ANNEX C

Flexibility laid down in Article 3

The flexibility provisions laid down in Article 3 of this Protocol shall be determined in accordance with the following procedure:

— The carry-over of quantities not utilized during any given year to the corresponding quantities for the following year up to 9 % of the quantities concerned for the actual year of application.

— The advance utilization during any given year of part of the quantities fixed for the following year up to 5 % of the quantities concerned for the year of utilization. Such advance exports shall be deducted from the corresponding quantities fixed for the following year.

Protocol 10

on the restructuring of the Spanish iron and steel industry

1. Restructuring plans of Spanish iron and steel undertakings should lead to a situation where the production capacity of the Spanish iron and steel industry for ECSC hot-rolled products does not exceed 18 million tonnes at the end of the period referred to in Article 52, and they should be compatible with the last general steel objectives adopted before the date of accession.

2. From the date of accession, the Commission and the Spanish Government will assess jointly the degree to which the plans, already approved by the Spanish Government and officially forwarded to the Commission on 24 July and 1 August 1984 have been completed and the viability of the iron and steel undertakings to which those plans relate.

3. Should the viability of these undertakings not be satisfactorily guaranteed at the end of a maximum of three years after accession, the Commission, after having received the opinion of the Spanish Government, shall propose, at the end of the first year after accession, to make an addition to those plans, thereby enabling those undertakings to reach a viable state by the end of those plans.

4. The Commission and the Spanish Government will also assess, from the date of accession, the viability of undertakings for which the plans referred to in point 2 above make no provision for aid after the date of accession. Should the viability of these undertakings not be satisfactorily guaranteed at the end of a maximum of three years after accession, the Commission, after having received the opinion of the Spanish Government, will propose, at the end of the first year after accession, restructuring measures thereby enabling those undertakings to reach a viable state by the end of the abovementioned period of three years at the latest.

5. Any aid to the Spanish iron and steel industry forming part of the additions to the plans provided for in point 3 or measures provided for in point 4 shall be notified in advance, and not later than the end of the first year after accession, to the Commission by the Spanish Government. The said Government shall not implement its projects without authorization from the Commission.

The Commission shall assess those projects on the basis of the criteria and in accordance with the procedures defined in the Annex to this Protocol.

6. During the period mentioned in Article 52 of the Act of Accession, Spanish deliveries of ECSC iron and steel products to the remainder of the Community should fulfil the following conditions:

(a) The level of Spanish deliveries to the remainder of the Community during the first year following accession, shall be that fixed by the Commission after agreement of the Spanish Government and consultation of the Council during the year preceding accession. Should no agreement have been reached on this point, by the date of accession, the level of deliveries shall be fixed, not later than two months after the date of accession, by the Commission with the assent of the Council.

These deliveries will in any event have to be liberalized once the transitional arrangements have expired and, in order to bring about a harmonious transition, their level may be increased before the end of the said arrangements, the level of the first year being considered as a starting point.

Any increase in the level will be made on the basis of:

— the state of progression of the Spanish restructuring plans, taking into account significant

factors in re-establishing the viability of the undertakings; and necessary measures to attain such viability, and

— iron and steel measures which may be in force in the Community after accession so that Spain is not treated less favourably than third countries.

(b) The Spanish Government hereby undertakes to implement upon accession, under its responsibility and in agreement with the Commission, a mechanism for monitoring deliveries to the remainder of the Community market calculated to ensure strict observance of the quantitative undertakings agreed or established pursuant to point (a).

This mechanism must be compatible with any other measure of market supervision which may be adopted during the three years following the date of accession, and must not jeopardize the possibility of delivering the agreed quantities.

The Commission will regularly inform the Council of the reliability and the effectiveness of this mechanism. Should it prove to be unsatisfactory, the Commission shall, with the assent of the Council, take the appropriate measures.

ANNEX

Procedures and criteria for the assessment of aids

1. All aids to the iron and steel industry, whether specific or non-specific, financed by the Spanish State or through State resources in any form whatsoever may be considered compatible with the orderly functioning of the Common Market only if they respect the general rules set out in paragraph 2 and satisfy the provisions of paragraphs 3 to 6. Such aids shall be put into effect only in accordance with the procedures established in this Annex.

The concept of aid includes aid granted by regional or local authorities and any aid elements contained in the financing measures taken by the Spanish State in respect of the iron and steel undertakings which it directly or indirectly controls and which do not count as the provision of risk capital according to standard company practice in a market economy.

2. Aids granted to the Spanish iron and steel industry may be considered compatible with the orderly functioning of the common market provided that:

— the recipient undertaking or group of undertakings is engaged in the implementation of a systematic and specific restructuring programme covering the various aspects of restructuring (modernization, reduction of capacity and, where necessary, financial restructuring), which is capable of restoring its competitiveness and of making it financially viable without aid under normal market conditions, by the expiry of the transitional arrangements at the latest,

— the said restructuring programme results in a reduction in the overall production capacity of the recipient undertaking or group of undertakings and does not make provision for an increase in production capacity for the various categories of products for which there is not a growth market,

— the amount and intensity of the aids granted to steel undertakings are progressively reduced,

— the aids in question do not entail distortions of competition and do not affect trading conditions to an extent contrary to the common interest,

— the aids are approved not later than 15 months after accession and do not lead to any payments after the expiry of the transitional arrangements, other than by way of interest subsidies or of payments to honour guarantees on loans disbursed before that date.

3. Aids in support of investment in the iron and steel industry may be considered compatible with the orderly functioning of the common market provided that:

— the Commission has received prior notification of the investment programme where such notification is required by Commission Decision No 3302/81/ECSC of 18 November 1981, on the information to be furnished by steel undertakings about their investments or by any subsequent Decision,

— the amount and intensity of the aids are justified by the extent of the restructuring effort that has been made, account being taken of the structural problems of the region where the investment is to be undertaken, and are limited to what is necessary for that purpose,

— the investment programme takes account of the criteria defined in paragraph 2 and of the general objectives for steel, having regard to any reasoned opinion which the Commission may have issued on the investment programme concerned.

In its examination of such aids the Commission shall take account of the extent of the contribution of the investment programme concerned to other Community objectives, for instance innovation, energy saving and environmental protection, provided that the rules of paragraph 2 are adhered to.

4. Aids to defray the normal costs resulting from the partial or total closure of steel plants may be considered compatible with the orderly functioning of the common market.

The costs eligible for such aid shall be the following:

— allowances paid to workers made redundant or retired before legal retirement age, where such allowances are

not covered by aids pursuant to Article 56 (1) (c) or (2) (b) of the Treaty,

— compensation due to third parties in respect of the termination of contracts, in particular for the supply of raw materials,

— expenditure incurred for the redevelopment of the site, the buildings and/or infrastructures of closed steel plant for alternative industrial use.

Exceptionally and by way of derogation from paragraph 5 of the Protocol 10 and the fifth indent of paragraph 2 of this Annex, aids for closures which could not be foreseen in the programmes notified not more than 12 months after accession may be notified to the Commission after that date and authorized later than the first 15 months following accession.

5. Aids to facilitate the operation of certain undertakings or plants may be considered compatible with the orderly functioning of the common market provided that:

— those aids form an integral part of a restructuring programme as defined in the first indent of paragraph 2,

— they are progressively reduced at least once a year,

— they are limited in intensity and amount to what is absolutely necessary in order to enable operation to continue during the period of restructuring, and are justified by the extent of the restructuring effort made, account also being taken of any aid granted for investment.

In its examination of such aids the Commission shall take account of the problems facing the unit or units in question and the region or regions concerned, and of the secondary effects of the aid on competition on markets other than the steel market, in particular the transport market.

6. Aids to defray expenditure by steel undertakings on research and development projects may be considered compatible with the orderly functioning of the common market provided that the research and/or development project in question has one of the following objectives:

— a reduction in the costs of production, notably energy saving, or an improvement in productivity,

— an improvement in product quality,

— an improvement in the performance of iron and steel products or an increase in the range of uses of steel,

— an improvement in working conditions as regards health and safety.

The total amount of all aid granted for the above purposes may not exceed 50 % of the eligible costs of the project. The costs eligible for such aid shall mean the costs directly associated with the project and shall exclude in particular all expenditure on investment related to production processes.

7. The Commission shall seek the views of the Member States on the aid projects notified to it by the Spanish Government before adopting a position on them. It shall inform all Member States of the position adopted by it on each aid project.

If, after giving notice to the parties concerned to submit their comments, the Commission finds that an aid is incompatible with the provisions of this Annex, it shall inform the Spanish Government of its decision. Article 88 of the Treaty shall apply in the event of failure by the Spanish Government to comply with that Decision.

8. The Spanish Government shall supply the Commission twice a year with reports on aids disbursed in the course of the preceding six months, on the uses made of such aids and on the results achieved during the same period as regards restructuring. These reports must include details of all financial measures taken by the Spanish State or by regional or local authorities in respect of public steel undertakings. They must be forwarded within two months of the end of each six-month period in a form to be determined by the Commission.

The first of these reports will concern aids disbursed during the first six months following accession.