by market forces except to the extent a jurisdiction considers necessary to achieve other goals. In addition to benefiting consumers and a jurisdiction's economy as a whole, such a competitive environment rewards enterprises that respond efficiently to consumer demand, and enterprises should provide information and advice when governments are considering laws and policies that might reduce their efficiency or otherwise affect the competitiveness of markets.

58. Enterprises should be aware that competition laws are being enacted in a rapidly increasing number of jurisdictions, and that it is increasingly common for those laws to prohibit anti-competitive activities that occur abroad if they have a harmful impact on domestic consumers. Moreover, the growth of cross-border trade and investment makes it more likely that anti-competitive conduct taking place in one jurisdiction will have harmful effects in other jurisdictions. As a result, anti-competitive unilateral or concerted conduct that is or may be legal where it occurs is increasingly likely to be illegal in another jurisdiction. Enterprises should therefore take into account both the law of the country in which they are operating and the laws of all countries in which the effects of their conduct are likely to be felt.

59. Finally, enterprises should understand that competition authorities are engaging in more and deeper co-operation in investigating and challenging anti-competitive activity. See *generally*: Recommendation of the Council Concerning Co-operation between Member Countries on Anticompetitive Practices Affecting International Trade, C(95)130/Final; *Making International Markets More Efficient Through "Positive Comity" in Competition Law Enforcement*, Report of the OECD Committee on Competition Law and Policy, DAFFE/CLP(99)19. When the competition authorities of various jurisdictions are reviewing the same conduct, enterprises' facilitation of co-operation among the authorities promotes consistent and sound decision-making while also permitting cost savings for governments and enterprises.

Commentary on Taxation

60. Corporate citizenship in the area of taxation implies that enterprises should comply with the taxation laws and regulations in all countries in which they operate, co-operate with authorities and make certain kinds of information available to them. However, this commitment to provide information is not without limitation. In particular, the *Guidelines* make a link between the information that should be provided and its relevance to the enforcement of applicable tax laws. This recognises the need to balance the burden on business in complying with applicable tax laws and the need for tax authorities to have the complete, timely and accurate information to enable them to enforce their tax laws.

61. A member of an MNE group in one country may have extensive economic relationships with members of the same MNE group in other countries. Such relationships may affect the tax liability of each of the parties. Accordingly, tax authorities may need information from outside their jurisdiction in order to be able to evaluate those relationships and determine the tax liability of the member of the MNE group in their jurisdiction. Again, the information to be provided is

limited to that which is relevant to the proposed evaluation of those economic relationships for the purpose of determining the correct tax liability of the member of the MNE group. MNEs should co-operate in providing that information.

62. Transfer pricing is another important issue for corporate citizenship and taxation. The dramatic increase in global trade and cross-border direct investment (and the important role played in such trade and investment by MNEs) has meant that transfer pricing tends now to be a significant determinant of the tax liabilities of members of an MNE group. It is recognised that determining whether transfer pricing respects the arm's length standard (or principle) is often difficult both for MNEs and for tax administrations.

63. The Committee on Fiscal Affairs (CFA) of the OECD undertakes ongoing work to develop recommendations for ensuring transfer pricing reflects the arm's length principle. Its work resulted in the publication in 1995 of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Transfer Pricing Guidelines) which was the subject of the Recommendation of the OECD Council on the Determination of Transfer Pricing between Associated Enterprises (members of an MNE group would normally fall within the definition of Associated Enterprises).

64. The OECD Transfer Pricing Guidelines focus on the application of the arm's length principle to evaluate the transfer pricing of associated enterprises. The Transfer Pricing Guidelines aim to help tax administrations (of both OECD Member countries and non-member countries) and MNEs by indicating mutually satisfactory solutions to transfer pricing cases, thereby minimising conflict among tax administrations and between tax administrations and MNEs and avoiding costly litigation. MNEs are encouraged to follow the guidance in the OECD Transfer Pricing Guidelines, as amended and supplemented, in order to ensure that their transfer prices reflect the arm's length principle.

COMMENTARY ON THE IMPLEMENTATION PROCEDURES OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

1. The Council Decision represents the commitment of adhering countries to further the implementation of the recommendations contained in the text of the *Guidelines*. Procedural guidance for both NCPs and the CIME is attached to the Council Decision.

2. The Council Decision sets out key adhering country responsibilities for the *Guidelines* with respect to NCPS, summarised as follows:

- Setting up NCPs (which will take due account of the procedural guidance attached to the Decision), and informing interested parties of the availability of *Guidelines*-related facilities.
- NCPs in different countries to co-operate with each other as necessary.
- NCPs to meet annually and report to the CIME.

3. The Council Decision also establishes CIME's responsibilities for the *Guidelines*, including:

- Organising exchanges of views on matters relating to the *Guidelines*

- Issuing clarifications as necessary
- Holding exchanges of views on the activities of NCPs
- Reporting to the OECD Council on the *Guidelines*

4. CIME is the OECD body responsible for overseeing the functioning of the *Guidelines.* This responsibility applies not only to the *Guidelines*, but to all elements of the Declaration (National Treatment Instrument, and the instruments on International Investment incentives and Disincentives, and Conflicting Requirements). In the Declaration, CIME seeks to ensure that each element is respected and understood, and that they all complement and operate in harmony with each other.

5. Reflecting the increasing relevance of the *Guidelines* to countries outside the OECD, the Decision provides for consultations with non-adhering countries on matters covered by the *Guidelines*. This provision allows CIME to arrange periodic meetings with groups of countries interested in *Guidelines* issues, or to arrange contacts with individual countries if the need arises These meetings and contacts could deal with experiences in the overall functioning of the *Guidelines* or with specific issues. Further guidance concerning CIME and NCP interaction with non-adhering countries is provided in the Procedural Guidance attached to the Decision.

I. Procedural Guidance for NCPs

6. National Contact Points have an important role in enhancing the profile and effectiveness of the *Guidelines*. While it is enterprises that are responsible for observing the *Guidelines* in their day-to-day behaviour, governments can contribute to improving the effectiveness of the implementation procedures. To this end, they have agreed that better guidance for the conduct and activities of NCPs is warranted, including through annul meetings and CIME oversight.

7. Many of the functions in the Procedural Guidance of the Decision are not new, but reflect experience and recommendations developed over the years (*e.g.* the 1984 Review Report C/MIN (84)5 (Final)). By making them explicit the expected functioning of the implementation mechanisms of the *Guidelines* is made more transparent. All functions are now outlined in four parts of the Procedural Guidance pertaining to NCPS: institutional arrangements, information and promotion, implementation in specific instances, and reporting.

8. These four parts are preceded by an introductory paragraph that sets out the basic purpose of NCPS, together with core criteria to promote the concept of "functional equivalence". Since governments are accorded flexibility in the way they organise NCPS, NCPs should function in a visible, accessible, transparent, and accountable manner. These criteria will guide NCPs in carrying out their activities and will also assist the CIME in discussing the conduct of NCPS.

Core Criteria for Functional Equivalence in the Activities of NCPs

Visibility. In conformity with the Decision, adhering governments agree to nominate National Contact Points, and also to inform the business community, employee organisations and other interested parties, including NGOs, about the availability of facilities associated with NCPs in the implementation of the *Guidelines.* Governments are expected to publish information about their contact points and to take an active role in promoting the *Guidelines,* which could include hosting seminars and meetings on the instrument. These events could be arranged in co-operation with business labour, NGOs, and other interested parties, though not necessarily with all groups on each occasion.

Accessibility. Easy access to NCPs is important to their effective functioning. This includes facilitating access by business labour, NGOs, and other members of the public. Electronic communications can also assist in this regard. NCPs would respond to all legitimate requests for information, and also undertake to deal with specific issues raised by parties concerned in an efficient and timely manner.

Transparency. Transparency is an important criterion with respect to its contribution to the accountability of the NCP and in gaining the confidence of the general public. Thus most of the activities of the NCP will be transparent. Nonetheless when the NCP offers its "good offices" in implementing the *Guidelines* in specific instances, it will be in the interests of their effectiveness to take appropriate steps to establish confidentiality of the proceedings. Outcomes will be transparent unless preserving confidentiality is in the best interests of effective implementation of the *Guidelines*.

Accountability. A more active role with respect to enhancing the profile of the *Guidelines* -- and their potential to aid in the management of difficult issues between enterprises and the societies in which they operate -- will also put the activities of NCPs in the public eye. Nationally, parliaments could have a role to play. Annual reports and annual meetings of NCPs will provide an opportunity to share experiences and encourage "best practices" with respect to NCPs. CIME will also hold exchanges of views, where experiences would be exchanged and the effectiveness of the activities of NCPs could be assessed.

Institutional Arrangements

9. The composition of NCPs should be such that they provide an effective basis for dealing with the broad range of issues covered by the *Guidelines*. Different forms of organisation (*e.g.* representatives from one Ministry, an interagency group, or one that contained representatives from non-governmental bodies) are possible. It may be helpful for the NCP to be headed by a senior official. NCP leadership should be such that it retains the confidence of social partners and fosters the public profile of the *Guidelines*. NCPs, whatever their composition, are expected to develop and maintain relations with representatives of the business community, employee organisations, and other interested parties.

Information and Promotion

10. The NCP functions associated with information and promotion are fundamentally important to enhancing the profile of the *Guidelines*. These functions also help to put an accent on "pro-active" responsibilities of NCPs.

11. NCPs are required to make the *Guidelines* better known and available by appropriate means, including in national languages. On-line information may be a cost-effective means of doing this, although it should be noted that universal access to this means of information delivery can not be assured. English and French language versions will be available from the OECD, and website links to the OECD *Guidelines* website are encouraged. As appropriate, NCPs will also provide prospective investors, both inward and outward, with information about the *Guidelines*. A separate provision also stipulates that in their efforts to raise awareness of the *Guidelines*, NCPs will co-operate with a wide variety of organisations and individuals, including, as appropriate, the business community, employee organisations, other non-governmental organisations, and the interested public.

12. Another basic activity expected of NCPs is responding to legitimate enquiries. Three groups have been singled out for attention in this regard: (i) other National Contact Points (reflecting a provision in the Decision); (ii) the business community, employee organisations, other non-governmental organisations and the public; and (iii) governments of non-adhering countries.

Implementation in Specific Instances

13. When issues arise relating to implementation of the *Guidelines* in specific instances, the NCP is expected to help resolve them. Generally, issues will be dealt with by the NCP in whose country the issue has arisen. Among adhering countries, such issues will first be raised and discussed on the national level and, where appropriate, pursued at the bilateral level. This section of the Procedural Guidance provides guidance to NCPs on how to handle such situations. The NCP may also take other steps to further the effective implementation of the *Guidelines*.

14. In making an initial assessment of whether the issue raised merits further examination, the NCP will need to determine whether the issue is *bona fide* and relevant to the implementation of the *Guidelines*. In this context, the NCP will take into account:

- the identity of the party concerned and its interest in the matter;
- whether the issue is material and substantiated;
- the relevance of applicable law and procedures;
- how similar issues have been, or are being, treated in other domestic or international proceedings;
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the *Guidelines*.

15. Following its initial assessment, the NCP is expected to respond to the party or parties having raised the issue. If the NCP decides that the issue does not merit further consideration, it will give reasons for its decision.

16. Where the issues raised merit further consideration, the NCP would discuss the issue further with parties involved and offer "good offices" in an effort to contribute informally to the resolution of issues. Where relevant, NCPs will follow the procedures set out in paragraph 2a) through 2d). This could include seeking the advice of relevant authorities, as well as representatives of the business community, labour organisations, other non-governmental organisations, and experts Consultations with NCPs in other countries, or seeking guidance on issues related to the interpretation of the *Guidelines* may also help to resolve the issue.

17. As part of making available good offices, and where relevant to the issues at hand, NCPs will offer, or facilitate access to, consensual and non-adversarial procedures, such as conciliation or mediation, to assist in dealing with the issues at hand, such as conciliation or mediation. In common with accepted practices on conciliation and mediation procedures, these procedures would be used only upon agreement of the parties concerned.

18. If the parties involved fail to reach agreement on the issues raised, the NCP will issue a statement, and make recommendations as appropriate, on the implementation of the *Guidelines*. This procedure makes it clear that an NCP will issue a statement, even when it feels that a specific recommendation is not called for.

19. Transparency is recognised as a general principle for the conduct of NCPs in their dealings with the public (see para. 8 in "Core Criteria" section, above). However, paragraph C-4 recognises that there are specific circumstances where confidentiality is important. The NCP will take appropriate steps to protect sensitive business information. Equally, other information, such as the identity of individuals involved in the procedures, should be kept confidential in the interests of the effective implementation of the *Guidelines*. It is understood that proceedings include the facts and arguments brought forward by the parties. Nonetheless, it remains important to strike a balance between transparency and confidentiality in order to build confidence in the *Guidelines* procedures and to promote their effective implementation. Thus, while para. C-4 broadly outlines that the proceedings associated with implementation will normally be confidential, the results will normally be transparent.

20. As noted in para. 2 of the "Concepts and Principles" chapter, enterprises are encouraged to observe the *Guidelines* wherever they operate, taking into account the particular circumstances of each host country.

- In the event *Guidelines*-related issues arise in a non-adhering country, NCPs will take steps to develop an understanding of the issues involved. While it may not always be practicable to obtain access to all pertinent information, or to bring all the parties involved together, the NCP may still be in a position to pursue enquiries and engage in other fact finding activities. Examples of such steps could include contacting the management of the firm in the home country, and, as appropriate, government officials in the non-adhering country.

- Conflicts with host country laws, regulations, rules and policies may make effective implementation of the *Guidelines* in specific instances more difficult than in adhering counties. As noted in the commentary to the General Policies chapter, while the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.

- The parties involved will have to be advised of the limitations inherent in implementing the *Guidelines* in non-adhering countries.

- Issues relating to the *Guidelines* in non-adhering countries could also be discussed at NCP annual meetings with a view to building expertise in handling issues arising in non-adhering countries.

Reporting

21. Reporting would be an important responsibility of NCPs that would also help to build up a knowledge base and core competencies in furthering the effectiveness of the *Guidelines*. In reporting on implementation activities in specific instances, NCPs will comply with transparency and confidentiality considerations as set out in para. C 4.

II. Procedural Guidance for the CIME

22. The Procedural Guidance to the Council Decision provides additional guidance to the Committee in carrying out its responsibilities, including:

- Discharging its responsibilities in an efficient and timely manner
- Considering requests from NCPs for assistance
- Holding exchanges of views on the activities of NCPs
- Providing for the possibility of seeking advice from experts

23. The non-binding nature of the *Guidelines* precludes the Committee from acting as a judicial or quasi-judicial body. Nor should the findings and statements made by the NCP (other than interpretations of the *Guidelines*) be questioned by a referral to CIME. The provision that CIME shall not reach conclusions on the conduct of individual enterprises has been maintained in the Decision itself.

24. CIME will consider requests from NCPs for assistance, including in the event of doubt about the interpretation of the *Guidelines* in particular circumstances. This paragraph reflects paragraph C-2c) of the Procedural Guidance to the Council Decision pertaining to NCPs, where NCPs are invited to seek the guidance of the CIME if they have doubt about the interpretation of the *Guidelines* in these circumstances.

25. When discussing NCP activities, it is not intended that CIME conduct annual reviews of each individual NCP, although the CIME will make recommendations, as necessary, to improve their functioning, including with respect to the effective implementation of the *Guidelines*.

26. A substantiated submission by an adhering country or an advisory body that an NCP was not fulfilling its procedural responsibilities in the implementation of the *Guidelines* under the Decision, or acting consistently with regard to the procedures followed in its handling of specific instances, will also be considered by the CIME. This complements provisions in the section of the annex pertaining to NCPs reporting on their activities.

27. Clarifications of the meaning of the *Guidelines* at the multilateral level would remain a key responsibility of the CIME to ensure that the meaning of the *Guidelines* is consistent with CIME interpretations will also be considered. This may not be needed often, but would provide a vehicle to ensure consistent interpretations of the *Guidelines*.

28. Finally, the Committee may wish to call on experts to address and report on issues (e.g. child labour, human rights), or individual issues, or to improve the effectiveness of procedures. For this purpose, CIME could call on OECD in-house expertise, international organisations, the advisory bodies, NGOs, academics, and others. It is understood that this will not become a panel to settle individual issues.

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SHORT-TERM MEASURES TO ENHANCE ASEAN INVESTMENT CLIMATE*

(ASSOCIATION OF SOUTH EAST ASIAN NATIONS)

The Short-Term Measures to Enhance ASEAN Investment Climate were adopted by the members of the Association of South East Asian Nations to stimulate investment in the region. In particular, they apply to companies that submitted relevant applications to the ASEAN Investment Agencies from 1 January 1999 to 31 December 2000, approved thereafter, with regard to investment projects in the manufacturing sector.

Section 1

Privileges Granted to New Investments/Projects or Expansion of Existing Investment Operations

1. Fiscal Incentives

Companies will be given:

i. minimum of 3 years corporate income tax exemption or a minimum 30% corporate income tax allowance. This tax exemption is not granted on an incremental basis over and above existing incentive provisions.

ii. duty exemption on imported capital goods required by the promoted investment projects.

2. Domestic Market Access

Companies will be given free market access to the domestic market of the host country.

3. Foreign Equity Ownership

Companies will be allowed 100% foreign equity ownership.

4. Right of Use of Industrial Land

Companies will be given the right of use or lease of factory or industrial land for a minimum period of 30 years.

* *Source*: Association of South East Asian Nations (2000). "Short-Term Measures to Enhance ASEAN Investment Climate"; available on the Internet (http:// www.asean.org.id). [Note added by the editor.]

5. Customs Clearance

Approved investment projects will be given speedy customs clearance through the ASEAN CEPT Green Lane or equivalent procedures adopted by the ASEAN Member Countries for all raw materials and capital goods required by the investment projects.

6. Employment of Foreign Personnel

The privileges cover more relaxed policy on the following:

i. Approval of foreign professional, managerial and technical personnel posts required by the investor;

ii. At least one-year renewable multiple entry visas and exit permits for all foreign professional, managerial and technical personnel and their family members, where applicable; and

iii. Restrictions and levies on the employment of foreign professional, managerial and technical personnel, if any.

Section 2

Privileges Granted to Investors Injecting Equity Into Existing Companies

All privileges available under Section 1, except for corporate tax incentives and land use privileges, also apply to investors under Section 2. However, with regard to tax incentives, the remaining period of the tax privileges enjoyed by the company being taken over, or into which capital is injected, will continue to be available to the new equity owners.

Section 3

Highlights of Specific Measures Extended by ASEAN Member Countries

Brunei Darussalam

Brunei Darussalam will allow 100% foreign equity ownership in high-technology manufacturing and export-oriented industries.

Indonesia

Indonesia offers wholesale and retail trade up to 100% foreign equity ownership to qualified investors, in addition to 100% foreign equity in all areas of the manufacturing sector. Indonesia has also reduced the processing time for approval in principle, for investments less than US$100 million, to 10 working days. In the banking sector, listed banks are open for 100% foreign equity ownership.

Lao PDR

Lao PDR allows duty exemption on imported capital goods required by the promoted investment projects.

Malaysia

Malaysia offers 100% foreign equity ownership in the manufacturing sector with no export conditions imposed on all new investments, expansions and diversifications (except for seven specific activities and products).

With limited exceptions, foreigners can also own land in Malaysia.

Myanmar

Myanmar will extend minimum of three years corporate tax exemption to all investment projects in all sectors. In addition, Myanmar will also extend duty free import of raw materials to all industrial investments for the first three years of operation.

Philippines

Philippines will open retail trade and distribution business to foreign equity. In addition, the Philippines has opened private construction in the domestic market to foreign companies.

Singapore

Singapore has substantially reduced business costs as part of a cost reduction package that amounts to S$10 billion in savings in addition to extending 30% corporate investment tax allowance on a liberal basis to industrial projects and to selected service industries in respect of productive equipment. These activities include manufacturing, engineering or technical services and computer-related services.

Thailand

Thailand allows 100% foreign equity ownership for manufacturing projects regardless of location. Furthermore, agricultural projects which export 80% of sales will receive import duty exemption on machinery, regardless of location.

Vietnam

Vietnam extends duty exemption on imported capital goods for all projects. In respect of inport of raw materials for production for specially encouraged investments and for projects located in mountainous or remote regions for the first 5 years of operation. Issuance of investment licenses for several types of projects has been reduced to 15 days from the receipt of proper simplified documents. In addition, investment licensing for projects under US$ 5 million has been decentralised to all provinces and cities.

Section 4

Conditions

To qualify for the privileges stipulated in the above sections of this Memorandum, investors must satisfy the following specific conditions:

i. Meet the minimum investment level specified by the host country, if any;

ii. The industry must be in the published priority list for tax incentives to enjoy this particular privilege;

iii. The industry must not be in any negative list, if any; and

iv. The investor must show proof that foreign funds have been brought in for the entire amount of the investment, if required by the host country.

Some details on specific privileges are contained in the table below.

MEASURES	**COMMENTS**
1. Fiscal Incentives	Details of incentives, priority list and other terms and conditions can be obtained from the individual Member Countries' websites or the individual Member Countries' contact points listed in Section 6.
2. Duty exemption on the import of capital goods	Malaysia - duty-free for export zones and exemption for export-oriented projects. For others, applicable, if not locally manufactured. Philippines - only in export-zones, free ports and selected sectors covered by special laws. Thailand - duty free for export-oriented and special projects located in all zones and projects located in zone 3, if not manufactured locally.
3. Free market access to domestic market	Indonesia - covers all industries except those in the negative list and those in the bonded zones. Lao PDR - export condition may be imposed on selected products. Myanmar – only a certain amount will be allowed for domestic market. Malaysia, Philippines, Singapore, Thailand and Vietnam - covers all industries except those listed in the negative list.
4. 100% foreign equity ownership	Brunei Darussalam - only for high-technology manufacturing and export-oriented projects. Indonesia - after 15 years, companies must have at least some local equity ownership Indonesia, Malaysia Philippines, Singapore Thailand And Vietnam - covers all industries except those listed in the negative list.
5. Removal of Restrictions and Levies on the Employment of Foreign Nationals, if any	Indonesia - any individuals must pay an exit tax but this is deductible against income tax. Malaysia - Foreign professionals, managerial and technical personnel paying income tax are exempted from paying levy.

The priority list of industries, the negative list of the respective Member Countries and other details relating to the privileges are available in the ASEAN website as well as the individual Member Countries' investment agencies websites or through the individual Member Countries contact points listed in Section 6.

The Investment Agencies are required to complete processing of the relevant applications within 60 working days from receipt of fully completed applications.

In addition to the specific conditions, an investor must submit an application to the Investment Agency of the host country before 31 December 2000. Investors or companies will receive official confirmation of privileges relating to incentives, market access and equity ownership in writing on approval of their applications.

Section 5

Duration of Privileges

Privileges will, unless otherwise specified in this Memorandum, or at the time of issue of approval, continue for the life of the investment project or such other period as may be specified by individual Member Countries at their websites. This will apply even if there are subsequent changes in the investment or other laws of the host country. If any approved project, under this Memorandum, is not implemented according to the project implementation schedule agreed to between the investor and the host government, during the promotion period, the above privileges may be withdrawn.

Section 6

Contact Points for Further Information and Enquiries

Brunei Darussalam

Brunei Industrial Development Authority (BINA)
Ministry of Industry and Primary Resources
Jalan Menteri Besar 2065
Bandar Seri Begawan
Brunei Darussalam
Tel : (673) 2 383 811
Fax : (673) 2 382 838
Web Site: http://www.brunet.bn/aseansummit/summit.htm
E-mail: BinaL1@brunet.bn

Indonesia

Deputy Chairman for Promotion
Investment Coordinating Board (BKPM)
No. 44, Jalan Gatot Subroto, Jakarta
Indonesia
Tel: (62) 21 525 2008/525 5041
Fax (62) 21 525 4945

Web Site: http://www.bkpm.go.id
E-mail: sysadm@bkpm.go.id

Lao PDR

Committee for Investment and Foreign Economic Cooperation
Luang Prabang Road-Vientiane
Lao People's Democratic Republic
Tel: (856) 21 216 563
Fax: (856) 21 216 563

Malaysia

Investment Promotion Division
Malaysian Industrial Development Authority
Wisma Damansara, Ground 9 & 11 Floor
Jalan Semantan, Damansara Heights
P.O. Box 101618
50720 Kuala Lumpur
Malaysia
Tel: (603) 255 3633
Fax: (603) 255 7970/255 0697/253 8507
Web Site: http://www.mida.gov.my
E-mail: promotion@mida.gov.my

Myanmar

The Office of Myanmar Investment Commission
653-691 Merchant Street
Pabedan Township
Yangon
Union of Myanmar
Tel: (951) 241 918
Fax: (951) 282 101

Philippines

Technical Services Group
Board of Investments
Department of Trade and Industry
Industry and Investments Building
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DRAFT FINAL ACT OF THE INTERNATIONAL CONFERENCE, DRAFT SUPPLEMENTARY TREATY TO THE ENERGY CHARTER TREATY, DRAFT DECISION OF THE ENERGY CHARTER CONFERENCE, DRAFT DECLARATION ON ENVIRONMENTAL AND SOCIAL STANDARDS, AND GUIDELINES TO INVESTORS [*]

Article 10(4) of the Energy Charter Treaty (reproduced in vol. II of this *Compendium*) required signatories to commence negotiations on a supplementary treaty not later than 1 January 1995, with a view to concluding it by 1 January 1998. The aim of the Supplementary Treaty is to provide a non-discriminatory basis for making investments in the energy sector while grandfathering existing discriminatory measures and catering for specific reservations in respect of privatizations. As of the time of the printing of this volume, broad agreement had been reached on the draft texts, with a few outstanding issues remaining to be solved. Discussions continue in the Energy Charter Investment Group on those issues. The draft texts consist of the following parts: the draft Final Act, the draft text of the Supplementary Treaty, the draft Decisions and the draft Declaration on Environmental and Social Standards, and Guidelines to Investors.

DRAFT [**]

FINAL ACT OF THE INTERNATIONAL CONFERENCE AND DRAFT DECISION OF THE ENERGY CHARTER CONFERENCE

I. Acting in accordance with Article 10(4) of the Energy Charter Treaty, negotiations for a supplementary treaty began in December 1994 by the setting up of a Working Group to prepare the text. The Provisional Energy Charter Conference met a number of times and concluded the negotiations on the Supplementary Treaty to the Energy Charter Treaty (hereinafter referred to as the "Supplementary Treaty") in December 1997. A Conference to adopt the Supplementary Treaty was held at Brussels in three sessions on 23-24 April, on 24-25 June 1998 and on […].

Representatives of the Republic of Albania, the Republic of Armenia, Australia, the Republic of Austria, the Azerbaijani Republic, the Kingdom of Belgium, the Republic of Belarus, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the European Communities, the Republic of Finland, the French Republic, the Republic of Georgia, the Federal Republic of Germany, the Hellenic Republic, the Republic of Hungary, the Republic of Iceland, Ireland, the Italian Republic, Japan, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Republic of Latvia, the Principality of Liechtenstein, the Republic of Lithuania, the Grand Duchy of

[*] *Source*: Energy Charter Conference (1998). "Draft Final Act of the International Conference, Draft Supplementary Treaty to the Energy Charter Treaty and Decision of the Energy Charter Conference, Draft Declaration on Environmental and Social Standards and Guidelines to Investors"; (Brussels: Energy Charter Secretariat); available on the Internet (http://www.encharter.org). [Note added by the editor.]

[**] This text reflects a work in progress, and has been produced for documentary purposes without involving the responsibility on the Energy Charter Conference or its Secretariat. Permission to reproduce the text should be obtained from the Enregy Charter Secretariat.

Luxembourg, the Republic of Malta, the Republic of Moldova, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of Poland, the Portuguese Republic, Romania, the Russian Federation, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden, the Swiss Confederation, the Republic of Tajikistan, the former Yugoslav Republic of Macedonia, the Republic of Turkey, Turkmenistan, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the Republic of Uzbekistan (hereinafter referred to as "the representatives") participated in the Conference, as did invited observers from certain countries and international organisations.

II. The Energy Charter Conference, which was definitively established on the entry into force on 16 April 1998 of the Energy Charter Treaty, also met in Brussels in April and June 1998 and on […] to consider adoption of the Supplementary Treaty.

DRAFT

SUPPLEMENTARY TREATY TO THE ENERGY CHARTER TREATY

III. The text of the Supplementary Treaty which is set out in Annex 1 and Decisions with respect thereto which are set out in Annex 2 were adopted and it was agreed that the Supplementary Treaty would be open for signature at […] from […] to […].

UNDERSTANDINGS

IV. The following Understandings were adopted with respect to the Supplementary Treaty:

1. With respect to Article 10(2)

   a. With respect to the foundation and establishment of banks and their licensing it is understood that Article 10(2) places on Contracting Parties no obligations relating to economic activities other than Economic Activities in the Energy Sector.

   b. The obligation in Article 10(2) on a Contracting Party to accord treatment no less favourable than that which it accords to its own Investors or their Investments does not apply to the disposal by a Contracting Party of an asset described in Article 1(6)(a) of the Energy Charter Treaty which has a value of less than 75.000 Special Drawing Rights. However, a Contracting Party can not artificially partition an asset in order to evade the obligations of Article 10(2).

   c. Public ownership and/or participation in the energy sector, including in monopolized and demonopolized sectors, is not as such regarded as contravening Article 10(2).

      For the avoidance of doubt, and consistent with the Supplementary Treaty, a Contracting Party, when demonopolizing an activity, may establish transparent, objective, non-discriminatory conditions and requirements on the basis of which new entrants may take up the previously monopolized activity.

2. With respect to Article 10(3)

Restrictions in the constituent instruments of companies on the shareholdings or powers of Investors of other Contracting Parties and their Investments are regarded as contravening Article 10(2) if imposed or requested by a Contracting Party.

However, existing restrictions in such constituent instruments on the subsequent acquisition of privatised shares by Investors of other Contracting Parties are not affected by Article 10(2).

3. With respect to Article 10(3)(a)

It is understood that the individual exceptions in Annex EX do not affect the scope or interpretation of the Energy Charter Treaty.

4. With respect to Article 10(3)(b)

a Restrictions on the percentage or type of shares which can be owned by a single holder or association of such holders are not a contravention of Article 10(2) unless such restrictions discriminate against Investors of other Contracting Parties and their Investments.

b. Reservation of a minority of shares in a privatised enterprise to particular categories of Investors, employees, customers or small shareholders, or preferential terms given to such categories, are not regarded as contravening Article 10(2) provided there is no legal discrimination against members of such categories that are nationals or legal entities of other Contracting Parties.

c. The enquiry points designated under Article 20(3) of the Energy Charter Treaty shall be ready, if the designating Contracting Party so wishes, to make information available either free or for a reasonable charge about plans and intentions regarding privatisation and reduction of exclusive and special privileges. They should be ready to supply to Investors all the non-confidential information needed to tackle specific problems concerning Investments.

d. Contracting Parties acknowledge that special share arrangements are compatible with Article 10(2), unless they explicitly or intentionally favour Investors or Investments of a Contracting Party or discriminate against Investors or Investments of another Contracting Party on the grounds of their nationality or permanent residency.

5. With respect to Article 10(2) to (5)

For the avoidance of doubt, the Decisions and Understandings which form part of the Final Act of the European Energy Charter Conference done in Lisbon on 17 December 1994 apply to the Supplementary Treaty.

DECLARATIONS

V. The following Declarations were made with respect to the Supplementary Treaty:

1. The Charter Conference will proceed to a review of the Investor-State dispute settlement provisions. In so doing it shall take account of relevant international legal developments in the field of investor protection.

The review shall commence once such developments are manifest, but no later than 2005.

2. The representatives have taken note of the position of a significant number of delegations that they attach importance to high standards of environmental protection and conservation and in the field of labour, and that they reaffirm their commitment to sustainable development, taking into account the principles on environmental standards already set out in Article 19 of the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects, together with measures incorporating social and labour considerations. The representatives also took note that there was broad support for including a strong commitment in future on those issues. [See separate Declaration]

3. Contracting Parties undertake that in the light of the results of the efforts underway in other international fora to establish and further develop multilateral rules governing investment, they will commence consideration, not later than 2005 or the entry into force of this Treaty, whichever is the later, of appropriate amendments to this Treaty with a view to the adoption of any such amendments by the Charter Conference.

VI. The representatives also noted the following Declarations that were made with respect to the Supplementary Treaty:

DOCUMENTATION

VII. The records of negotiations of the Supplementary Treaty will be deposited with the Secretariat.

Done at […] on […].

DRAFT

SUPPLEMENTARY TREATY TO THE ENERGY CHARTER TREATY

PREAMBLE

The Contracting Parties to this Treaty,

Having regard to the Energy Charter Treaty done at Lisbon on 17 December 1994;

Acting in accordance with Article 10(4) of the Energy Charter Treaty which calls for negotiation of a supplementary treaty that will, subject to the conditions laid down therein, oblige each party thereto to accord to Investors of other parties, as regards the Making of Investments in its Area, the Treatment described in Article 10(3) of the Energy Charter Treaty;

Recalling Understanding No. 10 adopted at the signature of the Final Act of the European Energy Charter Conference in Lisbon on 17 December 1994, which specifies that those conditions will include, inter alia, provisions relating to the sale or other divestment of state assets (privatisation) and to the dismantling of monopolies (demonopolization);

Considering the important contribution that foreign investment can make to the development of energy sectors of the Contracting Parties;

Desiring to liberalise further the existing regimes relating to the Making of Investments in the energy sector;

Wishing to establish stable, equitable, favourable and transparent market conditions to achieve this purpose;

Confirming the importance of effective dispute settlement procedures,

HAVE AGREED as follows:

PART I:

INVESTMENT PROMOTION AND PROTECTION

ARTICLE 1
DEFINITION

In this Treaty "Contracting Party" means a state or Regional Economic Integration Organisation which has consented to be bound by this Treaty and for which this Treaty is in force.

ARTICLE 2
TREATMENT OF THE MAKING OF INVESTMENTS

1. As among the Contracting Parties, Article 10(2) to (5) of the Energy Charter Treaty shall read as follows:

2. Each Contracting Party shall accord to Investors of other Contracting Parties and their Investments in its Area, as regards the Making of Investments in its Area, treatment no less favourable than that which it accords to its own Investors or their Investments, or to Investors of any other Contracting Party or any third state or their Investments, whichever is the most favourable.

3. a. Paragraph (2) shall not apply to :

   i. any non-conforming measure that is maintained by a Contracting Party as set out n Annex EX;

   ii. the continuation or prompt renewal of such non-conforming measure; or

iii. an amendment to such non-conforming measure to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with paragraph (2).

b. The obligation in paragraph (2) to accord treatment no less favourable than that which a Contracting Party accords to its own Investors or their Investments shall not apply to measures concerning privatisation as provided for in Annex PR.

4. In the event of any inconsistency between paragraphs (2) and (3) of Article 10 and paragraph (7) of Article 10 the provision or provisions more favourable to the Investor or Investment shall prevail.

5. Each Contracting Party shall, as regards the Making of Investments in its Area, endeavour to:

a. limit to the minimum the application of measures referred to in paragraph (3);

b. progressively remove existing restrictions affecting Investors of other Contracting Parties or their Investments;

c. i. progressively reduce the scope of application inscribed against its name in Annex PR; and

ii. remove its name from the list of Annex PR.

The Charter Conference shall review Annex PR annually with a view to encouraging Contracting Parties listed therein to remove their names from that Annex.

In this light the Charter Conference shall, not later than 1 January 2004, conduct a comprehensive assessment of Annex PR taking into account the results of the annual reviews and any notifications by Contracting Parties of reliance on exceptions provided for in Annex PR.

2. As a consequence of paragraph 1. of this Article, the reference in paragraph (10) of Article 10 to paragraph (3) shall read paragraph (2).

PART II:

FINAL PROVISIONS

ANNEX EX

NON-CONFORMING MEASURES MAINTAINED BY A CONTRACTING PARTY AND ANY COMMITMENTS WITH REGARD TO THEM

(in accordance with Article 10(3)(a)(i))

[See the "Blue Book" for measures notified in accordance Article 10(9) of the Energy Charter Treaty]

ANNEX PR
EXCEPTIONS RELATING TO PRIVATISATION MEASURES

(In accordance with Article 10(3)(b))

1. Contracting Party listed below may, subject to the scope of application inscribed against its name, reserve a right for its own Investors to acquire all or some of the shares of a state enterprise or assets owned by the state or a state enterprise which it is privatising, or may sell or dispose of such shares or assets to its own Investors on preferential terms.

Country **Scope of Application**

2. Any Contracting Party may reduce the scope of application inscribed against its name or remove its name from the list by notifying the Secretariat. The Secretariat shall forthwith inform other Contracting Parties and update Annex PR accordingly.

DRAFT

DECISIONS WITH RESPECT TO THE ENERGY CHARTER TREATY AND THE SUPPLEMENTARY TREATY

The following Decisions were adopted with respect to the Energy Charter Treaty and the Supplementary Treaty:

1. With respect to Article 10(8)

Given that there do not appear to be any programmes maintained by signatories to the Energy Charter Treaty that come within the terms of Article 10(8) of that Treaty, the modalities of application of Article 10(7) of the Energy Charter Treaty to any such programmes shall be reserved for further consideration by the Charter Conference at an appropriate time.

2. With respect to the application of the institutional arrangements of the Energy Charter Treaty to the Supplementary Treaty

The Energy Charter Conference and the Secretariat established under the Energy Charter Treaty (referred to in the Supplementary Treaty and Decisions and Understandings respectively as the Charter Conference and the Secretariat) shall perform relevant duties and functions with respect to the Supplementary Treaty.

3. With respect to Article 10(3)(a)

Given that historically those few Contracting Parties with reciprocity exceptions have seldom relied on them and that the Supplementary Treaty represents substantial progress in meeting the conditions of such exceptions, the Contracting Parties concerned shall, where they have invoked or acted under such exceptions, notify the Secretariat, which shall inform the Charter Conference.

4. With respect to Article 10(9)

Having regard to the value gained from the first review of the reports submitted to the Secretariat under Article 10(9) of the Energy Charter Treaty:

a. The Contracting Parties shall continue to include material illustrating the overall opportunities for investors of other Contracting Parties to Make Investments in their Areas. Such material shall cover in particular the existence and nature of relevant state entities, monopoly situations and exclusive and special privileges.

b. The Charter Conference should further define, as and when appropriate, the details of information to be included in such explanatory material.

Each Contracting Party listed in Annex PR to the Supplementary Treaty shall on an annual basis notify the Secretariat of any reliance on an exception provided for in Annex PR that relates to the obligation in Article 10(2) on a Contracting Party to accord treatment no less favourable than that it accords to its own Investors or their Investments. The Charter Conference may review the information provided.

5. With respect to Article 10(3)(b)

A Contracting Party which is not listed in Annex PR may, regarding an exception inscribed in Annex PR by a Contracting Party which is listed in Annex PR but not Annex T, invoke an equivalent exception to its obligation in Article 10(2) in relation to the Investors of that other Contracting Party or their Investments in its own privatisation operations.

DRAFT

DECLARATION ON ENVIRONMENTAL AND SOCIAL STANDARDS, AND GUIDELINES TO INVESTORS

SOCIAL AND ENVIRONMENTAL STANDARDS

A. The Contracting Parties declare that, as regards measures taken in the context of investment promotion, they shall endeavour to ensure:

i. that such measures are consistent with internationally recognised fundamental health, safety and labour standards, and relevant international environmental obligations; and

ii. that no measure taken by a Contracting Party shall derogate from its domestic health, safety, labour or environmental laws and regulations, so as to induce an Investor to make an Investments within its Area.

B. The Charter Conference may, at the request of one or more Contracting Parties, review compliance with the terms set out in paragraph A(ii) above.

GUIDELINES TO INVESTORS

C. The Contracting parties further declare that they jointly recommend to multinational enterprises engaged in Economic Activity in the Energy Sector the observance of the Guidelines for Multinational Enterprises annexed to this Declaration. The Charter Conference shall consider any subsequent revisions of the Guidelines with a view of recommending them.

* * *

PROTOCOL AMENDING THE TREATY ESTABLISHING THE CARIBBEAN COMMUNITY (PROTOCOL VIII: COMPETITION POLICY, CONSUMER PROTECTION, DUMPING AND SUBSIDIES)*
[excerpts]

(CARIBBEAN COMMUNITY)

The Protocol Amending the Treaty Establishing the Caribbean Community (Protocol VIII: Competition Policy, Consumer Protection, Dumping and Subsidies) was opened for signature in March 2000.

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:

* *Source*: The Caribbean Community (2000). "Protocol Amending the Treaty Establishing the Caribbean Community (Protocol VIII: Competition Policy, Consumer Protection, Dumping and Subsidies)"; available on the Internet (http://www.caricom.org/protocolviii.htm). [Note added by the editor.]

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 fulfillment 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 benefited 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 benefiting 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 benefited 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 benefiting from the subsidy to raise his price to such an extent that the injurious effect is eliminated.

4. If a Member State accepts a voluntary guarantee pursuant to sub-paragraph 3(b), then the accepting Member State shall notify 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 shallestablish 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 l 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(ll)
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 benefiting from such subsidies.

2. Accordingly, subsidies provided by a Member State to agriculture shall not involve transfers from consumers, or direct payments to producers or processors which would have the effect of providing price support to producers.

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

4. Where a Member State makes direct payments of a subsidy to agricultural producers or processors through such schemes as crop insurance, disaster relief, income safety-net programmes, regional assistance programmes and structural adjustment assistance programmes , 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 benefiting 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 Article30(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 labeled 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 labeled 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.

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 for 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 of (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[1]

2. This Protocol shall cover the following products:

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

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

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

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)).

*** * ***

[1] The product coverage is the same as that of the WTO Agreement on Agriculture.

CIVIL LAW CONVENTION ON CORRUPTION*

(COUNCIL OF EUROPE)

The Civil Law Convention on Corruption was adopted by the Committee of Ministers on 9 September 1999, at its 678th meeting, and opened for signature by the member States, the non-member States that participated in its elaboration and the European Community, on 4 November 1999.

Preamble

The member States of the Council of Europe, the other States and the European Community, signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Conscious of the importance of strengthening international co-operation in the fight against corruption;

Emphasising that corruption represents a major threat to the rule of law, democracy and human rights, fairness and social justice, hinders economic development and endangers the proper and fair functioning of market economies;

Recognising the adverse financial consequences of corruption to individuals, companies and States, as well as international institutions;

Convinced of the importance for civil law to contribute to the fight against corruption, in particular by enabling persons who have suffered damage to receive fair compensation;

Recalling the conclusions and resolutions of the 19th (Malta, 1994), 21st (Czech Republic, 1997) and 22nd (Moldova, 1999) Conferences of the European Ministers of Justice;

Taking into account the Programme of Action against Corruption adopted by the Committee of Ministers in November 1996;

Taking also into account the feasibility study on the drawing up of a convention on civil remedies for compensation for damage resulting from acts of corruption, approved by the Committee of Ministers in February 1997;

Having regard to Resolution (97) 24 on the 20 Guiding Principles for the Fight against Corruption, adopted by the Committee of Ministers in November 1997, at its 101st Session, to Resolution (98) 7 authorising the adoption of the Partial and Enlarged Agreement establishing

* *Source*: Council of Europe (1999). "Civil Law Convention on Corruption (ETS No. 174)"; available on the Internet: (http://conventions.coe.int/treaty/en/Treaties/Html/174.htm). [Note added by the editor.]

the "Group of States against Corruption (GRECO)", adopted by the Committee of Ministers in May 1998, at its 102nd Session, and to Resolution (99) 5 establishing the GRECO, adopted on 1st May 1999;

Recalling the Final Declaration and the Action Plan adopted by the Heads of State and Government of the member States of the Council of Europe at their 2nd summit in Strasbourg, in October 1997,

Have agreed as follows:

CHAPTER I – MEASURES TO BE TAKEN AT NATIONAL LEVEL

Article 1 – Purpose

Each Party shall provide in its internal law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.

Article 2 – Definition of corruption

For the purpose of this Convention, "corruption" means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.

Article 3 – Compensation for damage

1. Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage.

2. Such compensation may cover material damage, loss of profits and non-pecuniary loss.

Article 4 – Liability

1. Each Party shall provide in its internal law for the following conditions to be fulfilled in order for the damage to be compensated:

   i the defendant has committed or authorised the act of corruption, or failed to take reasonable steps to prevent the act of corruption;

   ii the plaintiff has suffered damage; and

   iii there is a causal link between the act of corruption and the damage.

2. Each Party shall provide in its internal law that, if several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable.

Article 5 – State responsibility

Each Party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-state Party, from that Party's appropriate authorities.

Article 6 – Contributory negligence

Each Party shall provide in its internal law for the compensation to be reduced or disallowed having regard to all the circumstances, if the plaintiff has by his or her own fault contributed to the damage or to its aggravation.

Article 7 – Limitation periods

1. Each Party shall provide in its internal law for proceedings for the recovery of damages to be subject to a limitation period of not less than three years from the day the person who has suffered damage became aware or should reasonably have been aware, that damage has occurred or that an act of corruption has taken place, and of the identity of the responsible person. However, such proceedings shall not be commenced after the end of a limitation period of not less than ten years from the date of the act of corruption.

2. The laws of the Parties regulating suspension or interruption of limitation periods shall, if appropriate, apply to the periods prescribed in paragraph 1.

Article 8 – Validity of contracts

1 Each Party shall provide in its internal law for any contract or clause of a contract providing for corruption to be null and void.

2 Each Party shall provide in its internal law for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages.

Article 9 – Protection of employees

Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.

Article 10 – Accounts and audits

1 Each Party shall, in its internal law, take any necessary measures for the annual accounts of companies to be drawn up clearly and give a true and fair view of the company's financial position.

2 With a view to preventing acts of corruption, each Party shall provide in its internal law for auditors to confirm that the annual accounts present a true and fair view of the company's financial position.

Article 11 – Acquisition of evidence

Each Party shall provide in its internal law for effective procedures for the acquisition of evidence in civil proceedings arising from an act of corruption.

Article 12 – Interim measures

Each Party shall provide in its internal law for such court orders as are necessary to preserve the rights and interests of the parties during civil proceedings arising from an act of corruption.

CHAPTER II – INTERNATIONAL CO-OPERATION AND MONITORING OF IMPLEMENTATION

Article 13 – International co-operation

The Parties shall co-operate effectively in matters relating to civil proceedings in cases of corruption, especially concerning the service of documents, obtaining evidence abroad, jurisdiction, recognition and enforcement of foreign judgements and litigation costs, in accordance with the provisions of relevant international instruments on international co-operation in civil and commercial matters to which they are Party, as well as with their internal law.

Article 14 – Monitoring

The Group of States against Corruption (GRECO) shall monitor the implementation of this Convention by the Parties.

CHAPTER III – FINAL CLAUSES

Article 15 – Signature and entry into force

1 This Convention shall be open for signature by the member States of the Council of Europe, by non-member States that have participated in its elaboration and by the European Community.

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which fourteen signatories have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1. Any such signatory, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, acceptance or approval, shall automatically become a member on the date the Convention enters into force.

4 In respect of any signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of their consent to be bound by the Convention in accordance with the provisions of paragraph 1. Any signatory, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, acceptance or approval, shall automatically become a member on the date the Convention enters into force in its respect.

5 Any particular modalities for the participation of the European Community in the Group of States against Corruption (GRECO) shall be determined as far as necessary by a common agreement with the European Community.

Article 16 – Accession to the Convention

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Parties to the Convention, may invite any State not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20.d. of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Parties entitled to sit on the Committee.

2 In respect of any State acceding to it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe. Any State acceding to this Convention shall automatically become a member of the GRECO, if it is not already a member at the time of accession, on the date the Convention enters into force in its respect.

Article 17 – Reservations

No reservation may be made in respect of any provision of this Convention.

Article 18 – Territorial application

1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 19 – Relationship to other instruments and agreements

1 This Convention does not affect the rights and undertakings derived from international multilateral instruments concerning special matters.

2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it or, without prejudice to the objectives and principles of this Convention, submit themselves to rules on this matter within the framework of a special system which is binding at the moment of the opening for signature of this Convention.

3 If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate these relations accordingly, in lieu of the present Convention.

Article 20 – Amendments

1 Amendments to this Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe, to the non member States which have participated in the elaboration of this Convention, to the European Community, as well as to any State which has acceded to or has been invited to accede to this Convention in accordance with the provisions of Article16.

2 Any amendment proposed by a Party shall be communicated to the European Committee on Legal Co-operation (CDCJ) which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the European Committee on Legal Co-operation (CDCJ) and, following consultation of the Parties to the Convention which are not members of the Council of Europe, may adopt the amendment.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

Article 21 – Settlement of disputes

1 The European Committee on Legal Co-operation (CDCJ) of the Council of Europe shall be kept informed regarding the interpretation and application of this Convention.

2 In case of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Legal

Co-operation (CDCJ), to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

Article 22 – Denunciation

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 23 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council and any other signatories and Parties to this Convention of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this Convention, in accordance with Articles 15 and 16;

d any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 4th day of November 1999, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community, as well as to any State invited to accede to it.

* * *

RESOLUTION (97) 24 ON THE TWENTY GUIDING PRINCIPLES FOR THE FIGHT AGAINST CORRUPTION* (COUNCIL OF EUROPE)

Resolution (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption was adopted by the Committee of Ministers of the Council of Europe on 6 November 1997 at its 101st Session.

The Committee of Ministers,

Considering the Declaration adopted at the Second Summit of Heads of State and Government, which took place in Strasbourg on 10 and 11 October 1997 and in pursuance of the Action Plan, in particular section III, paragraph 2 "Fighting corruption and organised crime";

Aware that corruption represents a serious threat to the basic principles and values of the Council of Europe, undermines the confidence of citizens in democracy, erodes the rule of law, constitutes a denial of human rights and hinders social and economic development;

Convinced that the fight against corruption needs to be multi-disciplinary and, in this respect having regard to Programme of Action against Corruption as well as to the resolutions adopted by the European Ministers of Justice at their 19th and 21st Conferences held in Valletta and Prague respectively;

Having received the draft 20 guiding principles for the fight against corruption, elaborated by the Multidisciplinary Group on Corruption (GMC);

Firmly resolved to fight corruption by joining the efforts of our countries,

AGREES TO ADOPT **THE 20 GUIDING PRINCIPLES** FOR THE FIGHT AGAINST CORRUPTION, SET OUT BELOW:

1. to take effective measures for the prevention of corruption and, in this connection, to raise public awareness and promoting ethical behaviour;

2. to ensure co-ordinated criminalisation of national and international corruption;

3. to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations;

* *Source*: Council of Europe (1997). "Resolution (97) 24 on the twenty guiding principles for the fight against corruption"; adopted by the Committee of Ministers on 6 November 1997 at its 101st session; available on the Internet (http://www.greco.coe.int/docs/ResCM(1997)24E.htm). [Note added by the editor.]

4. to provide appropriate measures for the seizure and deprivation of the proceeds of corruption offences;

5. to provide appropriate measures to prevent legal persons being used to shield corruption offences;

6. to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society;

7. to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks;

8. to ensure that the fiscal legislation and the authorities in charge of implementing it contribute to combating corruption in an effective and co-ordinated manner, in particular by denying tax deductibility, under the law or in practice, for bribes or other expenses linked to corruption offences;

9. to ensure that the organisation, functioning and decision-making processes of public administrations take into account the need to combat corruption, in particular by ensuring as much transparency as is consistent with the need to achieve effectiveness;

10. to ensure that the rules relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary measures; promote further specification of the behaviour expected from public officials by appropriate means, such as codes of conduct;

11. to ensure that appropriate auditing procedures apply to the activities of public administration and the public sector;

12. to endorse the role that audit procedures can play in preventing and detecting corruption outside public administrations;

13. to ensure that the system of public liability or accountability takes account of the consequences of corrupt behaviour of public officials;

14. to adopt appropriately transparent procedures for public procurement that promote fair competition and deter corruptors;

15. to encourage the adoption, by elected representatives, of codes of conduct and promote rules for the financing of political parties and election campaigns which deter corruption;

16. to ensure that the media have freedom to receive and impart information on corruption matters, subject only to limitations or restrictions which are necessary in a democratic society;

17. to ensure that civil law takes into account the need to fight corruption and in particular provides for effective remedies for those whose rights and interests are affected by corruption;

18. to encourage research on corruption;

19. to ensure that in every aspect of the fight against corruption, the possible connections with organised crime and money laundering are taken into account;

20. to develop to the widest extent possible international co-operation in all areas of the fight against corruption.

AND, IN ORDER TO PROMOTE A DYNAMIC PROCESS FOR EFFECTIVELY PREVENTING AND COMBATING CORRUPTION, THE COMMITTEE OF MINISTERS

1. invites national authorities to apply these Principles in their domestic legislation and practice;

2. instructs the Multidisciplinary Group on Corruption (GMC) rapidly to complete the elaboration of international legal instruments pursuant to the Programme of Action against Corruption;

3. instructs the Multidisciplinary Group on Corruption (GMC) to submit without delay a draft text proposing the establishment of an appropriate and efficient mechanism, under the auspices of the Council of Europe, for monitoring observance of these Principles and the implementation of the international legal instruments to be adopted.

* * *