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1 ARTICLE 8 OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

1.1 Text of Article 8

Article 8

Identification of Non-Actionable Subsidies

8.1 The following subsidies shall be considered as non-actionable²³:

(footnote original) ²³ It is recognized that the assistance covers

²⁷ not more than 75 per cent of the costs of industrial research²⁸ or 50 per cent of the costs of pre-competitive development activity²⁹,³⁰; and provided that such assistance is limited exclusively to:

(footnote original) ³² "Neutral and objective criteria" means criteria which do not favour certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy. In this regard, regional subsidy programmes shall include ceilings on the amount of assistance which can be granted to each subsidized project. Such ceilings must be differentiated according to the different levels of development of assisted regions and must be expressed in terms of investment costs or cost of job creation. Within such ceilings, the distribution of assistance shall be sufficiently broad and even to avoid the predominant use of a subsidy by, or the granting of disproportionately large amounts of subsidy to, certain enterprises as provided for in Article 2.

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

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

as measured over a three-year period; such measurement, however, may be a composite one and may include other factors.

(c) assistance to promote adaptation of existing facilities³³ to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms, provided that the assistance:

(footnote original) ³³ The term "existing facilities" means facilities which have been in operation for at least two years at the time when new environmental requirements are imposed.

- (i) is a one-time non-recurring measure; and
- (ii) is limited to 20 per cent of the cost of adaptation; and
- (iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms; and
- (iv) is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and
- (v) is available to all firms which can adopt the new equipment and/or production processes.

8.3 A subsidy programme for which the provisions of paragraph 2 are invoked shall be notified in advance of its implementation to the Committee in accordance with the provisions of Part VII. Any such notification shall be sufficiently precise to enable other Members to evaluate the consistency of the programme with the conditions and criteria provided for in the relevant provisions of paragraph 2. Members shall also provide the Committee with yearly updates of such notifications, in particular by supplying information on global expenditure for each programme, and on any modification of the programme. Other

findings to the Committee. The Committee shall, upon request, promptly review the findings of the Secretariat (or, if a review by the Secretariat has not been requested, the notification itself), with a view to determining whether the conditions and criteria laid down in paragraph 2 have not been met. The procedure provided for in this paragraph shall be completed at the latest at the first regular meeting of the Committee following the notification of a subsidy programme, provided that at least two months have elapsed between such notification and the regular meeting of the Committee. The review procedure described in this paragraph shall also apply, upon request, to substantial modifications of a programme notified in the yearly updates referred to in paragraph 3.

8.5 Upon the request of a Member, the determination by the Committee referred to in paragraph 4, or a failure by the Committee to U 0.36 0 T.7 (i)13.3 (tte)15 i 1.4 (i) glarodotrat.t.apelaroc

5. At its meeting of 23 October 1997, the SCM Committee adopted a Format for Updates of Notifications under Article 8.3 of the Agreement on Subsidies and Countervailing Measures⁶, which sets out the information which should be provided for each programme notified under Article 8.3.⁷

6. No notification was received under Article 8.3 during the period in which Article 8 was in force.⁸

1.4 Article 8.5: Procedures for arbitration

7. At its meeting of 2 June 1998, the SCM Committee adopted procedures for arbitration under Article 8.5 "with the aim of facilitating the operation of arbitration proceedings and enhancing transparency and predictability for all Members with respect to the Application of Article 8 of the Agreement".⁹

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