

# THIRD ACP-EEC CONVENTION

SIGNED AT LOME ON 8 DECEMBER 1984

His Majesty the King of the Belgians,

Her Majesty the Queen of Denmark,

The President of the Federal Republic of Germany,

The President of the Hellenic Republic,

The President of the French Republic,

The President of Ireland,

The President of the Italian Republic,

His Royal Highness the Grand Duke of Luxembourg,

Her Majesty the Queen of the Netherlands,

Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland,

Contracting Parties to the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Economic Community, hereinafter referred to as "the Community", the States of the Community being hereinafter referred to as "Member States",

and the Council and the Commission of the European Communities,

of the one part, and

Her Majesty the Queen of Antigua and Barbuda,

The Head of State of the Bahamas,

The Head of State of Barbados,

Her Majesty the Queen of Belize,

The President of the People's Republic of Benin,

The President of the Republic of Botswana,

The President of the National Revolutionary Council, President of Burkina Faso, Head of the Government,

The President of the Republic of Burundi,

The President of the Republic of Cameroon,

The President of the Republic of Cape Verde,

The President of the Central African Republic,

The President of the Islamic Federal Republic of the Comoros,

The President of the People's Republic of the Congo,

The President of the Republic of the Ivory Coast,

The President of the Republic of Djibouti,

The Government of the Commonwealth of Dominica,

The General Secretary of the Ethiopian Workers' Party, Chairman of the Provisional Military Administrative Council and of the Council of Ministers and Commander-in-Chief of the Revolutionary Army of Ethiopia,

Her Majesty the Queen of Fiji,

The President of the Gabonese Republic,

The President of the Republic of the Gambia,

The Head of State and Chairman of the Provisional National Defence Council of the Republic of Ghana,

Her Majesty the Queen of Grenada,

The President of the Republic of Guinea,

The President of the Council of State of Guinea-Bissau,

The President of the Republic of Equatorial Guinea,

The President of the Cooperative Republic of Guyana,

The Head of the State of Jamaica,

The President of the Republic of Kenya,

The President of the Republic of Kiribati,

His Majesty the King of the Kingdom of Lesotho,

The President of the Republic of Liberia,

The President of the Democratic Republic of Madagascar,

The President of the Republic of Malawi,

The President of the Republic of Mali,

The Chairman of the Military Committee for National Safety, Head of State of the Islamic Republic of Mauritania,

Her Majesty the Queen of Mauritius,

The President of the People's Republic of Mozambique,

The President of the Supreme Military Council, Head of State of Niger,

The Head of the Federal Military Government of Nigeria,

The President of the Republic of Uganda,

Her Majesty the Queen of Papua New Guinea,

The President of the Rwandese Republic,

Her Majesty the Queen of St Christopher and Nevis,

Her Majesty the Queen of Saint Lucia,

Her Majesty the Queen of Saint Vincent and the Grenadines,

The Head of State of Western Samoa,

The President of the Democratic Republic of Sao Tome and Principe,

The President of the Republic of Senegal,

The President of the Republic of Seychelles,

The President of the Republic of Sierra Leone,

Her Majesty the Queen of the Solomon Islands,  
The President of the Somali Democratic Republic,  
The President of the Democratic Republic of the Sudan,  
The President of the Republic of Suriname,  
Her Majesty the Queen Regent of the Kingdom of Swaziland,  
The President of the United Republic of Tanzania,  
The President of the Republic of Chad,  
The President of the Togolese Republic,  
His Majesty King Taufa'ahau Tupou IV of Tonga,  
The President of the Republic of Trinidad and Tobago,  
Her Majesty the Queen of Tuvalu,  
The Government of the Republic of Vanuatu,  
The President of the Republic of Zaire,  
The President of the Republic of Zambia,  
The President of the Republic of Zimbabwe,  
whose States are hereinafter referred to as "ACP States",

of the other part,

Having regard to the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community, on the one hand, and the Georgetown Agreement constituting the group of African, Caribbean and Pacific States, on the other;

ANXIOUS to reinforce, on the basis of complete equality between partners and in their mutual interest, close and continuing co-operation in a spirit of international solidarity;

WISHING to demonstrate their common desire to maintain and develop the friendly relations existing between their countries, in accordance with the principles of the Charter of the United Nations;

REAFFIRMING their adherence to the principles of the said Charter and their faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small;

RESOLVED to step up their common efforts to contribute towards international co-operation and to the solution of international problems of economic, social, intellectual and humanitarian nature, in conformity with the aspirations of the international community towards the establishment of a new, more just and more balanced economic order;

RESOLVED to make, through their co-operation, a significant contribution to the economic development and social progress of the ACP States and to the greater well-being of their populations;

HAVE DECIDED to conclude this Convention and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr François-Xavier DE DONNEA, State Secretary, Development Co-operation;

HER MAJESTY THE QUEEN OF DENMARK:

Mr K.E. TYGESEN, State Secretary, Ministry for Foreign Affairs;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Mr Peter SCHOLZ, Ambassador Extraordinary and Plenipotentiary of the Federal Republic of Germany to the Togolese Republic;

Dr Volkmar KOHLER, Parliamentary State Secretary to the Federal Minister for Economic Co-operation;

THE PRESIDENT OF THE HELLENIC REPUBLIC:

Mr Theodore PANGALOS, State Secretary, Ministry for Foreign Affairs;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr Claude CHEYSSON, Plenipotentiary;

Mr Christian NUCCI, Minister responsible to the Minister for External Relations, Responsible for Co-operation and Development;

THE PRESIDENT OF IRELAND:

Mr Jim O'KEEFFE, T.D., Minister of State at the Department of Foreign Affairs;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr Mario FIORET, Under Secretary of State, Ministry for Foreign Affairs;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Robert GOEBBELS, State Secretary, Ministry for Foreign Affairs;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Dr W.F. VAN EEKELLEN, State Secretary, Ministry for Foreign Affairs;

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

The Rt Honourable Timothy RAISON, M.P., Minister of State for Foreign and Commonwealth Affairs, Minister for Overseas Development;

THE COUNCIL AND THE COMMISSION OF THE EUROPEAN COMMUNITIES:

Mr Peter BARRY, Minister for Foreign Affairs, Ireland, President-in-Office of the Council of the European Communities;

Mr Gaston THORN, President of the Commission of the European Communities;

HER MAJESTY THE QUEEN OF ANTIGUA AND BARBUDA:

Mr Ronald SANDERS, Ambassador Extraordinary and Plenipotentiary, Head of the Mission of Antigua and Barbuda to the European Communities;

THE HEAD OF STATE OF THE COMMONWEALTH OF THE BAHAMAS:

Mr Richard C. DEMERITTE, High Commissioner to the United Kingdom;

THE HEAD OF STATE OF BARBADOS:

The Honourable H. B. St JOHN, QC, M.P., Deputy Prime Minister and Minister of Trade, Industry and Tourism;

HER MAJESTY THE QUEEN OF BELIZE:

Mr Rudolph I. CASTILLO, MBE, Ambassador Extraordinary and Plenipotentiary, Head of the Mission of Belize to the European Communities;

THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF BENIN:

Mr Soule DANKORO, Minister for Trade, Craft Trades and Tourism;

THE PRESIDENT OF THE REPUBLIC OF BOTSWANA:

The Honourable Mrs G. K. T. CHIEPE, Minister for Foreign Affairs;

THE PRESIDENT OF THE NATIONAL REVOLUTIONARY COUNCIL, PRESIDENT OF BURKINA FASO, HEAD OF THE GOVERNMENT:

Mr Youssouf OUEDRAOGO, Minister for Planning and Social Development;

THE PRESIDENT OF THE REPUBLIC OF BURUNDI:

Mr Stanislas MANDI, Minister of the Presidency responsible for relations with the National Assembly;

THE PRESIDENT OF THE REPUBLIC OF CAMEROON:

Mr Youssoufa DAOUDA, Minister of State for Planning and Regional Development;

THE PRESIDENT OF THE REPUBLIC OF CAPE VERDE:

Mr Silvino DA LUZ, Minister for Foreign Affairs;

THE PRESIDENT OF THE CENTRAL AFRICAN REPUBLIC:

Mr Guy DARLAN, High Commissioner for Planning, responsible for Economic and Financial Co-operation;

THE PRESIDENT OF THE ISLAMIC FEDERAL REPUBLIC OF THE COMOROS:

Mr Yahaia DJAMADAR, Roving Ambassador and Plenipotentiary;

THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF THE CONGO:

Mr Pierre MOUSSA, Minister for Planning;

THE PRESIDENT OF THE REPUBLIC OF THE IVORY COAST:

Mr Abdoulaye KONE, Minister for Economic Affairs and Finance;

THE PRESIDENT OF THE REPUBLIC OF DJIBOUTI:

Mr Ahmed Ibrahim ABDI, Ambassador Extraordinary and Plenipotentiary, Head of the Mission of the Republic of Djibouti to the European Economic Community;

THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA:

Mr Romeo Arden Coleridge SHILLINGFORD, High Commissioner to the United Kingdom;

THE GENERAL SECRETARY OF THE ETHIOPIAN WORKERS' PARTY, CHAIRMAN OF THE PROVISIONAL MILITARY ADMINISTRATIVE COUNCIL AND OF THE COUNCIL OF MINISTERS AND COMMANDER-INCHIEF OF THE REVOLUTIONARY ARMY OF ETHIOPIA:

Mr Ijigu MERSIE, Minister responsible for General Planning;

HER MAJESTY THE QUEEN OF FIJI:

Mr J.D. V. CAVALEVU, Ambassador Extraordinary and Plenipotentiary, Head of the Mission of Fiji to the European Communities;

THE PRESIDENT OF THE GABONESE REPUBLIC:

Mr Pascal NZE, Minister for Planning and Regional Development;

THE PRESIDENT OF THE REPUBLIC OF THE GAMBIA:

The Honourable Sheriff Saikouba SISAY, Minister of Finance and Trade;

THE HEAD OF STATE AND CHAIRMAN OF THE PROVISIONAL NATIONAL DEFENCE COUNCIL OF THE REPUBLIC OF GHANA:

Dr Kwesi BOTCHWEY, Secretary for Finance and Economic Planning;

HER MAJESTY THE QUEEN OF GRENADA:

Mr Oswald Moxley GIBBS, CMG, High Commissioner of Grenada to the United Kingdom;

THE PRESIDENT OF THE REPUBLIC OF GUINEA:

Captain Fode Momo CAMARA, Minister for International Co-operation;

THE PRESIDENT OF THE COUNCIL OF STATE OF GUINEA-BISSAU:

Mr Bartolomeu Simoes PEREIRA, Minister for Economic Co-ordination, Planning and International Co-operation;

THE PRESIDENT OF THE REPUBLIC OF EQUATORIAL GUINEA:

Mr Fortunato NZAMBI MACHINDE, Minister for Industry, Trade and Industrial Promotion;

THE PRESIDENT OF THE COOPERATIVE REPUBLIC OF GUYANA:

Mr Harold SAHADEO, Ambassador Extraordinary and Plenipotentiary,

Head of the Mission of Guyana to the European Communities;

THE HEAD OF STATE OF JAMAICA:

Mr E. Frank FRANCIS, Permanent Secretary, Ministry for Foreign Affairs;

THE PRESIDENT OF THE REPUBLIC OF KENYA:

The Honourable E. MWAN GALE, Minister for Foreign Affairs;

THE PRESIDENT OF THE REPUBLIC OF KIRIBATI:

The Rt Honourable Timothy RAISON, M.P., Minister of State for Foreign and Commonwealth Affairs, Minister for Overseas Development, of the United Kingdom of Great Britain and Northern Ireland;

HIS MAJESTY THE KING OF THE KINGDOM OF LESOTHO:

The Honourable Dr K. T. MAPHATHE, Minister of Transport and Communications;

THE PRESIDENT OF THE REPUBLIC OF LIBERIA:

The Honourable Emmanuel O. GARDINER, Minister of Planning and Economic Affairs;

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF MADAGASCAR:

Mr Georges Yvan SOLOFOSON, Minister for Trade;

THE PRESIDENT OF THE REPUBLIC OF MALAWI:

Mr E. C. Katola PHIRI, Minister of Trade, Industry and Tourism;

THE PRESIDENT OF THE REPUBLIC OF MALI:

Maitre Alioune Bondin BEYE, Minister for Foreign Affairs and International Co-operation;

THE CHAIRMAN OF THE MILITARY COMMITTEE FOR NATIONAL SAFETY, HEAD OF STATE OF THE ISLAMIC REPUBLIC OF MAURITANIA:

Lieutenant Colonel Ahmed OULD MINNIH, Member of the Military Committee for National Safety, Minister for Foreign Affairs and Co-operation;

HER MAJESTY THE QUEEN OF MAURITIUS:

The Honourable Nunkeswarsingh DEERPALSINGH, Minister for Agriculture, Fisheries and Natural Resources;

THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF MOZAMBIQUE:

Rei Baltazar dos SANTOS ALYES, Minister for Financial Affairs;

THE PRESIDENT OF THE SUPREME MILITARY COUNCIL, HEAD OF STATE OF NIGER:

Mr Almoustapha SOUMAILA, Minister responsible to the Prime Minister for Planning;

THE HEAD OF THE FEDERAL MILITARY GOVERNMENT OF NIGERIA:

Mr Job IROHA, Ambassador Extraordinary and Plenipotentiary;

THE PRESIDENT OF THE REPUBLIC OF UGANDA:

The Honourable Henry Milton MAKMOT, Deputy Minister of Finance;

HER MAJESTY THE QUEEN OF PAPUA NEW GUINEA:

The Honourable Rabbie L. NAMALIU, CMG, M.P., Minister for Foreign Affairs and Trade;

THE PRESIDENT OF THE RWANDESE REPUBLIC:

Mr Ambroise MULINDANGABO, Minister for Planning;

HER MAJESTY THE QUEEN OF ST CHRISTOPHER AND NEVIS:

Dr Claudius C. THOMAS, CMG, Ambassador Extraordinary and Plenipotentiary, Head of the Mission of Saint Lucia to the European Communities;

HER MAJESTY THE QUEEN OF SAINT LUCIA:

Dr Claudius C. THOMAS, CMG, Ambassador Extraordinary and Plenipotentiary, Head of the Mission of Saint Lucia to the European Communities;

HER MAJESTY THE QUEEN OF SAINT VINCENT AND THE GRENADINES:

Dr Claudius C. THOMAS, CMG, Ambassador Extraordinary and Plenipotentiary, Head of the Mission of Saint Lucia to the European Communities;

THE HEAD OF STATE OF WESTERN SAMOA:

The Honourable Tuilaepa SAILELE, Minister for Financial Affairs;

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF SAO TOME AND PRINCIPE:

Dr Carlos Alberto TINY, Minister for Co-operation;

THE PRESIDENT OF THE REPUBLIC OF SENEGAL:

Mr Abdourahmane TOURE, Minister for Trade;

THE PRESIDENT OF THE REPUBLIC OF SEYCHELLES:

Mr Calyxte D'OFFAY, Ambassador Extraordinary and Plenipotentiary, Director for External Relations;

THE PRESIDENT OF THE REPUBLIC OF SIERRA LEONE:

The Honourable Salia JUSU-SHERIFF, M.P., Minister of Development and Economic Planning;

HER MAJESTY THE QUEEN OF THE SOLOMON ISLANDS:

The Rt Honourable Timothy RAISON, M.P., Minister of State for Foreign and Commonwealth Affairs, Minister for Overseas Development, of the United Kingdom of Great Britain and Northern Ireland;

THE PRESIDENT OF THE SOMALI DEMOCRATIC REPUBLIC:

Mr Mohamed Omar GIAMA, Ambassador Extraordinary and Plenipotentiary, Representative of the Somali Democratic Republic to the European Communities;

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF THE SUDAN:

Mr MOHAMED EL HASSAN AHMED EL HAG, Minister of the Presidency for Secretariat General Affairs;

THE PRESIDENT OF THE REPUBLIC OF SURINAME:

Mr Imro E. FONG POEN, Minister of Transport, Trade and Industry;

HER MAJESTY THE QUEEN REGENT OF THE KINGDOM OF SWAZILAND:

The Honourable Mr Mhambi M. MNISI, Minister of Foreign Affairs;

THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA:

The Honourable Professor Kighoma A. MALIMA, Minister for Planning and Economic Affairs;

THE PRESIDENT OF THE REPUBLIC OF CHAD:

Mr Amos REOULENGAR, State Secretary, Economic Affairs and Trade;

THE PRESIDENT OF THE TOGOLESE REPUBLIC:

Mr Yaovi ADODO, Minister for Planning and Industry;

HIS MAJESTY KING TAUFU'AHAU TUPOU IV OF TONGA:

His Royal Highness Crown Prince TUPOUTO' A, Minister for Foreign Affairs and Defence;

THE PRESIDENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO:

The Honourable Desmond CARTEY, Minister of Industry, Commerce and Consumer Affairs;

HER MAJESTY THE QUEEN OF TUVALU:

Mr J.D. V. CAVALEVU, Ambassador Extraordinary and Plenipotentiary, Head of the Mission of Fiji to the European Communities;

THE GOVERNMENT OF THE REPUBLIC OF VANUATU:

The Honourable Sela MOLISA, M.P., Minister for Foreign Affairs and Trade;

THE PRESIDENT OF THE REPUBLIC OF ZAIRE:

Mr TSHIBW ABW A ASHILA PASHI, Ambassador Extraordinary and Plenipotentiary, Member of the Central Committee;

THE PRESIDENT OF THE REPUBLIC OF ZAMBIA:

The Honourable Leonard S. SUBUL W A, M.P., Minister of Commerce and Industry;

THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE:

The Honourable R. C. HOVE, Minister of Trade and Commerce;

WHO, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

## **Part One. General Provisions of ACP-EEC Co-operation**

### **Chapter 1. Objectives and Principles of Co-operation**

#### **Article 1.**

The Community and its Member States, of the one part, and the ACP States, of the other part (hereinafter referred to as the Contracting Parties), hereby conclude this co-operation Convention in order to promote and expedite the economic, cultural and social development of the ACP States and to consolidate and diversify their relations in a spirit of solidarity and mutual interest.

The Contracting Parties thereby affirm their undertaking to continue, strengthen and render more effective the system of co-operation established under the first and second ACP-EEC Conventions and confirm the special character of their relations, based on their reciprocal interest, and the specific nature of their co-operation.

The Contracting Parties hereby express their resolve to intensify their effort to create, with a view to a more just and balanced international economic order, a model for relations between developed and developing states and to work together to affirm in the international context the principles underlying their co-operation.

#### **Article 2.**

ACP-EEC co-operation, underpinned by a legally binding system and the existence of joint institutions, shall be exercised on



the basis of the following fundamental principles:

- equality between partners, respect for their sovereignty, mutual interest and interdependence;
- the right of each State to determine its own political, social, cultural and economic policy options;
- security of their relations based on the "acquis" of their system of co-operation.

### **Article 3.**

The ACP States shall determine the development principles, strategies and models for their economies and societies in all sovereignty.

### **Article 4.**

Support shall be provided in ACP-EEC co-operation for the ACP States' own efforts to achieve more self-reliant and self-sustained development based on their cultural and social values, their human capacities, their natural resources and their economic potential in order to promote the ACP States' social and economic progress and the well-being of their population through the satisfaction of their basic needs, the recognition of the role of women and the enhancement of people's capacities, with respect for their dignity.

### **Article 5.**

With a view to attaining more balanced and more self-reliant economic development in the ACP States, special efforts shall be made under this Convention to promote rural development, food security for the people and the revival and strengthening of agricultural production potential in the ACP States.

### **Article 6.**

In order to strengthen the ACP States' collective self-reliance, this Convention shall constitute support for their efforts to organize themselves into regional groupings and to step up their co-operation at regional and inter-regional level.

In this context of co-operation, special attention shall be paid to the implementation of operations which are particularly suited to the regional dimension and require a long-term effort.

### **Article 7.**

The Contracting Parties acknowledge the need to accord special treatment to the least-developed ACP States and to take account of the specific difficulties confronting the landlocked and island ACP States. They shall pay special attention to improving the living conditions of the poorest sections of the population.

Co-operation shall comprise, inter alia, special treatment when determining the volume of financial resources and the conditions attached thereto in order to enable the least-developed ACP States to overcome structural and other obstacles to their development.

For the landlocked and island ACP States, co-operation shall be aimed at devising and encouraging specific operations to deal with development problems caused by their geographical situations.

### **Article 8.**

In order to step up the effectiveness of the instruments of this Convention, the Contracting Parties shall adopt, in the framework of their respective responsibilities, guidelines, priorities and measures conducive to attaining the objectives set out in this Convention and to the implementation of financial and technical assistance and the other co-operation instruments in a co-ordinated manner.

With this in mind, they agree to pursue the dialogue, notably within the joint institutions, to seek ways and means of rendering those instruments ever more effective.

### **Article 9.**

Within the scope of their respective responsibilities, the institutions of this Convention shall examine periodically the results of the application thereof, provide any necessary impetus and take any relevant decision or measure for the attainment of its objectives.

Any question that might directly hamper the effective attainment of the objectives of this Convention may be raised in the context of the institutions.

Consultations shall take place within the Council of Ministers at the request of either Contracting Party in cases provided for in this Convention or where difficulties arise with the application or interpretation thereof.

Where the Community intends, in the exercise of its powers, to take a measure which might affect the interests of the ACP States as far as this Convention's objectives are concerned, it shall inform the said States of its intentions. Where necessary, the exchange of information may also take place on the initiative of the ACP States. At their request, consultations shall be held in good time so that account may be taken of their concerns before any final decision.

## **Chapter 2. Objectives and Guidelines of the Convention In the Main Areas of Co-operation**

### **Article 10.**

Co-operation shall be aimed at supporting development in the ACP States, a process centred on man himself and rooted in each people's culture. It shall back up the policies and measures adopted by those States to enhance their human resources, increase their own creative capacities and promote their cultural identities. Co-operation shall also encourage participation by the population in the design and execution of development operations.

Account shall be taken, in the various fields of co-operation, and at all the different stages of the operations executed, of the cultural dimension and social implications of such operations.

### **Article 11.**

In the framework of efforts to protect the environment and restore natural balances, co-operation shall contribute in particular towards the control of drought and desertification and the implementation of other campaigns to that end.

### **Article 12.**

Agricultural co-operation shall be aimed at the pursuit of food self-sufficiency and food security in the ACP States, developing and organizing their productive systems, improving the living standards and conditions and the life styles of the rural population and achieving the balanced development of rural areas.

Operations in this field shall be designed and executed to support the agricultural and food policies or strategies adopted by the ACP States.

### **Article 13.**

Co-operation in the fields of mining and energy shall be directed at promoting and expediting, in the mutual interest, diversified economic development, deriving full benefit from the ACP States' human potential and natural resources, and at fostering better integration of these and other sectors and their complementarity with the rest of the economy.

Co-operation shall be aimed at creating and consolidating the cultural, social and economic environment and the infrastructure required to achieve that objective.

Support shall be provided for the ACP States' efforts to devise and implement energy policies suited to their situation, notably the gradual reduction of the dependence of the majority of them on imported petroleum products and the development of new and renewable sources of energy.

Co-operation shall be aimed at encouraging improved exploitation of energy and mining resources by taking account of the energy component in development of the different economic and social sectors and thus helping to improve living conditions and the environment, leading to the better conservation of biomass resources, particularly fuelwood.

### **Article 14.**

The Contracting Parties, acknowledging the crucial role of industry as a driving force in economic and social development, are determined to ensure a balanced, self-reliant development in the ACP States based on those States' own priorities. They agree to foster industrial development in the ACP States with a view to strengthening those States' efforts to promote their collective self-reliance and increase their share of world trade.

## **Article 15.**

The aim of co-operation in fisheries shall be to help the ACP States to develop their fishery resources in order to expand production for domestic consumption as part of their efforts to achieve increased food security and increase production for export. Such co-operation shall be designed to serve the mutual interests of the Parties, in accordance with their fishery policies.

# **Chapter 3. Principles Governing the Instruments of Co-operation**

## **Article 16.**

In order to contribute towards achieving the aims of this Convention, the Contracting Parties shall deploy co-operation instruments that correspond to the principles of solidarity and mutual interest, adapted to the economic, cultural and social situation in the ACP States and in the Community and to developments in their international environment.

These instruments shall be directed mainly, by strengthening the established mechanisms and systems, at:

- increasing trade between the Parties;
- supporting the ACP States' efforts to achieve self-reliant development by stepping up their capacity to innovate and to adapt and transform technology;
- helping the ACP States to gain access to the capital markets and encouraging direct private European investment to contribute towards the development of the ACP States;
- remedying the instability of export earnings from the ACP States' agricultural commodities and helping those countries to cope with serious disruptions affecting their mining industries.

## **Article 17.**

In order to promote and diversify trade between the Contracting Parties, the Community and the ACP States are agreed on:

- general trade provisions;
- special arrangements for Community import of certain ACP products;
- arrangements to promote the development of the ACP States' trade and services, including tourism;
- a system of reciprocal information and consultation designed to help apply the trade co-operation provisions of this Convention effectively.

## **Article 18.**

The aim of the general trade arrangements, which are based on the Contracting Parties' international obligations, shall be to provide a firm and solid foundation for trade cooperation between the ACP States and the Community.

They shall be based on the principle of free access to the Community market for products originating in the ACP States, with special provisions for agricultural products and a safeguard clause.

In view of the ACP States' present development needs, the arrangements shall not comprise any element of reciprocity for those States as regards free access.

They shall also be based on the principle of non-discrimination by the ACP States between the Member States and the according to the Community of treatment no less favourable than the most-favoured-nation treatment.

## **Article 19.**

The Community shall contribute towards the ACP States' own development efforts by providing adequate financial resources and appropriate technical assistance aimed at stepping up those States' capacities for self-reliant and integrated economic, social and cultural development and also at helping to raise their population's standard of living and well-being.

Such contribution shall be made on predictable and regular bases. They shall be accorded on the most liberal terms possible for the Community. Particular account shall be taken of the situation of the least-developed ACP States.

## **Article 20.**

The Contracting Parties agree to facilitate greater, more stable flows of resources from the private sector to the ACP States by taking measures to improve the access of ACP States to capital markets and to encourage European private investment in ACP States.

The Contracting Parties underline the need to provide equitable and stable conditions for the treatment of such investment.

## **Article 21.**

Given the extreme dependence of the economies of the vast majority of ACP States on their exports of agricultural commodities, the Contracting Parties agree to pay particular attention to their co-operation in this sector with a view to supporting ACP government policies or strategies designed to restore and improve production and marketing conditions and local processing.

The Contracting Parties also agree to confirm the importance of the system for the stabilization of export earnings, as well as of intensifying the process of consultation between the ACP States and the Community in international forums and organizations which aim to stabilize agricultural commodity markets.

Given the role played by the mining industry in the development efforts of numerous ACP States and the ACP-EEC mutual dependence in that sector, the Contracting Parties confirm the importance of the system established to help ACP States confronted with serious disruptions in that sector to restore it to a viable state and remedy the consequences of such disruptions for their development.

# **Chapter 4. Institutions**

## **Article 22.**

The institutions of this Convention shall be the Council of Ministers, the Committee of Ambassadors and the Joint Assembly.

## **Article 23.**

1. The Council of Ministers shall be composed, on the one hand, of the members of the Council of the European Communities and of members of the Commission of the European Communities and, on the other hand, of a member of the government of each of the ACP States.

2. The functions of the Council of Ministers shall be to:

(a) establish the broad lines of the work to be undertaken in the context of the application of this Convention, notably in helping to solve problems fundamental to the joint and several development of the Contracting Parties;

(b) take any political decision for the attainment of the objectives of this Convention;

(c) take decisions in the specific areas provided for in this Convention;

(d) ensure efficient performance of the consultation mechanisms provided for in this Convention;

(e) deal with problems of interpretation of this Convention;

(f) settle procedural questions and arrangements for the implementation of this Convention;

(g) examine, at the request of one of the Contracting Parties, any question directly liable to hinder or promote the effective and efficient implementation of this Convention or any other issue likely to obstruct attainment of its objectives;

(h) take all necessary measures to establish ongoing contacts between the economic and social sectors in the Community and in the ACP States and to arrange regular consultations with their representatives on matters of mutual interest, given

the importance, acknowledged by the Contracting Parties, of establishing an effective dialogue between these sectors and of securing their contribution to the co-operation and development effort.

## **Article 24.**

1. The Committee of Ambassadors shall be composed, on the one hand, of each Member State's Permanent Representative to the European Communities and one representative of the Commission and, on the other, of the head of each ACP State's mission to the European Communities.
2. The Committee of Ambassadors shall assist the Council of Ministers in the performance of its functions and shall carry out any brief given to it by the Council.

It shall monitor implementation of this Convention and progress towards achieving the objectives set therein.

## **Article 25.**

1. The Joint Assembly shall be composed of equal numbers of, on the one hand, members of the European Parliament on the Community side and of, on the other, members of parliament or, failing this, of representatives designated by the ACP States.
2. (a) The Joint Assembly shall be a consultative body, which shall seek, through dialogue, debate and concerted action, to:
  - promote better understanding between the peoples of the Member States and the ACP States;
  - promote public awareness of the interdependence of the peoples and of their interests as well as of the need for solidarity in development;
  - reflect upon all matters pertaining to ACP-EEC co-operation, particularly the fundamental problems of development;
  - encourage research and initiative, and formulate proposals with a view to improving and reinforcing ACP-EEC co-operation;
  - urge the relevant authorities of the Contracting Parties to implement this Convention in the most efficient manner possible so as to ensure the full attainment of its objectives;
- (b) The Joint Assembly shall organize regular contacts and consultations with representatives of economic and social sectors in the ACP States and in the Community in order to obtain their views on the attainment of the objectives of this Convention.

# **Part Two. The Areas of ACP-EEC Co-operation**

## **Title I. Agricultural and Rural Development and Conservation of Natural Resources**

### **Chapter 1. Agricultural Co-operation and Food Security**

## **Article 26.**

Co-operation in the agricultural and rural sector, that is arable farming, livestock production, fisheries and forestry, shall be aimed, *inter alia*, at:

- supporting that ACP States' efforts to increase their degree of self-sufficiency in food, in particular by strengthening the capacity of the ACP States to provide their population with sufficient food and ensure a satisfactory level of nutrition;
- reinforcing food security at national, regional and inter-regional level;
- guaranteeing the rural population incomes that will significantly improve their standard of living;
- promoting the active participation of the rural population in their own development by organizing small farmers into associations and integrating them more effectively into national and international economic activity;
- creating satisfactory living conditions and a satisfactory life style in the rural environment, notably by developing social and cultural activities;
- improving rural productivity, notably by transfers of appropriate technology and the rational exploitation of plant and

animal resources;

- reducing post-harvest losses;
- diversifying job-creating rural activities and expanding activities that back up production;
- improving production by on-the-spot processing of the products of agriculture, including livestock farming, and fisheries and forestry;
- ensuring a balance between food crops and export crops;
- developing agricultural research tailored to the natural and human environment of the country and the region and meeting extension service needs;
- in the context of the above objective, protecting the natural environment, particularly through specific operations to control drought and desertification.

## **Article 27.**

1. Operations to attain the objectives referred to in Article 26 shall be as varied and practical as possible, at national, regional and inter-regional level.
2. They shall, furthermore, be designed and deployed to implement the policies and strategies established by the ACP States and respect their priorities.
3. Support shall be provided for such policies and strategies in the context of agricultural co-operation in accordance with the provisions of this Convention.

## **Article 28.**

1. Development of production calls for increased animal and crop production and involves:
  - improving farming methods for rain-fed crops while conserving soil fertility;
  - developing irrigated crops, inter alia through different types of agricultural water schemes (village water engineering, regulation of watercourses and soil improvement) ensuring optimum use and thrifty management of water which can be mastered by farmers and by local communities; operations shall also consist in the rehabilitation of existing schemes;
  - improving and modernizing cultivation techniques and making better use of factors of production (improved varieties and breeds, agricultural equipment, fertilizers, plant treatment preparations);
  - in the sphere of livestock farming, improving animal feed (more effective management of pasture, increased fodder production, more new water-points and repair of existing ones) and health, including the development of the infrastructure required for that purpose;
  - better integration of arable and livestock farming;
  - in the sphere of fisheries, modernizing fish-farming and developing aquaculture.
2. Other prerequisites for the development of production are:
  - the extension of secondary and tertiary back-up activities for agriculture, such as the manufacture, modernization and promotion of agricultural and rural equipment and other inputs and, where necessary, their importation;
  - the establishment or consolidation of agricultural credit facilities adapted to local conditions in order to promote access to production factors for farmers;
  - the encouragement of all those policies and incentives for producers which are appropriate to local conditions with a view to greater productivity and to improving farmers' incomes.

## **Article 29.**

In order to ensure a return on output, agricultural co-operation shall contribute to:

- adequate means of preservation and suitable storage facilities for producers;

- effective control of disease, pests and other factors causing production losses;
- basic marketing arrangements underpinned by suitable organization of producers, with the necessary material and financial resources, and by adequate means of communication;
- flexible operation of marketing channels, taking account of every form of public or private initiative, to enable local markets, areas of the country with shortfalls and urban markets to be supplied, in order to cut down dependence on outside sources;
- facilities to prevent breaks in supplies (security storage) and guard against erratic price fluctuations (intervention storage);
- processing, packaging and marketing of products, particularly by developing artisanal and agro-industrial units, in order to adapt them to the trend of the market.

### **Article 30.**

Rural promotion measures shall involve:

- the organization of producers within associations or communities in order to enable them to derive more benefit from joint contracts and investment and jointly owned equipment;
- the development of social and cultural activities (such as health, education and culture) essential for improving rural life styles;
- suitable extension services to train farmers;
- improving the training of instructors at all levels.

### **Article 31.**

Co-operation in agricultural research shall contribute:

- to the development, in the ACP States, of domestic and regional research capacities suited to the local natural, social and economic conditions of crop and animal production, with special attention being paid to arid and semi-arid regions;
- in particular, to improving varieties and breeds, the nutritional quality of products and their packaging, and developing technology and processes accessible to the producers;
- to better dissemination of the results of research undertaken in an ACP or non-ACP State and applicable in other ACP States;
- to extension work in order to inform the greatest possible number of users of the results of such research,

### **Article 32.**

Agricultural co-operation schemes shall be carried out in accordance with the detailed provisions and procedures laid down for financial and technical co-operation and in this context they may also cover the following:

1) under the heading of technical co-operation:

- exchange of information between the Community and the ACP States and among the ACP States themselves (on, for example, water use, intensive production techniques and the results of research);
- exchange of experience between professionals working in such areas as credit and savings, co-operatives, mutual insurance, artisanal activities and small-scale industry in rural areas;

2) under the heading of financial co-operation:

- supply of factors of production;
- support for market regulation bodies, on the basis of a co-ordinated approach to production and marketing problems;
- participation in the constitution of funds for agricultural credit facilities;
- opening of credit lines for trade organizations representing farmers, artisans and small-scale industrial operators in rural

areas, geared to their activities (such as supplies, primary marketing and storage), and also for associations implementing the campaigns on specific themes;

- support for measures to combine industrial and trade skills in the ACP States and the Community within artisanal or industrial units, for the manufacture of inputs and equipment and for such purposes as maintenance, packaging, storage, transport and processing of products.

### **Article 33.**

1. Community measures aimed at food security in the ACP States shall be conducted in the context of the food strategies or policies of the ACP States concerned and of the development objectives which they lay down.

They shall be implemented, in co-ordination with the instruments of the Convention, in the framework of Community policies and the measures resulting therefrom with due regard for the Community's international commitments.

2. In this context, multiannual indicative programming may be carried out with the ACP States which so wish, so that their food supplies can be better forecast.

### **Article 34.**

1. With regard to available agricultural products, the Community undertakes to ensure that export refunds can be fixed further in advance for all ACP States in respect of a range of products drawn up in the light of the food requirements expressed by those States.

Advance fixing shall be for one year and shall be applied each year throughout the life of this Convention, it being understood that the level of the refund will be determined in accordance with the methods normally followed by the Commission.

2. Specific agreements may be concluded with those ACP States which so request in the context of their food security policies.

### **Article 35.**

1. Food aid operations shall be decided on the basis of the rules and criteria adopted by the Community for all recipients of this type of aid.

Subject to those rules and to the Community's freedom of decision in this matter, food aid operations shall be governed by the following guidelines:

(a) except in urgent cases, Community food aid, which shall be a transitional measure, must be integrated with the ACP States' development policies. This calls for consistency between food aid and other co-operation measures;

(b) where products supplied as food aid are sold, they must be sold at a price which will not disrupt the domestic market. The resulting counterpart funds shall be used to finance the execution or running of projects or programmes with a major rural development component;

(c) where the products supplied are distributed free of charge, they must form part of nutrition programmes aimed in particular at vulnerable sections of the population or be delivered as remuneration for work;

(d) food aid operations that form part of development projects or programmes or nutrition programmes may be planned on a multiannual basis;

(e) as a matter of priority, the products supplied must meet the needs of the recipients. In the selection of such products, account should be taken in particular of the ratio of cost to specific nutritive value and of the effect the choice might have on consumer habits;

(f) where in a recipient ACP State, the trend of the food situation is such as to make it desirable for food aid to be replaced in whole or in part by operations designed to consolidate the current trend, alternative operations may be implemented in the form of financial and technical assistance, in accordance with the relevant Community rules. These operations shall be decided upon at the request of the ACP State concerned.

### **Article 36.**



In implementing this Chapter, special attention shall be paid, at the request of the countries concerned, to:

- the specific difficulties of the least-developed ACP States in carrying out the policies or strategies they have established to strengthen their food self-sufficiency and security. In this context, co-operation shall bear in particular on the productive sectors (including the supply of inputs), transport, marketing, packaging and the setting-up of storage infrastructure,
- establishing a security stock system in landlocked States in order to avoid the risk of breaks in supply;
- diversifying agricultural commodities production and improving food security in the island States.

## **Article 37.**

1. The Technical Centre for Agricultural and Rural Co-operation shall be at the disposal of the ACP States in order to provide them with better access to information, research, training and innovations in the spheres of agricultural and rural development and extension. Within the framework of its responsibilities it shall operate in close co-operation with the institutions and bodies referred to in this Convention.

2. The tasks of the Centre shall be to:

- (a) ensure, where so requested by the ACP States, the dissemination of scientific and technical information on methods and means of encouraging agricultural production and rural development (including the planning of agricultural and rural development and the preparation, implementation and evaluation of agricultural and rural development operations);
- (b) refer the ACP States' requests for information to the bodies qualified to deal with them, or deal direct with such requests;
- (c) provide ACP national and regional documentation centres and research institutes with easier access to scientific and technical publications dealing with agricultural and rural development issues and to data banks in the Community and the ACP States;
- (d) in general, help the ACP States to gain easier access to the results of work carried out by the national, regional and international bodies, more especially those qualified in the technical aspects of agricultural and rural development, based in the Community and in the ACP States, and maintain contact with those bodies;
- (e) foster the exchange of information between those engaged in agricultural and rural development on the results of field work carried out in the context of agricultural and rural development operations;
- (f) sponsor and help organize meetings of specialists, research workers, planners and development personnel so that they may exchange experience gained in specific ecological environments;
- (g) facilitate access by the ACP States' training and extension personnel to the information they need to carry out their tasks and refer requests for specific training to the existing qualified bodies;
- (h) help facilitate the adaptation of available information to the needs of the ACP States' departments responsible for development, training and extension services;
- (i) facilitate the dissemination of information concerning agricultural research and extension work, by reference to the priority requirements of development.

3. In the performance of its tasks the Centre shall pay particular attention to the needs of the least-developed ACP States.

4. The Committee of Ambassadors shall be the supervisory authority of the Centre. It shall lay down the rules of operation and the procedures for the adoption of the Centre's budget. The budget shall be financed in accordance with the rules laid down in this Convention in respect of financial and technical co-operation,

35. (a) The Centre shall be headed by a director appointed by the Committee of Ambassadors,

(b) The director of the Centre shall be assisted by staff recruited within the limits of the numbers budgeted for by the Committee of Ambassadors.

(c) The director of the Centre shall report on its activities to the Committee of Ambassadors.

6. (a) In order to provide the director of the Centre with technical and scientific assistance in working out appropriate solutions to the problems encountered by the ACP States, notably to improve their access to information, technical innovation, research and development in the sphere of agricultural and rural development and to devise the Centre's action programmes, an advisory committee shall be set up, composed on a basis of parity of agricultural and rural development

experts.

(b) The members of the advisory committee shall be appointed by the Committee of Ambassadors in accordance with the procedures and criteria determined by it.

## **Chapter 2. Drought and Desertification Control**

### **Article 38.**

1. The ACP States and the Community recognize that the physical, economic and political existence of certain ACP States is threatened by endemic drought and growing desertification, which destroy all efforts at development, in particular those aimed at achieving the priority objective of self-sufficiency and food security.

2. The two parties agree that in a number of ACP States control of drought and desertification constitutes a pressing and imperative need for the success of any development undertaking.

3. The same will apply eventually to the States bordering the affected areas, for which this phenomenon represents a real threat to their fragile social and ecological equilibrium.

### **Article 39.**

The two parties recognize that halting the deterioration of land and forest potential, re-establishing ecological equilibria, protecting natural resources and exploiting them efficiently constitute, inter alia, fundamental objectives which the ACP States concerned endeavour to attain with the support of the Community, notably in order to improve their people's living conditions.

### **Article 40.**

1. The scale, in space and time, of the phenomenon and also of the resources to be deployed, means that the operations to be undertaken must form part of overall, long-term policies designed and applied by the ACP States at national, regional and international level in the context of international solidarity.

2. To this effect, the two parties agree to lay stress on the implementation of campaigns with specific themes backed up not only by the resources of this Convention, but also by all other means of support that can be mobilized.

3. Remedying the situation of countries affected or threatened by these calamities, and promoting their lasting development, calls for a genuine policy to encourage the restoration of natural balances by means of better water control and a campaign against practices encouraging the appearance and development of the phenomenon of desertification.

### **Article 41.**

The operations to be undertaken, where necessary with research backing, shall cover, inter alia:

1) improving man's knowledge of, and ability to forecast, desertification phenomena by observing developments in the field, by making use of results achieved and gaining a better understanding of the changes to the human environment in time and space;

2) making an inventory of water-tables and of their replenishment capacity with a view to better predictability of water supplies, using surface and groundwater and improving management of these resources for the purpose of satisfying the needs of people and animals, and improving weather forecasting;

3) establishing a system for the prevention and control of bush fires and deforestation.

### **Article 42.**

If a return to the natural balance is to be expected, a "drought and desertification control" component in particular must be incorporated into all agricultural and rural development operations, such as:

1) - the extension of agro-forestry systems combining farming and forestry, research and development activities to produce plant species that are more adapted to local conditions;

- the introduction of suitable techniques aimed at increasing and maintaining the productivity of agricultural land, arable

land and natural pastureland with a view to controlling the various forms of erosion;

- the reclamation of land that has deteriorated, by means of reafforestation or agricultural land improvement, combined with maintenance schemes involving, as far as possible, the people and authorities concerned in order to safeguard the progress made;

2) the encouragement of measures to economize on wood as an energy source by stepping up research, application of, and information on, new and renewable sources of energy such as wind, solar and biomass energy, and by the use of improved stoves with a greater heat yield:

3) the development and management of forestry resources by setting up, at national or regional level, forestry management plans aimed at optimizing the exploitation of forestry resources;

4) the pursuit of ongoing campaigns to educate the people concerned to be aware of the phenomena of drought and desertification and to train them in the possible ways of controlling them.

### **Article 43.**

The Community shall provide support for the efforts deployed by the ACP States at national, regional and international level and for operations undertaken by intergovernmental and non-governmental organizations in the context of national and intergovernmental options and priorities.

## **Chapter 3. Co-operation on Agricultural Commodities**

### **Article 44.**

Given the extreme dependence of the economies of the vast majority of ACP States on their exports of agricultural commodities and the deterioration in the position of exports from the ACP States on the markets in these products, coupled with the excessive fluctuations of their prices on the world market, the Contracting Parties hereby express their determination to continue, reinforce and intensify their co-operation in this sector.

### **Article 45.**

To this effect, co-operation in the sector of agricultural commodities shall be planned and implemented in support of policies or strategies adopted by the ACP States and aim, inter alia, to:

- support ACP States' action designed to restore and improve production and marketing conditions, involving research and training, investment, supply and production of inputs, extension work, as well as action in fields such as credit, storage, conservation and transport;
- help diversify production with a view to reducing external dependence and ensuring better adjustment to market demands;
- encourage local processing which will create added value in economically viable conditions;
- stimulate specific action to facilitate the marketing of ACP products;
- help train ACP operators to make better use of all the mechanisms of world commodity markets;
- stimulate and stabilize the commodities sector in the economies of the ACP States;
- encourage a greater flow of private investment to this sector.

### **Article 46.**

In order to achieve these objectives, the Contracting Parties agree to:

- (a) undertake concerted action so as to facilitate the pursuit of this Convention's objectives in the area of commodities;
- (b) strive actively to create the conditions most conducive to the development of production and the improvement of marketing;
- (c) make judicious use of all the instruments and resources of this Convention which may be of help to this sector.

## **Article 47.**

In view of the importance and persistence of problems relating to agricultural commodities, the two parties agree to ensure that co-operation in these matters is subject to sustained and thorough monitoring. To this end, they agree to set up an Agricultural Commodities Committee, the functions of which shall be to:

- (a) monitor the general application of this Convention in the agricultural commodities sector;
- (b) examine any general problems concerning ACP-EEC trade in commodities which may be referred to it by the relevant subcommittees established in accordance with this Convention;
- (c) recommend suitable measures to solve such problems.

## **Article 48.**

The Agricultural Commodities Committee, of which the rules of procedure shall be laid down by the Council of Ministers, shall be composed of representatives of the ACP States and of the Community appointed by the Council of Ministers.

In accordance with Article 272(2), its work shall be supervised by the Committee of Ambassadors. As a rule, it shall meet quarterly and, should the Council of Ministers so decide in accordance with Article 270, at ministerial level.

## **Article 49.**

Efforts shall be made to intensify the process of ongoing consultation between the ACP States and the Community, and in international forums and organizations which aim to stabilize agricultural commodity markets. To this end, exchanges of views may take place, at the request of either party, when it is intended to conclude or renew an international agricultural commodity agreement. The aim of such exchanges of views shall be to take account of the respective interests of each party where the conclusion or renewal of an agreement is envisaged.

## **Title II. Development of Fisheries**

### **Article 50.**

The ACP States and the Community recognize the urgent need to promote the development of fishery resources of ACP States both as a contribution towards the development of fisheries as a whole and as a sphere of mutual interest for their respective economic sectors.

Co-operation in this field shall promote the optimum utilization of the fishery resources of ACP States, while recognizing the rights of landlocked states to participate in the exploitation of sea fisheries and the right of coastal states to exercise jurisdiction over the living marine resources of their exclusive economic zones in conformity with current international law and notably the conclusions of the third United Nations Conference on the Law of the Sea.

### **Article 51.**

To encourage the development of the exploitation of the fishery resources of the ACP States, all the mechanisms for assistance and co-operation provided for in this Convention, notably financial and technical assistance in accordance with the terms set out in Title III, Part Three, of this Convention shall be applied to fisheries.

The priority objectives of such co-operation shall be to:

- encourage the rational exploitation of the fishery resources of the ACP States and the resources of high seas in which the ACP States and the Community share interests;
- increase the contribution of fisheries to rural development, by giving importance to the role they play in strengthening food security, improving nutrition and rural living standards;
- increase the contribution of fisheries to industrial development by increasing catches, output and exports.

### **Article 52.**

Assistance from the Community for fisheries development shall include support in the following areas:

(a) fisheries production, including the acquisition of boats, equipment and gear, the development of infrastructure for rural fishing communities and the fishing industry and support for aquaculture projects, notably by providing specific lines of credit to appropriate ACP institutions for onlending to the operators concerned;

(b) fisheries management and protection, including the assessment of fish stocks and of aquaculture potential, the improvement of environmental monitoring and control and the development of ACP coastal states' capacities for the management of the fishery resources in their exclusive economic zone;

(c) processing and marketing of fishery products, including the development of processing, collection, distribution and marketing facilities and operations; the reduction of post-harvest losses and the promotion of programmes to improve fish utilization and nutrition from fishery products.

### **Article 53.**

Particular attention shall be paid in fishery resource development co-operation to the training of ACP nationals in all areas of fisheries, to the development and strengthening of ACP research capabilities and to the promotion of intra-ACP and regional co-operation in fisheries management and development.

### **Article 54.**

The ACP States and the Community recognize the need for direct or regional co-operation or, as appropriate, co-operation through international organizations, with a view to promoting conservation and the optimum use of the living resources of the sea.

### **Article 55.**

The Community and the ACP States recognize that coastal states exercise sovereign rights for the purpose of exploring, exploiting, conserving and managing the fishery resources of their respective exclusive economic zones in conformity with current international law. The ACP States recognize that there is a role for Community Member States' fishing fleets, operating lawfully in waters under ACP jurisdiction, in the development of ACP fishery potential and in economic development in general in the coastal ACP States. Accordingly, the ACP States declare their willingness to negotiate with the Community fishery agreements aimed at guaranteeing mutually satisfactory conditions for fishing activities of vessels flying the flag of one of the Member States of the Community.

In the conclusion or implementation of such agreements, the ACP States shall not discriminate against the Community or among the Member States, without prejudice to special arrangements between developing states within the same geographical area, including reciprocal fishing arrangements, nor shall the Community discriminate against ACP States.

### **Article 56.**

Where ACP States situated in the same subregion as territories to which the Treaty establishing the European Economic Community (hereinafter referred to as the Treaty) applies wish to engage in fishing activities in the corresponding fishing zone, the Community and the ACP States shall open negotiations with a view to concluding a fishery agreement in the spirit of Article 55, taking account of their specific situation in the region and of the objective of strengthening regional co-operation between those territories and the neighbouring ACP States.

### **Article 57.**

The Community and the ACP States recognize the value of a regional approach to fisheries access and shall support moves by ACP coastal states towards harmonized arrangements for access for fishing vessels.

### **Article 58.**

The Community and the ACP States agree to take all appropriate steps to ensure that the efforts undertaken in fisheries co-operation under this Convention shall be effective, taking into account notably the Joint Declaration on the origin of fishery products.

As regards exports of fishery products to the markets of the Community, due account shall be taken of Article 284.

### **Article 59.**

The mutually satisfactory conditions referred to in Article 55 shall bear in particular on the nature and the scale of the compensation to be received by the ACP States concerned under bilateral agreements.

Compensation shall be additional to any allocation relating to projects in the fisheries sector pursuant to Title III, Part Three, of this Convention.

Compensation shall be provided for partly by the Community as such and partly by the shipowners and shall take the form of financial compensation which may include licensing fees and, where appropriate, any other elements agreed upon by the parties to the fishery agreement, such as obligatory landing of part of the catch, employment of ACP nationals, the taking on board of observers, transfer of technology, research and training grants.

Compensation shall relate to the scale and value of the fishing opportunities provided in the exclusive economic zones of the ACP States.

In addition, with regard to the fishing of highly migratory species, the particular character of such fisheries shall be taken into account in the respective obligations under the agreements, including the financial compensation.

The Community shall take all necessary measures to ensure that its vessels comply with the provisions of the agreements negotiated and with the laws and regulations of the ACP State concerned.

### **Title III. Industrial Development**

#### **Article 60.**

The Community and the ACP States, acknowledging that industrialization is a driving force in bringing about balanced and diversified economic and social development and creating conditions conducive to the attainment of the ACP States' collective self-reliance, agree to promote industrial development in the ACP States with a view to providing them with a framework for strengthening their share of world trade.

#### **Article 61.**

The aim of industrial co-operation between the Community and the ACP States shall be, in particular, to derive full benefit from those States' human and natural resources through the modernization of their societies, to create jobs, to generate and distribute income, to facilitate the transfer of technology and its adaptation to conditions in the ACP States and their specific needs, to foster complementarity of the different branches of industry and between industry and the rural sector in order to make full use of that sector's potential, and to promote new relations of dynamic complementarity in the industrial field between the Community and the ACP States.

Account shall be taken in industrial co-operation of the need to establish and strengthen an economic, technical, social and institutional environment conducive to industrialization. Emphasis shall be placed on the development of all types of appropriate industries, training and co-operation between firms in the Member States of the Community and in the ACP States.

In pursuit of these aims, the Contracting Parties shall have recourse to, in addition to the specific provisions on industrial co-operation, those on trade, trade promotion for ACP products and private investment.

#### **Article 62.**

In order to implement industrial co-operation, the Community shall help carry out programmes, projects and operations submitted to it on the initiative or with the agreement of the ACP States. To this end, it shall use all the means provided in this Convention, notably those at its disposal under financial and technical co-operation and, in particular, those which are the responsibility of the European Investment Bank (hereinafter referred to as the "Bank"), without prejudice to operations to assist ACP States in mobilizing finance from other sources,

Industrial co-operation programmes, projects and operations which involve Community financing shall be implemented in conformity with Title III, Part Three, of this Convention, having regard to the particular characteristics of aid operations in the industrial sector.

#### **Article 63.**

The Community shall assist the ACP States in the improvement of their institutional framework, reinforcement of their financing institutions, the establishment, rehabilitation and improvement of industry-related infrastructure and in their efforts to integrate industrial structures and regional and inter-regional markets.

#### **Article 64.**

On the basis of a request from an ACP State, the Community shall provide the assistance required in the field of industrial training at all levels, bearing notably on the evaluation of industrial training needs and the establishment of corresponding programmes, the setting-up and operation of national or regional ACP industrial training establishments, training for ACP nationals in appropriate establishments, on-the-job training both in the Community and in the ACP States and also co-operation between industrial training establishments in the Community and the ACP States, and between the latter and those of other developing countries.

#### **Article 65.**

The Community shall assist in the establishment and expansion of all types of viable enterprise which have been identified by the ACP States as important in terms of their development objectives.

The Community and the ACP States shall place special emphasis on the restoration, upgrading, reorganization or restructuring of existing industrial capacities which are viable but temporarily out of action or performing badly and also on the maintenance of plant and equipment and of enterprises and, for this purpose, industrial co-operation shall be focused on assistance for the start-up or rehabilitation of such enterprises and on the relevant forms of training at all levels.

Particular attention shall be paid to

- industries for the domestic processing of ACP raw materials;
- agro-industries;
- integral industries capable of creating links between the different sectors of the economy;
- industries which have a favourable effect on employment, the trade balance and regional integration.

Community financing shall take the form, as a matter of priority, of loans from the Bank on its own resources and of risk capital, these being the specific financing methods for industrial enterprises.

#### **Article 66.**

The Community shall contribute in a spirit of mutual interest to the development of ACP-EEC and intra-ACP co-operation between enterprises by information and industrial promotion activities.

The aim of such activities shall be to intensify the regular exchange of information, organize the contacts required in the industrial sphere between industrial policy-makers, promoters and economic operators from the Community and the ACP States, carry out studies, notably feasibility studies, facilitate the establishment and operation of ACP industrial promotion bodies and foster joint investment, subcontracting arrangements and any other form of industrial co-operation between undertakings in the Member States of the Community and in the ACP States.

#### **Article 67.**

The Community shall contribute to the establishment and development of small and medium-sized enterprises in the artisanal, commercial, service and industrial sectors in view of the essential role that these enterprises play in the modern and informal sectors in building up a diversified economic fabric and in the general development of the ACP countries, and in view of the advantages they offer as regards the acquisition of skills, the integrated transfer and adaptation of appropriate technology and opportunities for taking the best advantage of local manpower. The Community can also help with sector evaluation and the establishment of action programmes, with the setting-up of appropriate infrastructure, the establishment, strengthening and operation of institutions providing information, promotion, extension, training, credit or guarantee and transfer of technology facilities.

The Community and the ACP States shall encourage co-operation and contact between small and medium-sized enterprises in the Member States and the ACP States.

#### **Article 68.**

With a view to assisting the ACP States to develop their technological base and indigenous capacity for scientific and technological development and facilitating the acquisition, transfer and adaptation of technology on terms that will seek to bring about the greatest possible benefits and minimize costs, the Community, through the instruments of financial and technical co-operation, is prepared, inter alia, to contribute to:

- (a) the establishment and strengthening of industry-related scientific and technical infrastructure in the ACP States;
- (b) the drawing-up and implementation of research and development programmes;
- (c) the identification and creation of opportunities for collaboration among research institutes, institutions of higher learning and enterprises of ACP States, the Community, the Member States and other countries;
- (d) the establishment and promotion of activities aimed at the consolidation of appropriate indigenous technology and the acquisition of relevant foreign technology, in particular that of other developing countries;
- (e) the identification, evaluation and acquisition of industrial technology including the negotiation on favourable terms and conditions of foreign technology, patents and other industrial property, in particular through financing or through other suitable arrangements with firms and institutions within the Community;
- (f) providing ACP States with advisory services for the preparation of regulations governing the transfer of technology and for the supply of available information, in particular on the terms and conditions of technology contracts, the types and sources of technology, and the experience of ACP States and other countries with the use of certain types of technology;
- (g) the promotion of technology co-operation between ACP States and between them and other developing countries in order to make the best use of any particularly appropriate scientific and technical facilities they may possess;
- (h) facilitating, wherever possible, access to and use of documentary and other data sources available in the Community.

## **Article 69.**

In order to enable the ACP States to obtain full benefit from the trade arrangements and other provisions of this Convention, promotion schemes shall be undertaken for the marketing of ACP States' industrial products on both Community and other external markets, and also in order to stimulate and develop trade in industrial products among the ACP States. Such schemes shall cover market research, marketing and the quality and standardization of manufactured goods, in accordance with Articles 190 and 191 and taking into account Articles 95 and 96.

## **Article 70.**

1. A Committee on Industrial Co-operation, supervised by the Committee of Ambassadors, shall:

- (a) review progress made with the overall industrial co-operation programme resulting from this Convention and, where appropriate, submit recommendations to the Committee of Ambassadors;
- (b) examine problems and policy issues in the field of industrial co-operation submitted to it by the ACP States or by the Community, and make any appropriate proposals;
- (c) organize, at the request of the Community or of the ACP States, a review of trends in industrial policies of the ACP States and of the Member States as well as developments in the world industrial situation with a view to exchanging information necessary for improving industrial co-operation and facilitating the industrial development of the ACP States;
- (d) establish the general strategy of the Centre for the Development of Industry referred to in Article 71, appoint the director and deputy director, nominate the members of the Governing Board, appoint the two auditors, apportion, on an annual basis, the overall financial allocation provided for in Article 73(4) and examine, on the basis of the Centre's annual report, the deployment of these resources in order to assess whether the Centre's activities are in conformity with the objectives assigned to it in this Convention and report to the Committee of Ambassadors and, through it, to the Council of Ministers;
- (e) carry out such other duties as may be assigned to it by the Committee of Ambassadors;

2. The composition of the Committee on Industrial Co-operation and the detailed rules for its operation shall be determined by the Council of Ministers.

## **Article 71.**



The Centre for the Development of Industry shall help to establish and strengthen industrial enterprises in the ACP States, particularly by encouraging joint initiatives by economic operators of the Community and the ACP States.

As a practical operational instrument, the Centre shall assist in the identification, promotion and implementation of viable industrial projects that meet the needs of ACP States, taking special account of domestic and external market opportunities and possibilities for the processing of local raw materials while making optimum use of the ACP States' endowments by way of factors of production.

In its efforts to help in establishing and strengthening industrial undertakings in the ACP States, the Centre shall adopt appropriate measures within the limits of its resources and its functions, in the field of transfer and development of technology, industrial training and information.

In carrying out the above tasks, the Centre shall take care to operate selectively by giving priority to small and medium-sized industrial enterprises and rehabilitation operations, and restoring existing viable industrial capacities to full utilization. It shall place special emphasis on opportunities for joint ventures and subcontracting.

The Centre shall act in close co-operation with the ACP States, the Member States and also the Commission and the Bank within their respective areas of responsibility. Its activity shall be subject to periodic evaluation.

## **Article 72.**

In the framework of the objectives set out in Article 71, the Centre's functions shall be to:

- (a) gather and disseminate all relevant information concerning trends in industrial sectors in the Community and the ACP States;
- (b) carry out studies, market research and evaluation work and gather and disseminate all relevant information on the industrial co-operation situation and opportunities and notably on the economic environment, the treatment which would-be investors may expect and the potential of viable industrial projects;
- (c) identify industrial policy-makers, promoters and economic and financial operators in the Community and ACP States, and organize and facilitate contacts and meetings of all kinds between them;
- (d) carry out studies and appraisals aimed at identifying practical opportunities for industrial co-operation with the Community in order to promote the industrial development of the ACP States, and at facilitating the implementation of appropriate schemes;
- (e) supply information and also specific advisory services and expertise, including feasibility studies, with a view to expediting the establishment or restoration of industrial enterprises;
- (f) identify potential partners of the ACP States and the Community for joint investment operations and assist in the implementation and follow-up;
- (g) identify and evaluate, on the basis of needs indicated by ACP States, opportunities for industrial training, chiefly on-the-job, to meet requirements of existing as well as projected industrial undertakings in ACP States and, where appropriate, assist in the implementation of appropriate schemes;
- (h) identify, collect, evaluate and supply information and advice on the acquisition, adaptation and development of appropriate industrial technology relating to specific projects and, where appropriate, assist in the setting-up of experimental or demonstration schemes;
- (i) identify, appraise, evaluate, promote and assist in the implementation of viable industrial projects of the ACP States;
- (j) help, in appropriate cases, to promote the marketing of ACP manufacturers on their domestic markets and on the markets of the other ACP States and the Community in order to encourage optimum exploitation of installed or projected industrial capacity;
- (k) identify and provide information on possible sources of financing and, where necessary, assist in the mobilization of funds from these sources for industrial projects in ACP States.

## **Article 73.**

1. The Centre shall be headed by a director assisted by a deputy director, both of whom shall be appointed by the Committee on Industrial Co-operation.

2. A joint Governing Board shall:

(a) advise and back up the director in providing impetus and motivation and in managing the Centre;

(b) take the following decisions:

- approve the budgets and annual accounts;
- establish multiannual and annual programmes of activities;
- approve the annual report;
- establish the organizational structures, staffing policy and establishment plan.

(c) transmit an annual report to the Committee on Industrial Co-operation.

3. The Governing Board shall be composed of persons with substantial experience in the private or public industrial and banking sectors or in industrial development planning and promotion. They shall be chosen on a personal basis on the grounds of their qualifications from among nationals of the States party to this Convention and appointed by the Committee according to the procedures laid down by it. A representative of the Commission and of the Bank shall take part in the Board's proceedings. The secretariat shall be provided by the Centre.

4. The Community shall contribute to the financing of the Centre's budget by means of a separate allocation of a maximum of 40 million ECU taken from the resources earmarked under Article 112 for the funding of regional co-operation projects.

5. Two auditors appointed by the Committee shall audit the financial management of the Centre.

6. The Centre's statute, financial and staff regulations and rules of procedure shall be adopted by the Council of Ministers on a proposal from the Committee of Ambassadors after the entry into force of this Convention.

## **Article 74.**

In implementing this Title, the Community shall pay special attention to the specific needs and problems of the least-developed, landlocked and island States, notably in the following areas:

- processing of raw materials;
- development, transfer and adaptation of technology;
- development and financing of schemes in favour of small and medium-sized industrial enterprises;
- development of industrial infrastructure and energy and mining resources;
- adequate training in the scientific and technical areas.

The Centre for the Development of Industry shall pay special attention to the specific problems that arise as regards promotion of industrialization activities of the least-developed, landlocked and island ACP States.

At the request of one or more least-developed ACP States, the Centre shall grant special assistance for identifying on the spot, examining, assessing, preparing, promoting and assisting in the implementation of industrial projects in the ACP State concerned.

## **Title IV. Development of Mining and Energy Potential**

### **Article 75.**

In view of the seriousness of the energy situation in the majority of the ACP States, owing partly to the crisis caused in many countries by dependence on imported petroleum products and the increasing scarcity of fuelwood, the ACP States and the Community agree to co-operate in this area with a view to finding solutions to their energy problems.

In ACP-EEC co-operation particular emphasis shall be placed on energy programming, operations for saving and making efficient use of energy, reconnaissance of energy potential and the economically and technically appropriate promotion of new and renewable sources of energy.

### **Article 76.**

The Community and the ACP States recognize the mutual benefits of co-operation in the field of energy. Such co-operation shall promote the development of the ACP States' conventional and non-conventional energy potential and their self-sufficiency, and shall be directed at the following goals in particular:

- (a) promoting economic development by exploiting domestic and regional energy resources;
- (b) improving living conditions in urban and suburban areas and in rural communities by taking due account of the energy component in the various co-operation measures;
- (c) protecting the natural environment, notably by mitigating the impact of population pressure on biomass consumption, particularly that of fuelwood.

## **Article 77.**

In order to attain the abovementioned objectives, energy co-operation schemes may, at the request of one or more of the ACP States concerned, be focused on:

- (a) collection, analysis and dissemination of relevant information;
- (b) strengthening the ACP States' management and control of their energy resources in line with their development objectives in order to enable them to appraise energy demand and supply options and to achieve strategic energy planning, inter alia by supporting energy programming and providing technical assistance for departments responsible for the planning and execution of energy policies;
- (c) analysing the energy implications of development projects and programming, taking account of the energy savings required and of opportunities for primary source substitution, particularly by having recourse to new and renewable energy sources;
- (d) implementing suitable programmes involving small- and medium-scale energy development projects, particularly those aimed at saving and providing substitutes for fuelwood;
- (e) enhancing investment potential for the exploration and development of domestic and regional energy sources as well as for the development of sites of exceptional energy production permitting the establishment of energy-intensive industry;
- (f) promoting research, adaptation and dissemination of appropriate technology as well as the training needed to meet energy-related manpower needs in the energy sector;
- (g) stepping up the ACP States' research and development capacities, particularly as regards the development of new and renewable sources of energy;
- (h) upgrading the basic infrastructure necessary for the production, transmission, transport and distribution of energy;
- (i) encouraging energy co-operation between ACP States in the energy sector, without excluding operations between those States and other, neighbouring states receiving Community aid.

## **Article 78.**

The aims of co-operation in mining shall be to help develop the mining sector of the ACP States concerned so as to ensure a satisfactory return from mining operations, for the overall development of those States. The Contracting Parties stress their mutual dependence in the sector and agree to use in co-ordinated fashion this Convention's various means of action in this field as well as other Community instruments where appropriate.

## **Article 79.**

At the request of one or more ACP States, the Community will carry out technical assistance or training activities to strengthen their scientific and technical capacity in the fields of geology and mining in order that they may derive greater benefit from available know-how and direct their exploration and prospecting programmes accordingly.

## **Article 80.**

In order to facilitate the development of the mining resources of the ACP States concerned, having regard to national and external economic considerations and with a view to diversification, the Community shall co-operate as appropriate,

through its technical and financial assistance programmes, with the ACP States in their prospecting and exploration efforts at all stages, both onshore and on the continental shelf as defined in international law.

Where appropriate, the Community shall also give its technical and financial assistance to the establishment of national or regional exploration funds in ACP States.

## **Article 81.**

With the aim of supporting efforts to exploit the ACP States' mining resources, the Community shall contribute towards the support of projects to rehabilitate, maintain, rationalize and modernize economically viable production units in order to make them more operational and more competitive.

It shall also contribute to the identification, drawing-up and implementation of new viable projects, including small- and medium-scale projects, to an extent compatible with investment and management capacities as well as market trends, taking particular account of the financing of feasibility and pre-investment studies.

It shall also support efforts of the ACP States to reinforce back-up infrastructure and assist with fitting mining operations into the social and economic fabric of the States concerned.

## **Article 82.**

In order to contribute to the objectives set out above, the Community shall be prepared to give its technical and financial assistance to help with the exploitation of the ACP States' mining and energy potential in accordance with the procedures peculiar to each of the instruments at its disposal and according to the provisions of this Convention.

In the sphere of research and investment preparatory to the launching of energy and mining projects, the Community may give assistance in the form of risk capital, possibly in conjunction with contributions of capital from the ACP States concerned and other sources of financing in accordance with the procedures laid down in Article 199.

The resources referred to in these provisions may be supplemented, for projects of mutual interest, by:

- (a) other Community financial and technical resources;
- (b) action aimed at the mobilization of public and private capital, including cofinancing.

## **Article 83.**

The Bank may, in accordance with its Statute, commit its own resources on a case-by-case basis beyond the amount fixed in Article 194 in mining and energy investment projects recognized by the ACP State concerned and by the Community as being of mutual interest.

## **Title V. Transport and Communications**

### **Article 84.**

1. Co-operation in the area of transport shall be aimed at the development of road transport, railways, port installations and shipping, transport by domestic waterways and air transport.

2. Co-operation in the area of communications shall be aimed at the development of postal services and telecommunications, including radiocommunications.

3. Co-operation in these areas shall be directed particularly towards the following objectives:

- (a) the creation of conditions fostering the movement of goods, services and persons at national, regional and international level;
- (b) the provision, rehabilitation, maintenance and efficient operation of cost-effective systems serving the requirements of social and economic development and adjusted to the needs of users and to the overall economic situation of the States concerned;
- (c) greater complementarity of transport and communications systems at national, regional and international level;
- (d) the harmonization of the national systems installed in ACP States, while facilitating their adjustment to technological pro-

gress;

(e) the reduction of barriers to frontier-crossing transport and communications, in terms of regulations and administrative procedures.

### **Article 85.**

1. In all co-operation projects and programmes in the fields concerned, efforts shall be made to ensure an appropriate transfer of technology and know-how.
2. Particular attention shall be given to training ACP nationals in the planning, management, maintenance and operation of the transport and communications systems.

### **Article 86.**

1. The Contracting Parties acknowledge the importance of shipping services as one of the forces behind economic development and promotion of trade between them.
2. The objective of co-operation in this field shall be to ensure harmonious development of efficient and reliable shipping services on economically satisfactory terms by facilitating the active participation of all parties according to the principle of unrestricted access to the trade on a commercial basis.

### **Article 87.**

1. The Contracting Parties underline the importance of the United Nations Convention on a Code of Conduct for Liner Conferences and the ratification instruments thereof, which safeguard the terms of competition in maritime matters and afford, inter alia, the shipping lines of developing countries extended opportunities to participate in the Conference system.
2. Consequently, the Contracting Parties are agreed, when ratifying the Code, on taking prompt measures for its implementation at national level, in conformity with its scope and provisions. The Community shall assist ACP States to apply the relevant provisions of the Code.
3. In conformity with Resolution 2 on non-Conference lines, annexed to the Code, the Contracting Parties shall not prevent non-Conference lines from operating in competition with a Conference as long as they comply with the principle of fair competition on a commercial basis.

### **Article 88.**

Attention shall be given in the context of co-operation to encouraging the efficient shipment of cargoes at economically and commercially meaningful rates and to the aspirations of ACP States for greater participation in such international ship-ping services. In this respect, the Community acknowledges the aspirations of the ACP States for greater participation in bulk cargo shipping. The Contracting Parties agree that competitive access to the trade shall not be impaired.

### **Article 89.**

In the framework of financial and technical assistance for shipping, special attention shall be given to technology transfer including multimodal transport and containerization, to the promotion of joint ventures and, notably through vocational training, to the setting-up of appropriate legislative and administrative infrastructure and the improvement of port management, to the development of inter-island shipping services and connecting infrastructure and to increased co-operation with economic operators.

As far as technical assistance for insurance is concerned, the procedures shall be those provided for in the framework of the development of trade and services.

### **Article 90.**

The Contracting Parties undertake to promote shipping safety, security of crews and the prevention of pollution.

### **Article 91.**

In order to ensure the effective implementation of Articles 86 to 90, consultation may take place, at the request of either Contracting Party, where necessary under the conditions provided for in the rules of procedure referred to in Article 9.

## **Article 92.**

1. In the field of co-operation on communications, particular attention shall be paid to technological development in supporting ACP States' efforts to establish and develop effective systems. This includes studies and programmes concerning satellite communication, where this is justified by operational considerations, in particular at regional and subregional level. Co-operation shall also cover means of observation of the earth by satellite in the fields of meteorology and remote sensing.

2. Particular importance shall be attached to telecommunications in rural areas, in order to stimulate their economic and social development.

## **Article 93.**

In all fields of transport and communications, particular attention shall be given to the specific needs of landlocked and island ACP States arising from their geographic situation and also to the economic situations of least-developed ACP States.

## **Article 94.**

Co-operation activities in the transport and communications fields shall be carried out in accordance with the provisions and procedures laid down in Title III, Part Three. of this Convention.

## **Title VI. Development of Trade and Services**

### **Article 95.**

With a view to attaining the objectives set out in Article 129, the Contracting Parties shall implement measures for the development of trade and services at all stages up to final distribution of the product.

The object is to ensure that the ACP States derive maximum benefit from the provisions of this Convention in the fields of trade, agricultural and industrial co-operation and may participate under the most favourable conditions in the Community, domestic, regional and international markets by diversifying the range and increasing the value and volume of ACP States' trade in goods and services.

### **Article 96.**

1. In promoting the development of trade and services, including tourism, in addition to developing trade between the ACP States and the Community, particular attention shall be given to operations designed to increase the ACP States' self-reliance, develop intra-ACP trade and improve regional co-operation in trade and services.

2. Operations shall be undertaken at the request of the ACP States, particularly in the following areas:

- the establishment of a coherent trade strategy;
- basic and further vocational training of personnel engaged in the fields of trade and services;
- the establishment and strengthening of organizations in the ACP States whose task it is to develop trade and services;
- increasing contacts and exchange of information between economic operators, including participation in fairs and exhibitions;
- support for the ACP States' efforts to improve the quality of their products, adapt them to market requirements and diversify their outlets;
- support for the ACP States' efforts to improve service infrastructure, including transport and storage facilities.

3. Participation of the least-developed, landlocked and island ACP States in the various activities to develop trade and services, including tourism, shall be encouraged by special provisions, such as the payment of travel expenses of personnel and costs of transporting articles and goods that are to be exhibited, on the occasion of their participation in fairs and exhibitions.

## **Article 97.**

Action for the development of ACP trade and services shall include specific co-operation in the field of tourism. The purpose of such co-operation shall be to support the ACP States' efforts to improve services in this industry. Particular attention shall be given to the need to integrate tourism into the social, cultural and economic life of the people in accordance with Articles 116 and 117.

## **Article 98.**

Provision of financial and technical co-operation, in accordance with the procedures and regulations laid down in Title III, Part Three, of this Convention, may be applied to tourism development measures at both national and regional levels. In addition to the main guidelines set out in Articles 95 and 96 and to the provisions for the development of small and medium-sized enterprises and artisanal activities set out in Article 67, these measures shall cover, inter alia, the following areas:

- development, rehabilitation and maintenance of tourism facilities, such as sites and monuments of national importance;
- training in specific skills in tourism planning and development;
- marketing, including participation in international fairs and exhibitions, promotion and advertising;
- research and development activities related to the development of the tourism industry;
- collection, analysis, dissemination and utilization of quantitative and qualitative tourism data;
- intra-ACP co-operation in the field of tourism.

## **Article 99.**

Within the framework of the instruments provided for in this Convention and in accordance with Articles 94 and 95, assistance for the development of trade and services shall include technical assistance for the establishment and development of insurance and credit institutions in connection with trade development.

## **Article 100.**

In addition to the appropriations which, within the framework of the national indicative programmes referred to in Article 215, may be allocated by each ACP State to the financing of operations to develop the fields referred to in Articles 95 to 99, the contribution of the Community to the financing of such operations, where they are of a regional nature, may amount, within the framework of the regional co-operation programmes referred to in Article 112, to a sum of 60 million ECU.

## **Title VII. Regional Co-operation**

### **Article 101.**

The Community shall support the ACP States' efforts to promote collective and self-reliant social, cultural and economic development and greater regional self-sufficiency.

In order to strengthen the ACP States' collective capabilities, the Community shall provide effective aid to achieve the objectives and priorities which they have set themselves in the context of regional co-operation, including inter-regional and intra-ACP co-operation.

### **Article 102.**

1. Regional co-operation shall cover operations agreed on between:

- two or more ACP States,
- one or more ACP States and one or more neighbouring non-ACP States, countries or territories,
- two or more regional bodies of which ACP States are members.
- one or more ACP States and regional bodies of which ACP States are members.

2. Regional co-operation may also cover operations agreed upon by two or more ACP States and one or more non-ACP non-neighbouring developing states, and when special circumstances so warrant between one ACP State and one or more non-ACP non-neighbouring developing states.

### **Article 103.**

In the context of regional co-operation, special attention shall be paid to:

- (a) evaluation and utilization of existing and potential dynamic complementarities in all relevant sectors;
- (b) maximization of the use of ACP human resources as well as the optimum and judicious exploration, conservation, transformation and exploitation of ACP natural resources;
- (c) acceleration of economic diversification and intensification of co-operation and development within and between the regions of the ACP States;
- (d) promotion of food security;
- (e) strengthening a network of relations among individual countries or groups of countries which have common characteristics, affinities and problems in order to solve such problems;
- (f) fullest use of economies of scale wherever a regional solution is more efficient than a national solution;
- (g) expansion of ACP States' markets by promoting trade between ACP States and between the ACP States and neighbouring third countries;
- (h) integration of the ACP States' markets by liberalizing intra-ACP trade and eliminating tariff, monetary and administrative barriers;
- (i) any action in support of regional integration.

### **Article 104.**

Account being taken of the objective and inherent characteristics of regional co-operation, projects and programmes undertaken in this sphere shall be governed by the arrangements and procedures established for financial and technical co-operation where they apply to that context.

### **Article 105.**

The Community shall provide financial and technical assistance to regional bodies, or for the creation of new ones where they are essential for attaining the objectives of regional co-operation.

### **Article 106.**

A regional operation is one which helps directly to solve a development problem common to two or more countries through joint schemes or co-ordinated national schemes and which meets at least one of the following criteria:

- (a) because of its nature or physical characteristics, it necessarily extends beyond the frontiers of one ACP State and cannot be carried out by a single country nor be divided up into national operations to be undertaken by each state on its own account;
- (b) the regional formula makes it possible to achieve significant economies of scale in relation to national operations;
- (c) the operation does not satisfy criterion (a) or (b) but the accompanying costs and benefits are unequally shared out among the beneficiary countries.

### **Article 107.**

Without prejudice to Article 106, the amount of the Community contribution under regional co-operation shall, in respect of operations which could be undertaken partly at national level, be determined on the basis of the following factors:

- (a) the operation strengthens co-operation, between the ACP States concerned, at the level of authorities, institutions or enterprises, or through regional bodies or by removing obstacles whether in the form of regulations or financial:



(b) two or more States have entered mutual commitments in respect of an operation, notably as regards the distribution of the facilities. investment and the running thereof,

(c) the operation is the regional expression of a sectoral strategy.

## **Article 108.**

1. Requests for financing from the funds earmarked for regional co-operation shall be presented by each of the ACP States participating in a regional operation.

2. Wherever an operation of regional co-operation is such as to be of interest to other ACP States, the Commission shall, in agreement with the applicant States, inform the other ACP States or, if need be, all the ACP States. The ACP States interested shall then confirm whether they intend to participate.

Notwithstanding this procedure, the Commission shall examine without delay any request for financing as long as it has been presented by at least two ACP States. The financing decision shall be taken after the States consulted have communicated their intention.

3. Where a single ACP State is associated with non-ACP countries, as provided for in Article 102, its request alone shall suffice.

4. Regional co-operation bodies may present requests for the financing of one or more specific regional co-operation schemes on behalf, and with the explicit agreement, of their members that are ACP States.

5. Each request for regional co-operation funding must include, where necessary, proposals concerning:

(a) the ownership of the goods and services to be financed as part of the operation, and the division of responsibilities for operation and maintenance;

(b) the choice of the regional authorizing officer and the State or body authorized to sign the financing agreement on behalf of all the participating ACP States or bodies.

## **Article 109.**

The ACP State or States or regional bodies participating in a regional operation with third countries as provided for in Article 102 may request the Community to finance that part of the operation for which they are responsible or a part in proportion to the benefits they derive from the operation.

## **Article 110.**

Where an operation is financed by the Community through a regional co-operation body, the financing terms applicable to the final beneficiaries shall be agreed between the Community and that body in agreement with the ACP State or States concerned.

## **Article 111.**

With a view to encouraging regional co-operation between them, the least-developed ACP States shall be given priority in any project involving at least one ACP State in that category, while special attention shall be paid to the landlocked and island ACP States in order to overcome the obstacles holding back their development.

## **Article 112.**

Of the financial resources earmarked in Article 194. for the social, cultural, and economic development of the ACP States. an amount of 1000 million ECU shall be reserved for the financing of their regional projects and programmes.

## **Article 113.**

The scope of regional co-operation shall, having regard to Article 103, include the following:

(a) agriculture and rural development, notably food self-sufficiency and food security;

(b) health programmes, including education, training, research and information related to primary health care and control of

major diseases, including animal diseases;

(c) evaluation, development, exploitation and preservation of fishery and marine resources, including scientific and technical co-operation with a view to the surveillance of exclusive economic zones;

(d) preservation and improvement of the environment, especially through programmes to combat desertification, erosion, coastal degradation and marine pollution with a view to ensuring rational and ecologically balanced development;

(e) industrialization, including the setting-up of regional undertakings including inter-regional production and marketing enterprises;

(f) exploitation of natural resources, notably the production and distribution of energy;

(g) transport and communications, namely, roads, railways, air and sea transport, inland waterways, postal services and telecommunications;

(h) development and expansion of trade;

(i) assistance for action programmes undertaken by ACP and ACP-EEC professional and business organizations with the aim of improving production and marketing of products on external markets;

(j) education and training, research, science and technology, information and communication, the establishment and reinforcement of training and research institutions and technical bodies responsible for technology exchanges as well as co-operation among universities;

(k) tourism, including the establishment and strengthening of tourist promotion centres;

(l) cultural and social co-operation activities.

## **Title VIII. Cultural and Social Co-operation**

### **Article 114.**

Co-operation shall contribute to the self-reliant development of the ACP States, a process centred on man himself and rooted in each people's culture. It shall back up the policies and measures adopted by those States to enhance their human resources, increase their own creative capacities and promote their cultural identities. It shall foster participation by the population in the process of development.

Such co-operation shall aim at promoting, in the interests of dialogue, exchange and mutual enrichment and, on a basis of equality, a better understanding and greater solidarity between ACP and EEC governments and peoples.

### **Article 115.**

1. Cultural and social co-operation shall be expressed through:

- the taking into account of the cultural and social dimension in projects and programmes;
- operations with the purpose of enhancing human resources with a view to the judicious and optimum use of natural resources and the satisfaction of basic physical and non-material needs;
- promotion of the cultural identities of the ACP States' peoples, with a view to fostering their self-advancement and stimulating their creativity.

2. Cultural and social co-operation schemes shall be undertaken in accordance with the arrangements and procedures laid down in Title III, Part Three of this Convention. They shall be governed by the priorities and objectives set in the indicative programmes or in the context of regional co-operation, depending on their inherent characteristics.

## **Chapter 1. Cultural and Social Dimension**

### **Article 116.**

1. The design, appraisal, execution and evaluation of each project or programme shall be based on understanding of, and regard for, the cultural and social features of the milieu.

2. This involves in particular:

- thorough knowledge of the human milieu concerned;
- evaluation of the human resources available for executing and maintaining projects;
- assessment of opportunities for participation by the population;
- study of local technology and of other appropriate forms of technology;
- provision of relevant information for all those concerned in the design and execution of operations, including technical co-operation personnel;
- provision of integrated programmes for the promotion of human resources.

### **Article 117.**

The following shall be taken into account in the appraisal of all projects and programmes:

(a) under the heading of social aspects, the impact on:

- reinforcement of capacities and structures of self-development;
- the status and role of women;
- contribution to the satisfaction of the basic cultural and physical needs of the population;
- employment and training;
- balance between demographic structure and other re-sources;
- types of social and interpersonal relationships;
- methods and forms of production and processing;

(b) under the heading of cultural aspects:

- adaptation to the cultural milieu and the implications for that milieu;
- integration and enhancement of the local cultural heritage, notably value systems, way of life, modes of thought and know-how, materials and styles;
- methods of information acquisition and transmission;
- interaction between man and his environment.

## **Chapter 2. Operations to Enhance the Value of Human Resources**

### **Article 118.**

Co-operation shall contribute to enhancing the value of human resources, in the context of integrated and co-ordinated programmes, through operations covering education and training, research, science and technology, information and communications, participation of the population, the role of women and health.

### **Article 119.**

1. In order to meet immediate and foreseeable education and training needs at the levels and in the sectors accorded priority under national and regional programmes, co-operation shall provide support for:

- (a) setting up and expanding training and educational establishments;
- (b) the ACP States' own efforts to restructure their educational establishment and systems and to update curricula, methods and technology employed, in order to step up the effectiveness and cut back the cost of all types of training;
- (c) drawing up an inventory of the skills and training required to achieve each ACP State's development objectives;

- (d) educational and training operations proper, notably literacy programmes and programmes of non-traditional forms of training, for practical and vocational purposes;
- (e) the training of instructors, educational planners and specialists in educational technology;
- (f) identification of the ACP States' needs concerning relevant new technology and its acquisition;
- (g) associations, twinning, exchanges and transfers of information and technology between universities and institutions of higher education in the ACP States and in the Community.

2. Training operations shall take the form of integrated programmes aimed at a well-defined objective, either in a given sector or as part of a more general framework.

3. These operations shall, as a matter of priority, be undertaken in the recipient ACP State or region. Where necessary they may be undertaken in another ACP State or in a Member State of the Community. In the case of specialized training particularly suited to the ACP States' needs, training schemes may, by way of exception, be carried out in another developing country.

## **Article 120.**

1. Co-operation shall support the ACP States' efforts to acquire their own scientific and technical skills; it shall contribute towards the execution of research programmes established by the ACP States, integrated into other development operations.

2. Research programmes shall be carried out primarily in the ACP States' national or regional framework; they shall take account of the needs and living conditions of the people concerned. They shall provide support for development in priority areas and comprise the following operations, as needed;

- (a) the setting-up or strengthening of basic or applied research institutions;
- (b) scientific and technological co-operation between the ACP States or between them and other developing countries;
- (c) the promotion of local technology, and the selection of imported technology and its adaptation to the specific needs of the ACP States;
- (d) improvement of scientific and technical information and documentation;
- (e) dissemination of research findings among users.

## **Article 121.**

Co-operation in the area of information shall be aimed at:

- (a) increasing the ACP States' ability to contribute actively to the international flow of information and knowledge, for this purpose it shall support, inter alia, the setting-up and strengthening of national and regional communication media;
- (b) ensuring that the people of the ACP States are better informed for the purposes of mastering their own development, through projects or programmes focused on informing the population and enabling it to express itself and making wide use of communications systems at grassroots level.

## **Article 122.**

1. Co-operation shall support the ACP States' efforts to ensure that grassroots communities are closely and continuously involved in development operations. To this end, and with the internal dynamics of the people as the starting point, the following factors shall be taken into consideration:

- (a) strengthening institutions capable of encouraging participation by the people, through operations involving work organization, staff training and management;
- (b) helping the people to organize themselves, particularly within co-operative-type associations, and placing at the disposal of the different groups concerned means complementary to their own initiative and efforts;
- (c) encouraging participation initiatives through education, training and cultural motivation and promotion;

(d) involving the people concerned, including women, young people, the elderly and the handicapped, in the various stages of development;

(e) expanding job opportunities, including those offered by the works undertaken as part of development operations.

2. Existing institutions or associations shall be used as widely as possible for the preparation and execution of development operations.

### **Article 123.**

1. Co-operation shall support the ACP States' efforts aimed at enhancing the work of women, improving their living conditions, expanding their role and promoting their status in the production and development process.

2. Particular attention shall be given to access by women to all aspects of training, to more advanced technology, to credit and to co-operative organizations, and to appropriate technology aimed at alleviating the arduous nature of their tasks.

### **Article 124.**

Operations to improve the ACP peoples' state of health shall be aimed, as a matter of priority, at nutrition, hygiene, health, education, safety of workers, primary health care services and preventive medicine, control of the major endemic diseases, and enhancing the value of traditional medicine and pharmacy. Such operations shall take account of special economic circumstances and the needs of the poorest sections of the population.

## **Chapter 3. Promotion of Cultural Identities**

### **Article 125.**

Co-operation shall contribute to operations forming part of the ACP States' policies and having as their purpose the promotion of their peoples' cultural identities, their cultural productions, the preservation and enrichment of their cultural heritage and the dissemination of the ACP States' cultural property and services.

### **Article 126.**

1. Co-operation schemes aimed at developing ACP States' cultural productions shall be designed as:

(a) components of an integrated programme, notably in the form of the production and distribution of teaching or audio-visual material for information and extension purposes, or

(b) specific projects, inter alia for:

- the production or co-production of radio and television programmes;

- the production and distribution of records and cassettes, films, books, periodicals and the like.

2. Where cultural items are produced for the market, their production and distribution shall be eligible for assistance provided under industrial co-operation and trade promotion.

### **Article 127.**

Support shall be provided for action by the ACP States to:

(a) safeguard and promote their cultural heritage, notably through the establishment of cultural data banks and sound recording libraries for the collection of oral traditions and the enhancement of such traditions;

(b) promote cultural exchanges between ACP States in highly representative areas of their respective identities;

(c) conserve historical and cultural monuments and promote traditional architecture.

### **Article 128.**

Co-operation shall also be aimed at fostering the distribution in the Community Member States of the ACP States' cultural property and services which are highly representative of their cultural identities.

# **Part Three. The Instruments of ACP-EEC Co-operation**

## **Title I. Trade Co-operation**

### **Chapter 1. General Trade Arrangements**

#### **Article 129.**

1. In the field of trade co-operation, the object of this Convention is to promote trade between the ACP States and the Community, taking account of their respective levels of development, and also between the ACP States themselves.
2. In the pursuit of this objective, particular regard shall be had to securing effective additional advantages for the ACP States' trade with the Community and to improving the conditions of access for their products to the market in order to accelerate the growth of their trade and, in particular, of the flow of their exports to the Community and to ensure a better balance in the trade of the Contracting Parties.
3. To this end, the Contracting Parties shall apply the provisions of this Title and the other appropriate measures under Title I of this Part and under Part Two of this Convention.

#### **Article 130.**

1. Products originating in the ACP States shall be imported into the Community free of customs duties and charges having equivalent effect.
  2. (a) Products originating in the ACP States:
    - listed in Annex II to the Treaty where they come under a common organization of the market within the meaning of Article 40 of the Treaty or
    - subject, on import into the Community, to specific rules introduced as a result of the implementation of the common agricultural policy,shall be imported into the Community, notwithstanding the general arrangements applied in respect of third countries, in accordance with the following provisions:
    - (i) those products shall be imported free of customs duties for which Community provisions in force at the time of import do not provide, apart from customs duties, for the application of any measure relating to their import;
    - (ii) for products other than those referred to under (i), the Community shall take the necessary measures to ensure more favourable treatment than that granted to third countries benefitting from the most-favoured-nation clause for the same products.
  - (b) If, during the application of this Convention, the ACP States request that new lines of agricultural production or agricultural products which are not the subject of specific arrangements when this Convention enters into force should benefit from such arrangements, the Community shall examine these requests in consultation with the ACP States.
  - (c) Notwithstanding the above, the Community shall in the context of the special relations and special nature of ACP-EEC co-operation, examine on a case-by-case basis the requests from the ACP States for preferential access for their agricultural products to the Community market and shall notify its decision on these reasoned requests within not more than six months of the date of their submission.
- Within the context of the provisions of (a) (ii), the Community shall take its decisions in particular with reference to concessions granted to developing third countries. It shall take account of the possibilities offered by the off-season market.
- (d) The arrangements referred to in (a) shall enter into force at the same time as this Convention and shall remain applicable for its duration.

However, if during the application of this Convention, the Community:

- subjects one or more products to common organization of the market or to specific rules introduced as a result of the implementation of the common agricultural policy, it shall reserve the right to adapt the import treatment for those products originating in the ACP States, following consultations within the Council of Ministers. In such cases, the provisions of (a) shall be applicable;

- modifies the common organization of the market in a particular product or the specific rules introduced as a result of the implementation of the common agricultural policy, it shall reserve the right to modify the arrangements laid down for products originating in the ACP States, following consultations within the Council of Ministers. In such cases, the Community shall undertake to ensure that products originating in the ACP States continue to enjoy an advantage comparable to that previously enjoyed in relation to products originating in third countries benefitting from the most-favoured-nation clause.

(e) Where the Community intends to conclude a preferential agreement with third states it shall inform the ACP States thereof. Consultations shall take place where the ACP States so request in order to safeguard their interests.

## **Article 131.**

1. The Community shall not apply to imports of products originating in the ACP States any quantitative restrictions or measures having equivalent effect.

2. However, paragraph 1 shall apply without prejudice to the import arrangements for the products referred to in the first indent of Article 130(2)(a).

The Community shall inform the ACP States when residual quantitative restrictions are eliminated in respect of any of these products.

## **Article 132.**

1. Article 131 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security, the protection of health and life of humans, animals and plants, the protection of national treasures possessing artistic, historic or archaeological value or the protection of industrial and commercial property.

2. Such prohibitions or restrictions shall in no case constitute a means of arbitrary discrimination or a disguised restriction on trade generally.

In cases where implementation of the measures referred to in paragraph 1 affects the interests of one or more ACP States, consultations shall be held at the request of the latter, in accordance with the second paragraph of Article 9 with a view to reaching a satisfactory solution.

## **Article 133.**

The treatment applied to imports of products originating in the ACP States may not be more favourable than that applied to trade among the Member States of the Community.

## **Article 134.**

Where new measures or measures stipulated in programmes adopted by the Community for the approximation of laws and regulations in order to facilitate the movement of goods are likely to affect the interests of one or more ACP States, the Community shall, prior to adopting such measures, inform the ACP States thereof through the Council of Ministers.

In order to enable the Community to take into consideration the interests of the ACP State concerned, consultations shall be held at the request of the latter in accordance with the second paragraph of Article 9 with a view to reaching a satisfactory solution.

## **Article 135.**

1. Where existing rules or regulations of the Community adopted in order to facilitate the movement of goods affect the interest of one or more ACP States or where these interests are affected by the interpretation, application or administration of such rules or regulations, consultations shall be held at the request of the ACP States concerned with a view to reaching a satisfactory solution.

2. With a view to finding a satisfactory solution, the ACP States may also bring up within the Council of Ministers any other problems relating to the movement of goods which might result from measures taken or envisaged by the Member States.

3. The relevant institutions of the Community shall, to the greatest possible extent, inform the Council of Ministers of such measures in order to ensure effective consultations.

## **Article 136.**

1. In view of their present development needs, the ACP States shall not be required for the duration of this Convention to assume in respect of imports of products originating in the Community, obligations corresponding to the commitments entered into by the Community under this Chapter, in respect of imports of the products originating in the ACP States.
2. (a) In their trade with the Community, the ACP States shall not discriminate among the Member States and shall grant to the Community treatment no less favourable than the most-favoured-nation treatment.  
(b) The most-favoured-nation treatment referred to in (a) shall not apply in respect of trade or economic relations between ACP States or between one or more ACP States and other developing countries.

## **Article 137.**

Unless it has already done so under earlier ACP-EEC Conventions, each Contracting Party shall communicate its customs tariff to the Council of Ministers within three months of

the entry into force of this Convention. Each Contracting Party shall also communicate any subsequent amendments to its tariff as and when they come into force.

## **Article 138.**

1. The concept of "originating products" for the purposes of implementing this Chapter, and the methods of administrative cooperation relating thereto, are defined in Protocol 1.
2. The Council of Ministers may adopt any amendment to Protocol I.
3. Where the concept of "originating products" has not yet been defined for a given product pursuant to paragraphs 1 or 2, each Contracting Party shall continue to apply its own rules.

## **Article 139.**

1. Should application of this Chapter result in serious disturbances in a sector of the economy of the Community or of one or more of the Member States, or jeopardize their external financial stability, or if difficulties arise which may result in a deterioration thereof, the Community may take, or may authorize the Member State concerned to take, safeguard measures. These measures, their duration and their methods of application shall be notified immediately to the Council of Ministers.
2. The Community and its Member States undertake not to use safeguard measures or other means for protectionist purposes or to hamper structural development.
3. Safeguard measures shall be restricted to those which would least disturb trade between the Contracting Parties in implementing the objectives of this Convention and must not exceed the scope of what is strictly necessary to remedy the difficulties that have arisen.
4. When applied, safeguard measures shall take account of the existing level of the ACP exports concerned to the Community and their potential for development.

## **Article 140.**

1. Prior consultations shall take place concerning the application of the safeguard clause, both when such measures are first adopted and when they are extended. The Community shall provide the ACP States with all the information required for such consultations and shall provide the data from which to determine to what extent imports from an ACP State or ACP States of a specific product have caused the effects referred to in Article 139(1).
2. Where consultations have taken place, safeguard measures, or arrangements jointly agreed upon by the ACP States concerned and the Community, shall enter into force thereafter.
3. However, the prior consultations provided for in (1) and (2) shall not prevent any immediate decisions which the Community or its Member States, in accordance with Article 139(1), might take where special factors have necessitated such decisions.



4. In order to facilitate the examination of factors that may cause market disturbances, a mechanism shall be instituted for the statistical surveillance of certain ACP exports to the Community.

5. The Contracting Parties undertake to hold regular consultations with a view to finding satisfactory solutions to problems which might result from the application of the safeguard clause.

6. The prior consultations as well as the regular consultations and the surveillance mechanism referred to in paragraphs 1 to 5 shall be implemented in accordance with the joint declaration annexed to this Convention.

### **Article 141.**

The Council of Ministers shall, at the request of any Contracting Party concerned, consider the economic and social effects of the application of the safeguard clause.

### **Article 142.**

When safeguard measures are being taken, modified or removed, particular attention shall be paid to the interests of the least-developed, landlocked and island ACP States.

### **Article 143.**

In order to ensure the effective implementation of this Convention in the field of trade co-operation, the Contracting Parties agree to inform and consult each other.

In addition to the cases for which consultations are specifically provided for in Articles 129 to 142, consultations shall also take place, at the request of the Community or of the ACP States, and in accordance with the conditions provided for in the procedural rules in Article 9, particularly in the following cases:

- 1) where Contracting Parties intend to take any trade measures affecting the interest of one or more Contracting Parties under this Convention, they shall inform the Council of Ministers thereof. Consultations shall take place, where the Contracting Parties concerned so request, in order to take account of their respective interests;
- 2) if, during the application of this Convention, the ACP States consider that agricultural products covered by Article 130(2)(a) other than those subject to special treatment should benefit from such treatment, consultations may take place within the Council of Ministers;
- 3) where a Contracting Party considers that obstacles to the movement of goods arise as a result of the existing rules of another Contracting Party or the interpretation, application or administration thereof;
- 4) where the Community or the Member States take safeguard measures in accordance with Article 139, consultations on these measures may take place within the Council of Ministers, where the Contracting Parties concerned so request, notably with a view to ensuring compliance with Article 139(3).

## **Chapter 2. Special Undertakings on Rum and Bananas**

### **Article 144.**

Until the entry into force of a common organization of the market in spirits and notwithstanding Article 130(1), entry into the Community of products of subheading 22.09 CI - rum, arrack, tafia - originating in the ACP States shall be governed by Protocol 5.

### **Article 145.**

In order to permit the improvement of the conditions under which bananas originating in the ACP States are produced and marketed, the Contracting Parties hereby agree to the objectives set out in Protocol 4.

### **Article 146.**

This Chapter and Protocols 4 and 5 shall not apply to relations between the ACP States and the French overseas departments.

## **Title II. Co-operation In the Field of Commodities**

### **Chapter 1. Stabilization of Export Earnings from Agricultural Commodities**

#### **Article 147.**

1. With the aim of remedying the harmful effects of the instability of export earnings and to help the ACP States overcome one of the main obstacles to the stability, profitability and sustained growth of their economies, to support their development efforts and to enable them in this way to ensure economic and social progress for their peoples by helping to safeguard their purchasing power, a system shall be operated to guarantee the stabilization of export earnings, in accordance with Article 160, derived from the ACP States' exports to the Community or other destinations, as defined in Article 150, of products on which their economies are dependent and which are affected by fluctuations in price or quantity or both these factors.

2. In order to attain these objectives, transfers shall be devoted to maintaining financial flows in the sector in question or, for the purpose of promoting diversification, directed towards other appropriate sectors and used for economic and social development.

#### **Article 148.**

The following products shall be covered:

	NIMEXE Code
1. Groundnuts, shelled or not	12.01-31 to 12.01-35
2. Groundnut oil	15.07-74 and 15.07-87
3. Cocoa beans	18.01-00
4. Cocoa paste	18.03-10 to 18.03-30
5. Cocoa butter	18.04-00
6. Raw or roasted coffee	09.01-II to 09.01-17
7. Extracts, essences or concentrates of coffee	21.02-II to 21.02-15
8. Cotton, not carded or combed	55.01-10 to 55.01-90
9. Cotton linters	55.02-10 to 55.02-90
10. Coconuts	08.01-71 to 08.01-75
11. Copra	12.01-42
12. Coconut oil	15.07-29, 15.07-77 and 15.07-92
13. Palm oil	15.07-19, 15.07-61 and 15.07-63
14. Palm nut and kernel oil	15.07-31, 15.07-78 and 15.07-93

15. Palm nuts and kernels	12.01-44
16. Raw hides and skins	41.01-II to 41.01-95
17. Bovine cattle leather	41.02-05 to 41.02-98
18. Sheep and lamb skin leather	41.03-10 to 41.03-99
19. Goat and kid skin leather	41.04-10 to 41.04-99
20. Wood in the rough	44.03-20 to 44.03-99
21. Wood roughly squared or half-squared, but not further manufactured	44.04-20 to 44.04-98
22. Wood sawn lengthwise, but not further prepared	44.05-I 0 to 44.05-79
23. Fresh bananas	08.01-31
24. Tea	09.02-10 to 09.02-90
25. Raw sisal	57.04-10
26. Vanilla	09.05-00
27. Cloves - whole fruit, cloves and stems	09.07-00
28. Sheep's or lambs' wool, not carded or combed	53.01-10 to 53.01-40
29. Fine animal hair of Angora goats - mohair	53.02-95
30. Gum arabic	13.02-91
31. Pyrethrum - flowers, leaves, stems, peel and roots; saps and extracts from pyrethrum	12.07-10 and 13.03-15
32. Essential oils, not terpeneless, of cloves, of niaouli and of ylang-ylang	33.01-23
33. Sesame seed	12.01-68
34. Cashew nuts and kernels	08.01-77
35. Pepper	09.04-II and 09.04-70
36. Shrimps and prawns	03.03-43
37. Squid	03.03-68

38. Cotton seeds	12.01-66
39. Oil-cake	23.04-01 to 23.04-99
40. Rubber	40.01-20 to 40.01-60
41. Peas	07.01-41 to 07.01-43, 07.05-21 and 07.05-61
42. Beans	07.01-45 to 07.01-47, 07.05-25, 07.05-65 and ex 07.05-99
43. Lentils	07.05-30 and 07.05-70
44. Nutmeg and mace	09.08-13; 09.08-16; 09.08-60 and 09.08-70
45. Shea nuts	12.01-70
46. Shea nut oil	ex 15.07-82 and ex 15.07-98
47. Mangoes	ex 08.01-99
48. Dried bananas	08.01-35II

2. Upon presentation of each transfer request, the ACP State shall choose between the following systems:

(a) each product listed in paragraph 1 shall constitute a product within the meaning of this Chapter;

(b) product groups 1 and 2, 3 to 5, 6 and 7, 8 and 9, 10 to 12, 13 to 15, 16 to 19, 20 to 22, 23 and 48, 45 and 46 shall each constitute a product within the meaning of this Chapter.

## Article 149.

If, twelve months after the entry into force of this Convention, one or more products not contained in the list in Article 148, but upon which the economies of one or more ACP States depend to a considerable extent, are affected by sharp fluctuations, the Council of Ministers shall decide, not later than six months after the presentation of a request by the ACP State or States concerned, whether or not to include the said product or products in the list, taking account of factors such as employment, deterioration of the terms of trade between the Community and the ACP State concerned and the level of development of the ACP State concerned and the conditions which characterize products originating in the Community.

## Article 150.

1. The system shall apply to earnings from exports

(a) by each ACP State, to the Community, of each product listed in Article 148;

(b) by the ACP States already benefitting from the derogation referred to in paragraph 2 to the other ACP States, of each product listed in Article 148 for which such derogation has been granted;

(c) by the ACP States already benefitting from the derogation referred to in paragraph 3, to all destinations, of each product listed in Article 148.

2. If so requested by one or more ACP States in respect of one or more of the products listed in Article 148, the Council of Ministers may decide, on the basis of a report established by the Commission, in liaison with the requesting ACP State or States, and not later than six months after the presentation of the request, to apply the system to exports of the products in

question from the said ACP State or States to other ACP States.

3. At the request of an ACP State which does not send the bulk of its exports to the Community, the Council of Ministers, on the basis of a report drawn up by the Commission in conjunction with the requesting ACP State, may decide, not later than six months after presentation of the request, that the system shall apply to its exports of the products in question whatever their destination.

## **Article 151.**

Each ACP State concerned shall certify that the products to which the system applies have originated in its territory within the meaning of Article 2 of Protocol 1.

## **Article 152.**

For the purposes specified in Article 147, the Community shall allocate to the system, for the duration of this Convention, an amount of 925 million ECU to cover all its commitments under the system. This amount shall be managed by the Commission.

## **Article 153.**

1. The overall amount referred to in Article 152, shall be divided into a number of equal annual instalments corresponding to the number of years of application.

2. Interest earned by investment in the market, over the period from 1 April to 30 June, of the sum equivalent to half each annual instalment, minus any advances and transfers paid during that period, shall be credited to the system's resources. Interest earned by investment in the market, over the period from 1 July to 31 March, of the sum equivalent to half each second annual instalment, minus any advances and transfers paid during that second period, shall be credited to the system's resources.

3. Whatever balance remains at the end of each of the first four years of application of this Convention shall be carried forward automatically to the following year.

## **Article 154.**

The resources available for each year of application are made up of the sum of the following:

- (1) the annual instalment, minus any amounts used under Article 155(1);
- (2) the sums carried forward under Article 153(3);
- (3) the amounts replenished under Articles 172 to 174;
- (4) any amounts made available under Article 155(1);
- (5) the amount of interest earned pursuant to Article 153(2).

## **Article 155.**

1. If the total amount of the transfer basis in a year of application, as calculated in accordance with Article 158(2), and where appropriate reduced in accordance with Article 164, exceeds the amount of resources available in the system for that year, advance use shall be made automatically, for each year except the last, of a maximum of 25% of the following year's instalment.

2. If, after the measure referred to in paragraph 1, the amount of resources available is still less than the total amount of the transfer bases for the same year of application, the amount of each transfer basis which exceeds 2 million ECU in the case of ACP States listed under Articles 257 and 260, and 1 million ECU in the case of ACP States listed under Article 263, shall be reduced in accordance with paragraph 3.

3. (a) Each transfer basis shall be reduced by an amount calculated by applying to the reference level in question a percentage equal to that referred to in Article 162 applicable to the ACP State concerned.

(b) If, after the reduction referred to in (a), the total amount of the transfer basis so calculated is less than the amount of

resources available, the remainder shall be shared among all the transfers in proportion to the percentage by which each transfer was reduced.

(c) In no case shall the reduction of each transfer basis referred to in (a) exceed:

- 30% for the ACP States listed in Articles 257 and 260,
- 40% for the other ACP States.

4. If, after the reduction referred to in paragraph 3, the total amount of the transfers which may give rise to a payment exceeds the amount of available resources, the Council of Ministers shall evaluate the situation on the basis of a Commission report on the probable development of the system and shall examine the steps to be taken to remedy that situation, within the terms of this Convention.

## **Article 156.**

Before the expiry of the period referred to in Article 152, the Council of Ministers shall decide on the use of any balance remaining from the overall amount referred to in Article 152, including the interest referred to in Article 153(2), as well as on the conditions for future use of any amounts still to be paid by way of replenishment by the ACP States under Articles 172 to 174, following expiry of the period referred to in Article 152.

## **Article 157.**

Every request for a transfer shall, in addition to the necessary statistical data, include substantial information on the loss of earnings and also the programmes and operations to which the ACP State has allocated or undertakes to allocate the funds, in accordance with the objectives set out in Article 147.

Such request shall be addressed to the Commission, which shall examine it in conjunction with the ACP State concerned, with a view to calculating the amount of the transfer basis and any reduction which may be made pursuant to Article 164.

## **Article 158.**

1. In order to implement the system, a reference level and a transfer basis shall be calculated for each ACP State and for exports of each product to the Community and other destinations as defined in Article 150.

2. The difference between the reference level and actual earnings, plus 2% for statistical errors and omissions, shall constitute the basis of the transfer.

3. This reference level shall correspond to the average of export earnings in the four years preceding each year of application,

4. Where, however, an ACP State:

- begins processing a product traditionally exported in the raw state, or
- begins exporting a product which it did not traditionally produce,

the system may be put into operation on the basis of a reference level calculated over the three years preceding the year of application.

## **Article 159.**

1. In the case of the ACP States accorded the derogation referred to in Article 150(2), the transfer basis shall be calculated by adding to the earnings from exports of the product or products concerned to the Community the earnings from exports of those products to other ACP States.

2. In the case of the ACP States accorded the derogation referred to in Article 150(3), the transfer basis shall be calculated according to the earnings from exports of the product or products concerned to all destinations.

3. In the case of the ACP States not accorded the derogation referred to in Article 150(3), the transfer bases may in no case exceed those calculated pursuant to paragraph 2 of this Article.

## **Article 160.**

1. The export earnings for each year of the reference period and for the year of application shall be determined on the basis of the equivalent in the currency of the ACP State concerned of the earnings expressed in foreign exchange.
2. The reference level shall be calculated after the export earnings for each year of the reference period have been converted into ECUs at the average annual exchange rate for the ECU against the currency of the ACP State concerned over the years in question.
3. For the purpose of the calculation referred to in Article 158(2), the earnings for the year of application shall be converted into ECUs at the average annual exchange rate for the ECU against the currency of the ACP State concerned for the year of application.
4. If there is a fluctuation of more than 10% in the annual average exchange rate of the year of application for the currency of the ACP State concerned against the ECU in relation to the average of the average annual exchange rates for each year of the reference period, the earnings for the year of application shall be converted into ECUs, by way of derogation from paragraph 3 and without prejudice to paragraph 2, at a rate set at a level which restricts the fluctuation to 10% in relation to the said average.

## **Article 161.**

1. The system shall apply to the earnings from an ACP State's exports of the products listed in Article 148 if, during the year preceding the year of application, earnings from the export of each product to all destinations, re-exports excluded, represented at least 6% of its total earnings from exports of goods. The percentage shall be 4,5% in the case of sisal.
2. For the least-developed, landlocked and island ACP States, the percentage referred to in paragraph 1 shall be 1,5%.
3. Where, following a natural disaster, a substantial fall in production of the product in question is recorded during the year preceding the year of application, the percentage referred to in paragraph 1 shall be calculated on the basis of the average export earnings from that product during the first three reference years instead of on the basis of total export earnings during the year preceding the year of application.

A substantial fall in production shall be taken to mean at least 50% of the average production during the first three reference years.

## **Article 162.**

1. An ACP State shall be entitled to request a transfer if, on the basis of the results of one calendar year, its actual earnings, as defined in Article 165, from its exports of each product to the Community and, in the cases referred to in Article 150(1)(b), to other ACP States or, in the cases referred to in Article 150(1)(c), to all destinations, are at least 6% below the reference level.
2. The percentage given in paragraph 1 shall be 1,5% for the least-developed, landlocked and island ACP States.

## **Article 163.**

Request for transfers shall be inadmissible in the following cases:

- (a) if the request is presented after 31 March of the year following the year of application;
- (b) if it emerges from the examination of the request, to be undertaken by the Commission in conjunction with the ACP State concerned, that the fall in earnings from exports to the Community is the result of a trade policy of the ACP State concerned adversely affecting exports to the Community in particular.

## **Article 164.**

Should examination of the trend of the requesting ACP State's exports to all destinations and of production of the product in question in the ACP State concerned and of demand in the Community reveal significant changes, consultations shall take place between the Commission and the requesting ACP State to determine whether the transfer basis is to be maintained or reduced, and, if so, to what extent.

## **Article 165.**

1. The system shall be implemented in respect of the products listed in Article 148 where they are:
  - (a) released for home use in the Community, or
  - (b) brought into the Community under the inward processing arrangements in order to be processed.
2. The statistics used to implement the system shall be:
  - (a) those obtained by cross-checking Community and ACP State statistics, account being taken of fob values, or
  - (b) those obtained by multiplying the unit values for the exports of the ACP State in question, as given in that ACP State's statistics, by the quantities imported by the Community, as shown in Community statistics.
3. When submitting the transfer request for each product, the requesting ACP State shall choose one of the two systems set out above.
4. With regard to the product or products for which an ACP State is accorded the derogation referred to in Article 150(2) and 150(3), the export statistics adopted shall be those of the ACP State concerned.

## **Article 166.**

1. In order to ensure that the stabilization system functions efficiently and rapidly, statistical and customs co-operation shall be instituted between each ACP State and the Commission.
2. To this end, each ACP State shall notify the Commission, by sending monthly statistics on the volume and value of total exports, and exports to the Community and, where available, on the volume of marketed production, for each product on the list in Article 148 to which the system may apply.
3. The ACP States and the Commission shall adopt by agreement any measures facilitating inter alia the exchange of necessary information, the submission of requests for transfers, the provision of information concerning the use of transfers, the implementation of the replenishment provisions and of any other aspect of the system, by means of the widest possible use of standard forms.

## **Article 167.**

1. The Commission shall adopt a transfer decision on completion of the examination carried out in conjunction with the requesting ACP State; this examination shall bear on the statistical data and the calculation of the transfer basis which may give rise to a payment, and also on the information referred to in Article 157.
2. For each transfer a transfer agreement shall be concluded between the Commission and the ACP State concerned.
3. The amounts transferred shall not bear interest.

## **Article 168.**

1. The ACP State concerned and the Commission shall take all possible steps to ensure that the cross-checking of statistics referred to in Article 165 is completed not later than 31 May following receipt of the request. Not later than that date, the Commission shall notify the requesting ACP State of the result of the cross-checking operation or, in the event of a delay, the reason why it was not possible to complete the said operation.
2. The ACP State concerned and the Commission shall take all possible steps to ensure that the consultations referred to in Article 164 are concluded not later than two months after the notification referred to in paragraph 1. After this period has elapsed, the Commission shall notify the ACP States of the amount of the transfer resulting from appraisal of the request.
3. Without prejudice to Article 170(i) and not later than 31 July following receipt of the requests, the Commission shall take decisions concerning all transfer requests, except for those where cross-checking or consultations have not been concluded.
4. On 30 September following receipt of the requests, the Commission shall report to the Committee of Ambassadors on the progress made with the processing of all transfer requests.

## **Article 169.**

1. In the event of a disagreement between the requesting ACP State and the Commission over the results of the



examination referred to in Articles 163 and 164, the requesting ACP State shall have the right to initiate, without prejudice to possible recourse to Article 278, a good offices procedure.

2. The good offices procedure shall be carried out by an expert appointed by agreement between the Commission and the requesting ACP State.

3. Within two months of this appointment, the conclusions of the procedure shall be communicated to the requesting ACP State and to the Commission, which shall take account of them in making the transfer decision.

The ACP State concerned and the Commission shall take all possible steps to ensure that the decision is taken not later than 31 October following receipt of the request.

4. The procedure shall not result in a delay in the processing of any other transfer requests for the same year of application.

## **Article 170.**

1. The ACP State concerned and the Commission shall take such steps as are required to ensure that transfers are made rapidly in accordance with the procedure laid down in Article 168. To this end, provision shall be made for the payment of advances.

2. Programmes or operations to which the recipient ACP State undertakes to allocate the transferred resources shall be decided by that State subject to compliance with the objectives laid down in Article 147.

3. Before the transfer agreement is signed, the recipient ACP State shall communicate substantial information relating to the programmes and operations to which it has allocated or undertakes to allocate the funds, in accordance with the objectives set out in Article 147. Substantial information, in the context of this Article and that of Article 157 shall be taken to mean that relating to the diagnosis of the problems in the sector or sectors concerned, statistics, and the allocation plan drawn up by the requesting ACP State. Should the requesting ACP State intend, as specified in Article 147(2), to allocate the funds to a sector other than that where the loss has occurred, it shall communicate to the Commission the reasons for this allocation. In either case, the Commission shall ensure that such communication conforms with Article 157.

## **Article 171.**

1. Within twelve months of the signing of the transfer agreement the recipient ACP State shall send the Commission a report on the use which it has made of the funds transferred. The report shall contain all the information specified on the form drawn up jointly in accordance with Article 166.

2. Should the report referred to in paragraph 1 not be presented within the time-limit set or should it call for comment, the Commission shall send a request for substantiation to the ACP State concerned, which shall be obliged to reply thereto within two months.

3. Once the deadline referred to in paragraph 2 has expired, the Commission may, having referred the matter to the Council of Ministers and having duly informed the ACP State concerned, three months after completion of this procedure, suspend application of decisions on subsequent transfer requests until that State has provided the required information.

The ACP State concerned shall be notified of this measure immediately.

## **Article 172.**

ACP States which have received transfers shall, with the exception of the least-developed ACP States, contribute to the replenishment of the resources made available for the system by the Community. The replenishment obligation shall disappear if, during the seven-year period following the year during which the transfer was made, the conditions laid down in Article 173 have not been met.

## **Article 173.**

1. Where the trend of the export earnings derived from the product which sustained the drop in export earnings that gave rise to the transfer so permits, the ACP States concerned shall help replenish the resources of the system.

2. For the purposes of paragraph 1, the Commission shall determine:

- at the beginning of each year over the seven years following the year during which the transfer was paid,

- until such time as the whole amount of the transfer has been paid back into the system,

- in accordance with Article 165,

whether, for the preceding year:

(a) the unit value of the product under consideration exported to the Community was higher than the average unit value during the four years prior to the preceding year;

(b) the quantity of the same product actually exported to the Community was at least equal to the average of the quantities exported to the Community during the four years prior to the preceding year:

(c) the earnings for the year and the product in question amount to at least 106% of the average of earnings from exports to the Community during the four years prior to the preceding year.

3. If the three conditions set out in paragraph 2(a), (b) and (c) are fulfilled simultaneously, the ACP State shall contribute to the system an amount equal to the difference between the actual earnings derived in the preceding year from exports to the Community and the average of earnings from exports to the Community during the four years prior to the preceding year, but in no case shall the amount of the contribution towards the replenishment of the resources of the system exceed the transfer in question.

4. In implementing paragraphs 2 and 3, account shall be taken of trends established in exports to all destinations.

## **Article 174.**

1. The amount referred to in Article 173(3) shall be contributed to the system at the rate of one fifth per year after a two-year deferment period beginning in the year during which the obligation to contribute towards replenishment was established.

2. The contribution may be made, at the request of the ACP State, either

- direct to the system, or

- by deduction from its transfer rights established before any application of Article 155, or

- by payment in local currency. In this case, the contribution shall be used, as a matter of priority, to cover local expenditure charged to the European Development Fund (hereinafter referred to as the "Fund") within the framework of development projects to the financing of which it is contributing.

## **Chapter 2. Special Undertakings on Sugar**

### **Article 175.**

1. In accordance with Article 25 of the ACP-EEC Convention of Lomé signed on 28 February 1975 and with Protocol 3 annexed thereto, the Community has undertaken for an indefinite period, notwithstanding the other provisions of this Convention, to purchase and import, at guaranteed prices, specific quantities of cane sugar, raw or white, which originates in the ACP States producing and exporting cane sugar and which those States have undertaken to deliver to it.

2. The conditions for the implementation of the aforementioned Article 25 have been laid down by Protocol 3 referred to in paragraph 1. The text of the Protocol is annexed to this Convention as Protocol 7.

3. Article 139 of this Convention shall not apply within the framework of the said Protocol.

4. For the purpose of Article 8 of the said Protocol the institutions established under the Convention may be used during the period of application of this Convention.

5. Article 8(2) of the said Protocol shall apply should this Convention cease to be operative.

6. The declarations contained in Annexes XIII, XXI and XXII of the Final Act to the ACP-EEC Convention of Lomé signed on 28 February 1975 are reaffirmed and their provisions shall continue to apply. These declarations are annexed as such to this Convention.

7. This Article and the Protocol 3 referred to in paragraph 1 shall not apply to relations between the ACP States and the French overseas departments.

## **Chapter 3. Mining Products: Special Financing Facility (SSYSMIN)**

### **Article 176.**

With a view to contributing to the creation of a more solid basis for the development of the ACP States whose economies are dependent on the mining sectors and in particular towards helping them cope with a decline in their capacity to export mining products to the Community and the corresponding decline in their export earnings, a system shall be established to assist these States in their efforts to re-establish the viability of the mining sector or to remedy the harmful effects on their development of serious temporary or unforeseeable disruptions affecting those mining sectors and beyond the control of the ACP States concerned.

### **Article 177.**

1. The system laid down in Article 176 shall apply notably to the following products:

- copper, including associated production of cobalt,
- phosphates,
- manganese,
- bauxite and alumina,
- tin
- iron ore (ores, concentrates and roasted iron pyrites), whether or not in agglomerate form (including pellets).

2. If, not sooner than twelve months following the entry into force of this Convention, one or more products not contained in the above list, but upon which the economies of one or more ACP States depend to a considerable extent, are affected by serious disruptions, the Council of Ministers shall decide, not later than six months after the presentation of a request by the ACP State or States concerned, whether or not to include the said product or products in the list.

### **Article 178.**

1. For the purposes specified in Article 176 and for the duration of this Convention, a special financing facility shall be set up to which the Community shall allocate an overall amount of 415 million ECU to cover all its commitments under this system:

- (a) this amount shall be managed by the Commission;
- (b) this overall amount shall be divided into a number of equal annual instalments corresponding to the number of years of application. Each year, except the last, the Council of Ministers, on the basis of a report submitted to it by the Commission, may authorize the advance use of up to 50% of the following year's instalment where required;
- (c) whatever balance remains at the end of each year of application of this Convention, except the last, shall be carried over automatically to the following year;
- (d) if the resources available for any year of application are insufficient, the amounts due shall be reduced accordingly;
- (e) the resources available for each year of application shall be made up of the following elements:
  - the annual instalment, minus any amounts used under (b),
  - the sums carried over under (c).

2. Before the expiry of the period referred to in Article 291, the Council of Ministers shall decide on the allocation of any balances remaining from the overall amount referred to in this Article.

### **Article 179.**

1. Recourse to the means of financing available under the special facility provided for in Article 178 shall be open to:

- (a) the countries eligible under Article 180(a) for a product covered by Article 177 and exported to the Community,

(b) the countries not eligible under Article 180(a) but eligible under Article 180(b), by derogation on a case-by-case basis from Articles 177 and 180(a),

when a substantial fall is recorded, or can be expected over the following months, in their capacity to produce or to export, or in their export earnings derived from mining products referred to in Articles 177 and 180(b), of such a magnitude as to affect seriously the profitability of otherwise viable and economic lines of production, thus preventing them from replacing at a normal rate or maintaining the production plant or export capacity, and from continuing to provide funds for major identified development projects to which the ACP State concerned has given the highest priority in the allocation of mining revenue.

2. The recourse referred to in paragraph 1 shall also be available when a substantial fall in production or export capacity is experienced, or is foreseen, owing to accidents and serious technical mishaps or grave political events, whether internal or external, or important technological and economic developments affecting the profitability of production.

3. A substantial fall in production or export capacity shall be taken to mean 10%.

## **Article 180.**

An ACP State which, during at least two of the preceding four years, as a general rule, has derived either

(a) 15% or more of its export earnings from a product covered by Article 177, or

(b) by derogation on a case-by-case basis from Article 177 and from (a) above, 20% or more of its export earnings from all its mining products (excluding precious minerals, oil and gas)

may apply for financial aid from the resources allocated to the special financing facility if the conditions laid down in Article 179 are fulfilled.

However, for least-developed, landlocked or island ACP States, the figure stipulated in (a) shall be 10% and the figure stipulated in (b) shall be 12%.

## **Article 181.**

The application for aid shall be made to the Commission, which shall examine it in conjunction with the ACP State concerned. Where necessary, an expeditious experts' study to diagnose the production capacity concerned from the technical and financial angles may be financed from the funds provided under Article 178, notably with a view to expediting appraisal of the application.

The fact that the aid conditions have been fulfilled shall be established by agreement between the Community and the ACP State. Notification thereof by the Commission to the ACP State shall entitle the latter to Community aid from the special financing facility.

## **Article 182.**

The aid referred to in Article 180 shall be directed at the objectives set out in Article 176.

As a matter of priority such aid shall be used to finance rehabilitation, maintenance and rationalization programmes to complement the efforts made by the ACP State concerned to restore the affected production and export capacity to a viable level, with special attention being paid to integrating it satisfactorily in the country's overall development process. Where it would appear impossible to restore such capacity to a viable state, the ACP State concerned and the Commission shall seek projects or programmes best suited to attaining the objectives of the system.

Where Articles 179(1)(b) and 180(b) are applied, the resources of the special financing facility shall be used as a matter of priority to support the efforts the ACP State concerned deploys to avoid interruption of the development projects referred to in Article 179 or to promote projects that would replace, even partially, the mining capacities lost as a source of export earnings.

The amount of this aid shall be determined by the Commission in the light of the funds available under the special financing facility, the nature of the projects or programmes proposed by the ACP State concerned and the possibilities for co-financing.

In determining the amount, account shall be taken of the scale of the reduction in production or export capacity, and of the losses of earnings suffered by the ACP States as identified in Article 179 and of the relative importance of the mining

industry affected for the ACP State's export earnings.

Under no circumstances may a single ACP State be eligible for more than 35% of the funds available under an annual instalment. This percentage shall be 15% for a contribution on the basis of Articles 179(1)(b) and 180(b).

The procedures applicable to assistance in the above circumstances and the implementing arrangements shall be as provided for under Title III, Part Three, of this Convention; account shall be taken of the need for rapid implementation of the aid.

### **Article 183.**

1. To permit the implementation of precautionary measures to halt deterioration of production plant during the appraisal or implementation of these projects or programmes, the Community may grant an advance to any ACP State which requests one. This possibility shall not exclude recourse by the ACP State concerned to the emergency aid provided for in Article 203.
2. Since an advance is granted as a means of prefinancing projects or programmes which it precedes or to which it is preparatory, account shall be taken of the scale and nature of those projects or programmes when the amount of the advance is fixed.
3. The advance shall take the form of supplies or of the provision of services, or of cash payments if this arrangement is considered more appropriate.
4. It shall be incorporated in the amount earmarked for Community operations in the form of projects or programmes when the financing agreement relating to such operations is signed.

### **Article 184.**

Aid granted from the special financing facility shall be reimbursed on the same terms and conditions as special loans, account being taken of the provisions adopted in favour of the least-developed ACP States.

## **Title II. Financial and Technical Co-operation**

### **Chapter 1. General Provisions**

#### **Section 1. Objectives and Principles**

### **Article 185.**

The aims and objectives of financial and technical co-operation shall be to:

- (a) make, in favour of the ACP States, by adequate financial resources and appropriate technical assistance, a significant contribution to the implementation of the objectives of this Convention in order to support and promote the efforts of those States to achieve self-determined, self-reliant and self-sustained integrated social, cultural and economic development, on the basis of mutual interest and in a spirit of interdependence;
- (b) help raise the standard of living and improve the well-being of the peoples of the ACP States;
- (c) promote measures likely to mobilize the capacity for initiative of communities and to encourage and support the participation of those concerned in the design and implementation of development projects;
- (d) complement the efforts of the ACP States and remain in keeping with them;
- (e) promote the optimum development of human resources and contribute to the rational utilization of the natural resources of the ACP States;
- (f) encourage intra-ACP co-operation and regional co-operation among ACP States;
- (g) permit the establishment of more balanced economic and social relations and better understanding between the ACP States, Member States of the Community and the rest of the world with a view to achieving a new international economic order;
- (h) enable the ACP States faced with serious economic and social difficulties of an exceptional nature resulting from natural disasters or extraordinary circumstances having comparable effects to benefit from emergency aid;

(i) help the least-developed, landlocked and island ACP States to overcome the specific obstacles which hamper their development efforts.

## **Article 186.**

Financial and technical co-operation shall:

(a) be implemented on the basis of objectives and priorities established by the ACP States, with due regard to their respective geographical, social and cultural characteristics, specific potential and development strategies;

(b) be given on the most liberal terms possible for the Community;

(c) be administered under simple and rational procedures;

(d) contribute to the fullest participation of the majority of the population in the benefits of development, as well as support the necessary structural changes;

(e) ensure that technical assistance be provided upon request of the ACP State concerned, be of the highest quality but cost-effective and include arrangements for the rapid training of local replacement personnel;

(f) ensure that resource flows are on a more predictable and continuous basis;

(g) ensure participation by the ACP States in the management and utilization of financial resources and greater and more efficient decentralization of decision-making powers.

## **Section 2. Scope**

### **Article 187.**

Within the framework of this Convention, financial and technical co-operation shall cover:

(a) capital projects;

(b) sectoral programmes;

(c) rehabilitation of projects and programmes;

(d) technical co-operation programmes;

(e) deployment of flexible resources in support of the efforts of grassroots communities.

### **Article 188.**

1. Financial and technical co-operation shall also be provided upon request for sectoral development and import programmes the purpose of which is to contribute to the optimum functioning of the productive sectors of the economy and to help meet basic human needs. Such programmes may include the financing of inputs to the productive system, such as raw materials, spare parts, fertilizers, insecticides and supplies to improve health and education services, but not of current administrative costs.

Such aid shall back up the measures taken by the ACP States concerned to resolve the problems underlying the serious situation where this is of a structural nature. Its aim shall be to do away progressively with the needs it fulfils.

2. Financial and technical co-operation may cover, for new, ongoing or past projects and programmes, current administrative, maintenance and operating expenses only on the conditions laid down in (a) and (b):

(a) The financing of projects or programmes may cover expenditure incurred in, and strictly limited to, the start-up period, provided that such expenditure, identified in the financing proposal, is considered necessary for setting up, launching and operating the capital projects in question;

(b) managing capital projects and programmes implemented earlier, in order to ensure that full use is made of such projects and programmes;

(c) The least-developed ACP States shall be accorded priority and favourable treatment in the determination and implementation of the back-up and follow-up assistance referred to in (a) and (b).

## **Article 189.**

The funds provided may be used to cover external costs and local expenditure required for the execution of projects and programmes.

## **Article 190.**

1. The projects and programmes may, within the framework of the priorities established by the ACP States and that of regional co-operation, apply inter alia to:

- (a) rural development, and in particular the striving for food self-sufficiency and food security;
- (b) industrialization, artisanal activities, energy, mining, tourism and economic and social infrastructure;
- (c) structural improvement of the productive sectors of the economy;
- (d) protection of the environment;
- (e) prospecting for, and exploration and exploitation of, natural resources;
- (f) training, applied scientific research and applied technology, technological adaptation or innovation and the transfer of technology;
- (g) industrial promotion and information;
- (h) marketing and sales promotion;
- (i) promotion of small and medium-sized national enterprises;
- (j) support for local and regional development banks and financing institutions;
- (k) microprojects for grassroots development;
- (l) transport and communications;
- (m) measures for promoting, in the field of air and sea transport, the movement of goods and persons
- (n) measures for developing fishing activities;
- (o) development and optimum utilization of human resources, special account being taken of the role of women in development;
- (p) improvement of social and cultural infrastructure and services and of housing and water supply for the people.

2. These projects and programmes may also concern operations on specific themes, such as:

- drought and desertification control;
- combating the consequences of natural disasters through the introduction of prevention and aid mechanisms in the least-developed, landlocked and island ACP States;
- control of major endemic diseases and epidemics;
- hygiene and primary health care;
- control of endemic livestock diseases;
- measures to save energy;
- operations in general which are long-term and thus extend beyond any specific time-scale.

## **Article 191.**

1. The following shall be eligible for financial and technical co-operation :

- (a) ACP States;

(b) regional or inter-state bodies to which one or more ACP States belong and which are authorized by the said States;

(c) joint bodies set up by the Community and the ACP States and authorized by those States to attain certain specific objectives, notably in the spheres of agricultural, industrial and trade co-operation.

2. The following shall also be eligible for financial and technical co-operation, subject to the agreement of the ACP State or States concerned, in respect of projects and programmes approved by the latter:

(a) public or semi-public agencies of the ACP States, and in particular their national or regional financial institutions and development banks;

(b) local communities and private bodies working in the countries concerned for their economic, social and cultural development;

(c) enterprises carrying out their activities in accordance with industrial and business management methods and formed as companies or firms of an ACP State within the meaning of Article 253;

(d) groups of producers that are nationals of the ACP States;

(e) award holders and trainees.

## **Section 3. Responsibilities of the ACP States and the Community**

### **Article 192.**

1. Operations financed by the Community shall be implemented by the ACP States and the Community in close co-operation, the concept of equality between the partners being recognized.

2. The ACP States shall be responsible for:

(a) defining the objectives and priorities on which the indicative programmes shall be based;

(b) choosing the projects and programmes which they decide to put forward for Community financing;

(c) preparing and presenting to the Community the dossiers of projects and programmes;

(d) preparing, negotiating and concluding contracts;

(e) implementing projects and programmes financed by the Community;

(f) managing and maintaining operations carried out in the context of financial and technical co-operation.

3. The ACP States and the Community shall bear joint responsibility for:

(a) establishing within the joint institutions, the general guidelines for financial and technical co-operation;

(b) adopting the indicative programmes of Community aid;

(c) appraising projects and programmes, and examining the extent to which they fit the objectives and priorities and comply with the provisions of this Convention;

(d) taking the necessary implementing measures to ensure equality of conditions for participation in invitations to tender and contracts;

(e) evaluating the effects and results of projects and programmes completed or underway;

(f) ensuring that the projects and programmes financed by the Community are executed in accordance with the arrangements decided upon and with the provisions of this Convention.

4. The Community shall be responsible for taking financing decisions on projects and programmes.

### **Article 193.**

1. The Council of Ministers shall examine at least once a year whether the objectives of financial and technical co-operation are being attained and shall examine the general and specific problems resulting from the implementation of that co-operation. This examination shall also cover regional co-operation and measures in favour of least-developed, landlocked



and island ACP States.

2. To this end, an ACP-EEC Committee shall be set up within the Council of Ministers to:

- (a) collect information on existing procedures relating to the implementation of financial and technical co-operation and give any necessary clarification on these procedures;
- (b) examine, at the request of the Community or the ACP States and on the basis of concrete examples, any general or specific problems arising from the implementation of such financial and technical co-operation;
- (c) examine any problems in connection with the implementation of the timetables of commitments, execution and payments as provided for in Articles 216(2) and 220(2), with a view to facilitating the removal of any difficulties and bottlenecks discovered at different levels;
- (d) ensure that the objectives and principles of financial and technical co-operation are attained;
- (e) help establish general guidelines for financial and technical co-operation in accordance with the provisions of this Convention;
- (f) prepare and submit to the Council of Ministers results of evaluation of projects and programmes;
- (g) submit to the Council of Ministers any suggestions likely to improve or expedite the implementation of financial and technical co-operation;
- (h) follow up and implement guidelines and resolutions adopted by the Council of Ministers on financial and technical co-operation;
- (i) perform other tasks entrusted to it by the Council of Ministers.

3. The ACP-EEC Committee, which shall meet every quarter, shall be composed, on a basis of parity, of representatives of the ACP States and of the Community appointed by the Council of Ministers, or their authorized representatives. It shall meet at ministerial level each time one of the parties so requests and at least once a year. A representative of the Bank shall be present at committee meetings.

4. The Council of Ministers shall lay down the ACP-EEC Committee's rules of procedure, in particular the conditions for representation and the number of members of the Committee, the detailed arrangements for their deliberations and the conditions for holding the chair.

5. With the agreement of the Committee of Ambassadors, the ACP-EEC Committee may convene meetings of experts to study the causes of any difficulties and bottlenecks which may arise in implementing financial and technical co-operation. These experts shall suggest to the Committee possible ways of removing such difficulties and bottlenecks.

6. Any specific problem arising in the implementation of financial and technical co-operation may be submitted to the ACP-EEC Committee, which shall examine it within sixty days with a view to providing an appropriate solution.

7. To facilitate the work of the ACP-EEC Committee, ACP States and their beneficiary regional organizations, together with the Commission and in collaboration with the Bank, shall submit to the Committee an annual report on the management of Community financial and technical aid.

The report shall in particular show the position as to the commitment, implementation and use of aid, broken down by type of financing, the results of work done to evaluate projects and programmes and specific examples of implementation problems.

8. The ACP-EEC Committee shall examine the annual reports on the management of Community financial and technical aid, which shall be submitted to it by the Commission and the ACP States pursuant to paragraph 7. It shall draw up, for the attention of the Council of Ministers, recommendations and resolutions relating to measures directed towards attainment of the objectives of financial and technical co-operation, within the framework of the powers conferred upon it by that Council. It shall draw up an annual progress report, which shall be examined by the Council of Ministers at its annual meeting on the definition of the general guidelines for financial and technical co-operation.

9. On the basis of the information referred to in paragraphs 7 and 8, the Council of Ministers shall establish the general guidelines for financial and technical co-operation and shall adopt resolutions or guidelines on the measures to be taken by the Community and the ACP States in order to ensure that the objectives of such co-operation are attained.

10. Where the financing of projects within the Bank's sphere of competence is concerned, the arrangements and

procedures for implementing financial and technical co-operation, as set out in Chapters 3 and 4, may, in consultation with the ACP States concerned, be adapted to take account of the nature of the projects financed by the Bank and to permit it, within the framework of the procedures laid down by its Statute, to act in accordance with the objectives of this Convention.

## **Chapter 2. Financial Co-operation**

### **Section 1. Financial Resources**

#### **Article 194.**

For the duration of this Convention, the overall amount of the Community's financial assistance shall be 8500 million ECU.

This amount shall comprise:

(1) 7400 million ECU from the Fund, allocated as follows:

(a) for the purposes set out in Articles 185, 186 and 187, 6 060 million ECU consisting of:

- 4860 million ECU in the form of grants;
- 600 million ECU in the form of special loans;
- 600 million ECU in the form of risk capital;

(b) for the purposes set out in Articles 147 to 174, 925 million ECU in the form of transfers for the stabilization of export earnings;

(c) for the purposes set out in Articles 176 to 184, a special financing facility of 415 million ECU under the Sysmin scheme;

(2) for the purposes set out in Articles 185, 186 and 187, up to 1 000 million ECU from the Bank in the form of loans made from its own resources in accordance with the terms and conditions provided for in its Statute. These loans shall be combined, under the conditions laid down in Article 196, with an interest rate subsidy charged to the Fund.

#### **Article 195.**

1. Should an ACP State fail to ratify, or denounce, this Convention, the Contracting Parties shall adjust the amounts of the resources provided for therein.

2. Such adjustments shall also apply upon

- (a) the accession to this Convention of new ACP States which did not take part in its negotiation;
- (b) the enlargement of the Community.

### **Section 2. Terms and Conditions of Loans**

#### **Article 196.**

1. In order to permit effective support for ACP States' development programmes, the Contracting Parties agree that all loans extended to ACP States shall be provided on concessional terms.

2. Special loans from the Fund shall be granted under the following terms and conditions:

- (a) a maturity period of 40 years, including
- (b) a mandatory grace period of 10 years;
- (c) such loans shall bear interest at the rate of 1% per annum, save as regards the least-developed ACP States, for which this rate shall be reduced to 0,50%.

3. Loans from the Bank shall be granted under the following terms:

- (a) the rate of interest shall be the rate charged by the Bank at the time of signing of each loan contract;
- (b) except where loans are intended for investment in the oil sector, this rate shall be reduced by means of a 3% interest

rate subsidy, which shall be automatically adjusted so that the interest rate actually borne by the borrower will be neither less than 5% nor more than 8%;

(c) the aggregate amount of interest rate subsidies calculated in terms of its value at the time of the signing of the loan contract shall be charged against the amount of grants provided by the Fund and shall be paid direct to the Bank;

(d) the duration of loans made by the Bank from its own resources shall be governed by terms stipulated on the basis of the economic and financial characteristics of the project, but may not exceed 25 years. These loans shall normally comprise a grace period fixed by reference to the construction period and the funds needed for the project.

## **Section 3. Methods of Financing**

### **Article 197.**

1. Projects or programmes may be financed by grant, or by special loan, or by risk capital, or by loans from the Bank from its own resources, or jointly by two or more of these means of financing.

2. For resources of the Fund administered by the Commission, the methods of financing for each project or programme shall be decided jointly by the Community and the ACP State or States concerned by reference to the level of development and the geographical, economic and financial situation of these States. Account shall also be taken of the economic, social and cultural impact of the methods of financing.

3. For resources of the Fund administered by the Bank, the methods of financing shall be fixed in close consultation with the ACP State concerned or the beneficiary on the basis of the economic and financial characteristics of the project or programme in question and the stage of development and economic and financial situation of the ACP State or States concerned.

4. For the Bank's own resources, the methods of financing shall be decided by reference to the nature of the project, the prospects for its economic and financial return and the stage of development and economic and financial situation of the ACP State or States concerned. Account shall be taken in addition of factors guaranteeing the servicing of repayable aid. Examination by the Bank of the admissibility of projects and the granting of loans from its own resources shall be carried out in consultation with the ACP State or States concerned in accordance with the detailed rules, conditions and procedures laid down in its Statute and in this Convention.

5. The Bank's task in the ACP States shall be to contribute, through its own resources, to the economic and industrial development of the ACP States on a national and regional scale. To this end, the financing of productive projects and programmes in industry, agro-industry, tourism and mining, and in energy production, transport and telecommunications linked to these sectors shall be undertaken in the first place by the Bank with loans from its own resources or risk capital. These sectoral priorities shall not exclude the possibility of the Bank's financing, from its own resources, productive projects and programmes in other sectors which satisfy its criteria for making contributions, in particular in the area of commercial agriculture.

6. Where a request for the financing of a project or programme is submitted to the Commission or to the Bank, and it is found that such project or programme could not be financed by one of the forms of aid administered by the institution, the latter shall, having informed the potential recipient, transmit the request without delay to the other institution.

7. Grants or loans may be accorded to an ACP State, or direct to the recipient, or via a development bank, or may be channelled by the ACP State to a final recipient.

8. In the last-mentioned case, the terms on which the money may be made available by the ACP State to the final recipient shall be laid down in the financing agreement or loan contract.

9. In the course of its financial operations, the Bank shall establish close links with the national development banks of the ACP States. In the interests of co-operation, it shall endeavour to make all appropriate contacts with banking and financial institutions in the ACP countries concerned by its operations.

10. Any profit accruing to the ACP State because it receives either a grant or a special loan for which the interest rate or the repayment period is more favourable than that of the final loan shall be used by the ACP State for development purposes on the conditions laid down in the financing agreement or loan contract.

11. Special treatment shall be accorded to the least-developed ACP States when determining the volume of the financial resources which such States may expect from the Community for the purpose of their indicative programmes. In addition, account shall be taken of the particular difficulties of the land-locked or island ACP States. These financial resources shall be

combined with particularly favourable terms of financing, having regard to the economic situation and the nature of the needs specific to each State. They shall consist essentially of grants, and, in appropriate cases, of special loans, or risk capital or loans from the Bank, having regard to the criteria laid down in paragraph 4.

## **Article 198.**

At the request of the ACP States, the Community shall lend technical assistance in studying and finding practical solutions to their indebtedness, debt-servicing and balance-of-payments problems.

## **Section 4. Risk Capital**

### **Article 199.**

1. With a view to aiding the implementation of operations of general interest to the economy of the ACP States, the Community may contribute to the formation of risk capital which may be used inter alia for:

(a) increasing directly or indirectly the own resources, or resources treated as such, of public, semi-public or private enterprises and granting quasi-capital assistance to such enterprises;

(b) financing specific studies for the preparation and the drawing up of projects and providing assistance to enterprises during the start-up period or for rehabilitation purposes;

(c) financing research and investment in preparation for the launching of projects and programmes in the mining and energy sectors.

2. (a) To attain these objectives, risk capital may be used to acquire temporary minority holdings on behalf of the Community in the capital of the enterprises concerned or in that of institutions specialized in the financing of development in the ACP States. Such holdings may be acquired in conjunction with a loan from the Bank or with another form of risk-capital assistance. Once the conditions are met, the holdings shall be transferred, preferably to nationals or institutions of the ACP States.

(b) Financing decisions relating to risk capital shall be taken by the Community within the framework of Article 220(5) to (8).

3. Quasi-capital assistance may take the form of:

(a) subordinated loans, which shall be redeemed and in respect of which interest, if any, shall be paid only after other bank claims have been settled;

(b) conditional loans, the repayment or duration of which shall be governed by terms laid down when the loan is made. Conditional loans may be made directly, with the agreement of the ACP State concerned, to a given firm. They may also be granted to an ACP State or to financial institutions in the ACP States to enable them to acquire a holding in the capital of enterprises operating in the sectors referred to in Article 197(5), where such an operation comes under the financing of preparatory or new productive capital projects and may be supplemented by other Community financing, possibly together with other sources of financing, as a co-financing operation. Such loans may also be granted, case by case, at the request of the ACP State, subject to the same conditions and by derogation from Article 191, to an enterprise of a Community Member State to enable it to undertake a productive capital project in the territory of that ACP State;

(c) loans made to financial institutions in the ACP States, where the characteristics of their activities and management so permit. Such loans may be used for onlending to other firms and acquiring holdings in other enterprises.

4. The terms of quasi-capital assistance referred to in paragraph 3 shall be determined by reference to the characteristics of each project financed. However, the terms on which quasi-capital assistance is granted shall generally be more favourable than those for subsidized loans from the Bank. The interest rate shall not be greater than that on subsidized loans.

5. Where the assistance referred to in this Article is granted to consultancy firms or is used to finance research or investment in preparation for the launching of a project, it may be incorporated in any capital assistance to which the promoting company may be entitled if the project is carried out.

6. The projects and programmes identified and promoted by the joint bodies set up by the Community and the ACP States and authorized by those States to attain certain specific objectives within the framework of Article 191(1)(c) may also be entitled to the quasi-capital assistance referred to in paragraph 3 of this Article.

## **Section 5. Co-financing**

### **Article 200.**

1. The financial resources of the Community may be applied, at the request of the ACP States, to co-financing, particularly where they will facilitate an increase in the financial flows to the ACP States and support their efforts to harmonize international co-operation for their development. Special consideration shall be given to the possibility of co-financing in the following cases, among others:

- (a) large-scale projects which cannot be financed by any one source of financing alone;
- (b) projects in which Community participation, and an input of its project expertise, might facilitate the participation of other additional sources of finance;
- (c) projects which may benefit from a blend of concessionary and non-concessionary financing;
- (d) projects which may be broken down into subprojects which could be eligible for financing from different sources; (e) projects for which a diversification of financing may lead to an advantageous solution from the point of view of the financing and investment costs and of other aspects of the implementation of the said projects;
- (f) projects of a regional or inter-regional nature.

2. Co-financing may be in the form of joint or parallel financing.

Preference shall be given to the more suitable solution from the point of view of cost-effectiveness.

3. Whenever possible, the Commission and the Bank shall try to involve private sector resources in projects financed by them, and in particular:

- (a) to seek out and negotiate with commercial partners for joint financial operations;
- (b) to apply the various techniques developed in recent years to attract private-sector resources into co-financing operations,

4. With the agreement of the parties concerned, necessary measures shall be taken to co-ordinate and harmonize operations of the Community and of the other co-financing bodies, in order to avoid an increase in the number of procedures to be undertaken by the ACP States and to allow those procedures to be made more flexible, notably as regards:

- (a) the needs of other co-financing bodies and recipients;
- (b) the choice of projects to be co-financed and the arrangements for carrying them out;
- (c) the harmonization of works, supply and services contracts rules and procedures;
- (d) the payment terms;
- (e) the rules of eligibility and competition;
- (f) the margin of preference granted to ACP enterprises.

5. With the agreement of the ACP State concerned, the Community may provide the other co-financing bodies with administrative help, should they so desire, in order to facilitate the implementation of projects or programmes being co-financed.

6. At the request of the ACP State in question and with the agreement of the other parties concerned, the Commission or the Bank may act as a lead or co-ordinating agency for projects part-financed by them.

## **Section 6. Microprojects**

### **Article 201.**

1. In order to make a practical response to the needs of local communities with regard to development, the Fund shall participate in the financing of microprojects at the ACP States' request.

2. Programmes for microprojects shall cover small projects within the framework of Article 187 and other projects which

meet the criteria referred to in paragraph 3 and have an economic and social impact on the life of the people and the local communities in the ACP States. These projects shall normally be located in rural areas. However, the Community may also assist in the financing of microprojects in urban areas.

3. In order to be eligible for Community financing, microprojects must:

- meet a priority need demonstrated and observed at local level;
- be undertaken with the active participation of the local community.

4. Special priority shall be accorded to the preparation and implementation of microprojects in the least-developed ACP States.

## **Article 202.**

1. Each project for which Community assistance is requested must stem from an initiative taken by the local community which will benefit therefrom. Contributions to microprojects shall normally come from:

- the community concerned, to be provided in kind, in the form of supply of services or in cash and matched to its capacity to contribute;
- the Fund.

The ACP State concerned may also contribute, either in the form of a financial contribution, or through the use of public equipment or the supply of services.

2. The share contributed by the Fund shall not normally exceed two-thirds of the total cost of each project and may not exceed 250 000 ECU. The contributions shall be mobilized at the same time. For each project, the local community shall undertake to maintain and run the project, where appropriate, in conjunction with the national authorities.

3. The amounts representing the Fund's contribution shall be charged against the grant allocation under the indicative programme of Community aid referred to in Article 215.

## **Section 7. Emergency Aid and Aid for Refugees and Returnees**

### **Article 203.**

1. Emergency aid shall be accorded to ACP States faced with serious economic and social difficulties of an exceptional nature resulting from natural disasters or extraordinary circumstances having comparable effects.

2. (a) Emergency aid shall cover assistance urgently necessary immediately an exceptional situation arises. This could take the form of works, supplies, the provision of services and payments in cash. It may be used to procure food, seeds, shelter, materials, medical supplies, clothing and transport. As regards other specific requests from the ACP States, the conditions of implementation of such aid shall be sufficiently flexible to enable the range of products and services to be widened.

(b) Emergency aid may also cover the financing of immediate measures to make damaged structures and equipment operational again and to ensure minimum viability.

(c) Emergency aid may also be integrated into national indicative programmes in order to prepare, by financing the immediate measures mentioned under (b), the execution of reconstruction or rehabilitation operations in the framework of these programmes.

3. Emergency aid shall:

- (a) help finance the most suitable means of remedying the serious difficulties encountered;
- (b) be non-reimbursable;
- (c) be granted and made available quickly and easily;
- (d) make a real contribution to solving the problems concerned.

4. For all operations relating to emergency aid, the ACP States may, in agreement with the Commission delegate, and in accordance with Article 234, authorize the placing of contracts after restricted invitations to tender, the conclusion of contracts by direct agreement and the performance of contracts by direct labour.

They may obtain their supplies from the markets of the Community, ACP States or third countries under the conditions laid down in Article 232.

5. Where appropriate, such aid may, with the agreement of the ACP State concerned, be implemented via specialized agencies or directly by the Commission.

6. The detailed rules for the allocation of such aid shall be the subject of an emergency procedure. The conditions governing the payment and implementation of such aid shall be determined, case by case; advances may be granted by the National Authorizing Officer where implementation is based on an estimate.

7. The Community shall take adequate steps to facilitate the speedy action which is required to meet the urgent needs for which emergency aid is intended, including such measures as the retroactive financing of immediate relief measures undertaken by the ACP States themselves.

8. (a) Funds provided under emergency aid must be committed within six months of the implementing arrangements being established, unless otherwise stipulated by those arrangements and provided that it is not agreed by common accord during the implementation period to extend that time-limit owing to extraordinary circumstances;

(b) where the funds made available have not all been committed within the time-limit set, they may be reduced to an amount corresponding to the funds committed within that time-limit;

(c) the unexpended portion shall then be paid back into the special appropriation.

## **Article 204.**

1. Aid may be granted to ACP States taking in refugees or returnees to meet acute needs not covered by emergency aid, to implement in the longer term projects and action programmes aimed at self-sufficiency and the integration or reintegration of such people.

2. It shall be administered and implemented under procedures permitting rapid action. Conditions for payment and implementation shall be laid down case by case.

3. Such aid may be implemented, if the ACP State concerned so agrees, through the intermediary of and in conjunction with specialized organizations, in particular the United Nations, or by the Commission direct.

## **Article 205.**

1. For the financing of the aid referred to in Article 203 and Article 204, a special appropriation of 290 million ECU shall be constituted within the Fund, of which 210 million ECU shall be for the aid referred to in Article 203 and 80 million ECU for the aid referred to in Article 204.

2. Should the appropriations provided for under one of the aforementioned Articles be used up before this Convention expires, transfers may be made from the appropriations provided for in the other Article.

3. On the expiry of this Convention, appropriations not committed for emergency aid or aid for refugees and returnees shall be paid back to the assets of the Fund for the purpose of financing other operations coming within the scope of financial and technical co-operation, save as otherwise decided by the Council of Ministers.

4. Should the special appropriations be used up before this Convention expires, the ACP States and the Community, within the relevant joint institutions, shall adopt appropriate measures to deal with the situations referred to in Articles 203 and 204.

## **Section 8. Small and Medium-sized Enterprises**

### **Article 206.**

1. The Community shall finance schemes in favour of small and medium-sized enterprises in the ACP States. The methods of financing shall be determined by reference to the nature of the programme presented by those States.

2. Technical co-operation from the Community shall help to reinforce the activities of bodies in the ACP States working for the development of small and medium-sized enterprises and to provide the necessary vocational training for such enterprises.

3. The Community's financing may take the form of direct aid or overall allocations in the form of loans or possibly grants. The overall aid may be accorded:

- by the Bank, from the resources administered by it, to banks or financial institutions for onlending to small and medium-sized industrial, agribusiness or tourist enterprises;
- by the Commission, from the resources administered by it, to public bodies, local authorities or co-operatives with a view to developing the artisanal, commercial and agricultural sectors, and to creating or strengthening guarantee funds for credit to small and medium-sized enterprises.

4. Where the financing is undertaken via an onlending body, it shall be that body's responsibility to present individual projects within the programme already approved and to administer the funds placed at its disposal. The methods, terms and conditions for the financing accorded to the final recipient shall be determined by agreement between the ACP State concerned, the relevant Community authority and the onlending body.

5. The projects shall be appraised by the financing body. This body shall decide, within the limits of its own financial responsibility, on final loans to be accorded and on terms established by reference to those obtaining for this type of operation in the ACP State in question.

6. The financing terms accorded by the Community to the financing body shall take into consideration the latter's need to cover its administrative costs, exchange and financial risks and the cost of technical assistance given to the enterprises or final borrower.

## **Chapter 3. Technical Co-operation**

### **Article 207.**

1. The purpose of technical co-operation shall be to provide enhanced support for the development of human resources in the ACP States.

2. Where such co-operation involves the provision of external supplementary human resources, then as a basic principle:

(a) such support through the provision of technical assistance personnel (consultancy firms, consulting engineers or experts, training or research institutions) shall be made available only at the request of the ACP State or States concerned;

(b) however, arrangements shall be made to train local personnel so as to phase out technical assistance and to staff projects entirely with ACP nationals on a permanent basis;

(c) the co-operation shall include arrangements to enhance the capacity of the ACP States to build up their own expertise and improve the technical skills of their own consultants, consulting firms and experts. In furtherance of this, effective training of local personnel shall be part of the assignment of technical assistance personnel;

(d) the experts provided under this co-operation shall be qualified for the specific tasks as defined in the ACP request.

3. The service contracts under which technical assistance personnel is to be recruited shall include those covering the recruitment of consultants and other technical specialists; they shall be negotiated, drawn up and concluded by the ACP State concerned subject to the agreement of the Commission delegate.

4. The Community shall take practical measures to increase and improve the information placed at the disposal of ACP States concerning the availability and qualifications of relevant specialists.

### **Article 208.**

1. Technical co-operation may be either linked with operations or of a general nature.

2. Technical co-operation linked with operations shall comprise inter alia:

(a) development studies;

(b) technical, economic, financial and commercial studies, and research and surveys required to prepare projects or programmes;

(c) help with the preparation of dossiers;



- (d) help with the execution and supervision of works;
- (e) temporarily meeting the cost of technicians and providing the resources needed for them to accomplish their assignments;
- (f) technical co-operation measures which may be required temporarily to permit the establishment, launching, operation and maintenance of a specific project;
- (g) aid for the evaluation of operations;
- (h) integrated training, information and research programmes.

3. General technical co-operation shall comprise inter alia:

- (a) studies of the prospects and resources for economic development and diversification in the ACP States, and of problems of interest to groups of ACP States or to the ACP States as a whole;
- (b) sectoral or product studies;
- (c) the provision of experts, advisers, technicians and instructors for specific assignments and for limited periods;
- (d) the supply of instructional, experimentation, research and demonstration equipment;
- (e) general information and documentation to promote the development of the ACP States and the achievement of the aims of co-operation;
- (f) exchanges of executive and specialized staff, students, research workers, motivators and heads of social or cultural groups or associations;
- (g) the granting of study or training awards, particularly to persons already in employment and requiring further training;
- (h) the organization of seminars or sessions for training, information and further training;
- (i) the setting-up or strengthening of information and documentation instruments, particularly for exchanges of know-how, methods and experience between ACP States and between them and the Community;
- (j) co-operation between or twinning of ACP institutions or Community and ACP States' institutions, particularly universities and other ACP and EEC training and research establishments;
- (k) support for particularly representative cultural events.

## **Article 209.**

1. Technical co-operation shall be provided under service contracts concluded with individual experts, or consultancy firms, training and research institutions, or exceptionally, by direct labour.

The choice of whether to use the services of consultancy firms or of experts recruited individually shall take account of the nature of the problems and the scale and complexity of the technical means and management resources required, as well as the comparative cost of each of the two solutions.

2. The criteria to be observed in the choice of technical co-operation contractors and their staff shall refer to:

- (a) professional skills (technical and training ability) and human qualities;
- (b) respect for the cultural values and the political and administrative circumstances of the ACP State or States concerned;
- (c) knowledge of the language necessary for the execution of the contract;
- (d) practical experience of problems of the type to be dealt with;
- (e) cost.

3. Given equal competence, preference shall be given to ACP States' experts, institutions or consultancy firms.

4. The recruitment of technical co-operation staff, the determination of their aims and functions and duration of their missions, their remuneration and the ways in which they contribute to the development of the ACP States to which they are sent, must conform to the principles for technical co-operation policy laid down in Article 207. The procedures to be applied

in this context must ensure objectivity in terms of the choice and quality of the services provided. The following additional principles shall also apply:

(a) recruitment shall be carried out by the national institutions that will use the technical assistance, with the help of the Commission and its delegate;

(b) due account shall be taken of the availability of suitable candidates, according to the criteria established in paragraph 2, residing in the ACP State itself or in the region;

(c) efforts shall be made to facilitate direct contact between a candidate and the future user of the technical assistance.

## **Article 210.**

1. Service contracts shall be awarded on the basis of restricted invitations to tender.

2. Certain contracts, however, may be awarded by direct agreement, notably in the following cases:

- small-scale or short-term operations;
- operations assigned to individual experts;
- operations continuing others already in hand;
- following an unsuccessful invitation to tender.

3. (a) Where an ACP State has, within its administrative and technical staff, nationals making up a substantial part of the work force necessary for the performance by direct labour of a technical co-operation project, the Community shall contribute exceptionally to the costs of the department involved by providing equipment that it lacks, or supply the required additional staff in the form of experts from another state.

(b) The participation of the Community shall cover only costs incurred by supplementary measures and temporary expenditure relating to execution strictly confined to the requirements of the project in question and shall exclude all operating expenditure of a permanent nature.

4. The manner in which the contract is to be awarded or the services undertaken shall be decided by agreement between the Commission and the ACP State concerned on the basis of the ACP State's needs and available resources.

## **Article 211.**

1. (a) For each technical co-operation scheme for which an invitation to tender has been issued, a shortlist of candidates from the Member States or the ACP States shall be drawn up, within two months of the date of the request, by agreement between the Commission and the ACP State concerned, where appropriate following prequalification; candidates shall be chosen by reference to their legal and financial situation, qualifications, experience, independence, availability and the criteria and principles set out in Article 209.

(b) Depending on requirements, the invitation to tender may cover:

- the design of the co-operation scheme and the services or staff resources to be deployed, the financial information being submitted at the same time but separately and the prices to be paid being negotiated at a later stage;
- prices, where in special, well-founded cases, the co-operation scheme is of a less complex nature.

(c) The invitation to tender dossier, drawn up by the ACP State in agreement with the Commission, shall contain details of the way in which tenders are to be presented and the criteria for selection of the successful tenderer, who must be chosen within thirty days of the date on which tenders are examined.

(d) Without prejudice to the respective powers of the National Authorizing Officer and the delegate referred to in Articles 227 and 228, the relevant authorities of the ACP States shall award the contract subject to the agreement of the Commission. The tender selected for each operation must be the most advantageous one, account being taken notably of its technical qualities, the organization of and methods proposed for the services rendered, the competence, experience and aptitude of the staff employed for the operation and, in the case referred to in the second indent of subparagraph (b), the cost of the services.

2. Where the procedure by direct agreement is applied, the successful candidate shall be chosen by the ACP State on the

basis of a Commission proposal. A candidate may also be proposed by the ACP State.

The ACP State shall be notified of the Commission's proposal within one month of making its request. The ACP State shall take its decision during the month following that notification.

3. In order to speed up the procedures, service contracts, including those covering the recruitment of consultants and other technical assistance specialists, may be negotiated, drawn up and concluded either by the National Authorizing Officer, on a proposal from the Commission or with its agreement, or by the Commission on behalf of the ACP State concerned and with its agreement, notably where urgent, small-scale or short-term operations are involved and in particular for experts' services in the preparation and execution of operations.

4. At the request of the ACP State concerned, the Commission may recruit and deal with the administrative formalities for individual technical assistance through its relevant agency.

5. The firms in the ACP States, which may be taken into consideration for technical co-operation operations, shall be selected by agreement between the Commission and the ACP State or States concerned.

6. In exceptional cases and in agreement with the Commission, recourse may be had to consultancy firms or experts that are nationals of third countries.

## **Article 212.**

1. Service contracts shall be negotiated, drafted and concluded by the relevant authorities of the ACP States, in agreement with the Commission delegate, on the basis of general conditions applicable to the award and performance of contracts which shall be adopted by decision of the Council of Ministers, at its first meeting following the entry into force of this Convention, after consultation of the ACP-EEC Committee referred to in Article 193.

2. Until the entry into force of the decision provided for in paragraph 1, the award and performance of service contracts financed by the Fund shall be governed by the national legislation of the ACP States or their established practices regarding international contracts or, if the ACP States so wish, by the general clauses currently used in the contracts financed by the Fund.

## **Article 213.**

In order to enhance the ACP States' capacity to build up their technical skills and improve the know-how of their consultants, co-operation between consultancy firms, consulting engineers, experts and institutions of the Member States and those of the ACP States shall be encouraged by means of temporary associations, subcontracting or the use of experts who are nationals of the ACP States in teams employed by consultancy firms, consulting engineers or institutions in the Member States of the Community.

## **Article 214.**

Technical co-operation shall provide support for educational and training operations in accordance with Article 119.

# **Chapter 4. Implementation Procedures**

## **Section 1. Programming, Appraisal, Implementation and Evaluation**

### **Article 215.**

1. The operations financed by the Community, which are complementary to the efforts of the ACP States, shall be integrated into the economic and social development plans and programmes of the said States and shall tie in with the objectives and priorities which they set at both the national and regional level.

2. At the beginning of the period covered by this Convention and before the indicative programme is drawn up, each ACP State shall obtain from the Commission at the earliest possible time a clear indication of the programmable financial allocation from which it may benefit during that period and shall be provided with any other relevant information.

3. Upon receipt of the information indicated in paragraph 2, each ACP State shall draw up and submit to the Community a draft indicative programme, on the basis of, and consistent with, its development objectives and priorities, containing:

- the priority development objectives at national and regional level of the ACP State concerned;
- the focal sector or sectors for which Community financial support is considered the most appropriate;
- the most appropriate measures and operations for attainment of the objectives in each of the sectors referred to in the second indent or, where such operations are not sufficiently well-defined, the broad outlines of the programmes to support the country's adopted policies in such sectors;
- specific national projects and programmes designed to achieve the development objectives may also be included where they have been clearly identified, especially those which constitute a follow-up to operations already undertaken;
- any proposals for regional projects and programmes.

4. Programming on the basis of the draft indicative programme referred to in paragraph 3 shall take place and ideally be completed before the entry into force of this Convention.

5. The draft indicative programme referred to above shall be the subject of exchanges of views between the representatives of the ACP State concerned and those of the Community in order to ensure the maximum effectiveness of co-operation schemes.

In order to enable the two parties to ensure that optimum use is made of the different instruments and resources provided under this Convention, the Community and the ACP States shall carry out, in the light of their common experience, exchanges of views, as soon as possible at a moment agreed between the Commission and the ACP States.

These exchanges of views shall be aimed at enabling the Community to gain knowledge of the development objectives and priorities of the ACP State concerned, both parties to identify, on the basis of this State's proposals, the sector or sectors on which Community's support will be brought to bear and also the resources to be deployed to attain the objectives sought, and the ACP States to ensure that the operations thus agreed on are inserted harmoniously and effectively in their development strategies.

6. The indicative programme shall be adopted by agreement between the Community and the ACP State concerned on the basis of proposals made by that State and shall be binding on both the Community and that State.

7. The operations, projects and programmes referred to in paragraph 3, together with those subsequently identified in the light of the objectives and priorities written into the indicative programme, shall then be appraised in accordance with Article 219.

8. The indicative programmes shall be sufficiently flexible to ensure that operations are kept constantly in line with the objectives and to take account of any changes occurring in the economic situation of each ACP State and of any modification of its initial priorities and objectives. Each programme may be revised at the request of the ACP State in question. In any case, it shall be reviewed at least once during the period covered by this Convention.

## **Article 216.**

1. The indicative programme shall establish the overall amounts of programmable assistance which may be placed at the disposal of each ACP State. Save for funds reserved for emergency aid, interest rate subsidies and regional co-operation, programmable assistance shall comprise on the one hand grants, and on the other hand loans including special loans and, where possible, risk capital.

2. Each ACP State and the Community shall agree on a timetable of commitments at the time of programming, and shall take the necessary steps to ensure the implementation of that timetable.

3. Any balance remaining from the Fund that has not been committed or disbursed by the end of the last year of the application of this Convention shall be utilized until it has been exhausted, in accordance with the same conditions as those laid down in this Convention.

4. A comparative account of commitments and payments shall be drawn up each year by the National Authorizing Officer and the Commission delegate, who shall take the necessary steps to ensure that the timetables referred to in paragraph 2 are adhered to and determine the causes of delays recorded in their execution so that the necessary remedial measures can be proposed.

## **Article 217.**

Unless otherwise provided in this Convention, all decisions requiring the approval of the Community or its relevant departments shall be deemed approved within sixty days of the notification being communicated by the ACP States concerned.

## **Article 218.**

1. (a) The identification of the projects or programmes proposed under the indicative programmes and the preparation of the relevant dossiers shall be the responsibility of the ACP States or of other beneficiaries approved by them.
- (b) The dossiers must contain all the information necessary for the appraisal of the projects or programmes.
- (c) Where so requested, the Community may provide assistance for drawing up the dossiers.
2. Such dossiers shall be officially transmitted to the delegate for the action required under his powers by the ACP States or the other beneficiaries specified in Article 191(1), Where the beneficiaries are those specified in Article 191(2), the express agreement of the State or States concerned shall be required.

## **Article 219.**

1. In the framework of financial and technical co-operation, project identification, preparation and appraisal shall:
  - (a) enable the effectiveness and viability of the operations requested, and the return thereon, to be assessed;
  - (b) take account of cultural and social aspects, both direct and indirect, according to the criteria referred to in Article 117;
  - (c) adapt financial criteria to take fully into account the longer- term social rate of return, including related secondary effects in ACP States;
  - (d) be adapted to the local conditions relating to the maintenance and operational capacities of the ACP States;
  - (e) take national efforts into consideration as well as other resources;
  - (f) take account of experience gained with operations of the same kind;
  - (g) be in conformity with the objectives and priorities established by the ACP States.
2. The effectiveness of projects and programmes shall be assessed by means of an analysis comparing the means to be employed with the effects expected from the technical, social, cultural, economic, financial and environmental viewpoints; possible variants shall be examined.
3. Projects and programmes shall be assessed for their viability from the viewpoint of the different economic agents involved in order to ascertain whether the operation will produce the expected effects in a period considered normal for the type of operation concerned.
4. The return on projects and programmes shall be appraised on the basis of the various effects expected, notably the physical, economic, social, cultural and financial effects, if possible on the basis of a cost-benefit analysis.
5. Project and programme appraisal shall be undertaken in close collaboration between the Community and the ACP States.
6. The specific difficulties and constraints of the least-developed ACP States which affect the effectiveness, viability and economic return of projects and programmes shall be taken into account when the said projects and programmes are appraised.

## **Article 220.**

1. The conclusions of the appraisal shall be summarized in a financing proposal.
2. The financing proposal shall contain an advance timetable for the technical and financial implementation of the project or programme, which shall be reproduced in the financing agreement and deal with the duration of the different phases of implementation.
3. The financing proposal drawn up by the relevant departments of the Community shall be forwarded officially to the ACP States concerned, which may, if appropriate, submit comments.

4. The Community's decision shall be taken on the basis of the financing proposal, which may be amended to take account of such comments.
5. Where the financing proposal is not adopted by the Community, the ACP State or States concerned shall be informed of the reasons for that decision.
6. If this situation arises, the representatives of the ACP State or States concerned may request either:
  - that the matter be referred to the Article 193 Committee, or
  - that they be given a hearing by the Community's decision-making bodies.
7. Following such a hearing, a definitive decision to adopt or reject shall be taken by the relevant Community body, to which the ACP State or States concerned may forward any facts which may appear necessary to supplement the information available to it before the decision is taken.
8. The Community shall take the decision on the financing proposal as soon as possible and, save in exceptional circumstances, within no more than four months of the date on which the financing proposal was forwarded to the ACP State concerned.

## **Article 221.**

1. With a view to expediting the procedures, financing decisions may deal with multiannual programmes or overall amounts where the financing concerns:
  - (a) training programmes;
  - (b) microproject programmes;
  - (c) trade promotion schemes;
  - (d) sets of operations of a limited scale in a specific sector;
  - (e) sets of technical co-operation schemes.
2. For the purpose of implementing paragraph 1 (a), (b), (c) and (d), the ACP States concerned shall prepare and submit to the Commission delegate a programme setting out the broad outlines of the schemes planned.
3. The financing decision concerning the operations referred to in paragraph 1 shall be taken by the Commission within the limits of the overall amounts referred to in the said paragraph.
4. Within the framework of the programmes thus adopted, the decision relating to each scheme under paragraph 1(a), (b), (c) or (d) shall be taken by the ACP State concerned, with the agreement of the Commission delegate, in respect of those operations to be executed within the ACP State and in other cases by the Commission. Such agreement shall be deemed to have been given once a month has elapsed from notification of the decision.
5. At the end of each year, the ACP State concerned, in consultation with the Commission delegate, shall forward a report to the Commission on the implementation of the programmes, operations and schemes referred to in paragraph 1 (a), (b), (c) and (d).

## **Article 222.**

1. For any project or programme financed by a grant from the Fund, a financing agreement shall be drawn up between the Commission, acting on behalf of the Community, and the ACP State or States concerned.

The agreement shall specify in particular the details of the Fund's financial commitment and the financing arrangements and terms.
2. For any project or programme financed by a special loan, a loan contract shall be drawn up between the Commission, acting on behalf of the Community, and the borrower.
3. Once the financing agreement has been signed, disbursements shall be made in accordance with the financing plan laid down. Where a detailed estimate needs to be submitted for approval, it shall be deemed approved once thirty days have elapsed since its submission.

## **Article 223.**

1. Overruns on the funds provided under the financing decision shall be borne by the recipient ACP State.
2. The ACP State shall set aside, within their indicative programme, a reserve fund to cover cost increases and contingencies.
3. Financing agreements for all projects and programmes shall make adequate provisions for appropriations to cover cost increases and contingencies.
4. Once it appears that cost overruns are likely to be incurred, the National Authorizing Officer shall so inform the Chief Authorizing Officer through the Commission delegate. The Chief Authorizing Officer shall on this occasion be informed of the measures the National Authorizing Officer intends to take in order to cover such cost overruns, whether by reducing the scale of the project or programme or by calling on national or other non-Community resources.
5. By way of exception, overruns may be financed by the Community if it is not decided by common agreement to scale down the project or programme or if it is not possible to cover them by other resources.
6. However, any unexpended balance left upon closure of projects and programmes financed under the indicative programme which has not been re-allocated to the said programme for the financing of new operations may be allocated to cover overruns. The National Authorizing Officer may, in consultation with the Chief Authorizing Officer, use such unexpended balance for covering cost overruns, within the limits of a ceiling set at 15% of the financial commitment for the project or programme concerned.
7. In order to cut down the likelihood of overruns to a minimum, the ACP States and the Community shall make every effort to
  - gather together all the factors required to assess the operations, notably the estimate of the actual costs;
  - wherever possible, issue the invitations to tender before taking the financing decision.

## **Article 224.**

1. (a) Evaluation shall be undertaken during the execution of projects and programmes. The ACP States concerned and the Community shall draw up a joint progress report, at agreed intervals, on the various aspects of the operation and its results.  
(b) Such a report may serve to re-orient the project or programme during execution if a joint decision is taken to this effect.
2. (a) The ACP States concerned and the Community shall organize the joint evaluation of completed projects and programmes. Evaluation shall concern the results, by comparison with the objectives, and also the administration, functioning and maintenance of the completed projects. The two parties shall study the results of such evaluation.  
(b) The relevant authorities of the Community and of the ACP States concerned shall each take the appropriate measures called for by the results of the evaluation work.

## **Section 2. Execution of Financial and Technical Co-operation**

### **Article 225.**

1. The execution of financial and technical co-operation shall be carried out with a minimum of administrative formalities and using simplified procedures, so that projects and programmes may be implemented rapidly and efficiently.
2. The Community and the ACP States respectively shall take adequate measures to ensure that the administrative bodies entrusted with the following duties and responsibilities can carry them out promptly and efficiently:
  - (a) preparation and approval of invitations to tender;
  - (b) issue of invitations to tender;
  - (c) receiving and examining tenders;
  - (d) deciding the outcome of tenders, submitting a proposal for the placing of contracts and giving final approval of same;
  - (e) signing of contracts and related documents.

3. The ACP States, and other beneficiaries authorized by them, shall execute the projects and programmes financed by the Community; they shall in particular be responsible for preparing, negotiating and concluding the necessary contracts for the execution of these operations.

## **Article 226.**

1. The Commission shall appoint the Chief Authorizing Officer of the Fund, who shall be responsible for managing the Fund's resources. Taking account in particular of the advance timetables for commitments and payments referred to in Article 216(2), the Chief Authorizing Officer shall accordingly commit, clear and authorize expenditure and keep the accounts of commitments and authorizations.

2. In close co-operation with the National Authorizing Officer, the Chief Authorizing Officer shall ensure equality of conditions for participation in invitations to tender and see to it that there is no discrimination in the invitation to tender dossier and that the tender selected is economically the most advantageous. The Chief Authorizing Officer shall receive the result of the examination of the tenders and approve the proposal for the placing of the contract, subject to the powers exercised by the Commission delegate under Article 228.

3. Subject to the powers exercised by the National Authorizing Officer under Article 227, the Chief Authorizing Officer shall make any adaptation arrangements and commitment decisions that prove necessary to ensure proper execution of approved operations from the economic and technical viewpoints.

## **Article 227.**

1. (a) The Government of each ACP State shall appoint a National Authorizing Officer to represent the national authorities in all operations financed from the Fund's resources administered by the Commission.

(b) The National Authorizing Officer may delegate some of these functions and shall inform the Chief Authorizing Officer of any such delegation.

2. In addition to his responsibilities in connection with the preparation, submission and appraisal of projects and programmes, the National Authorizing Officer shall, in close co-operation with the Commission delegate, issue invitations to tender, receive tenders, preside over the examination of tenders, establish the results of this examination, sign contracts and riders thereto and estimates and notify the Commission delegate thereof. He shall submit the invitation to tender dossier to the Commission delegate for agreement before issuing invitations to tender.

3. (a) The National Authorizing Officer shall transmit the result of the examination of the tenders and a proposal for placing the contract to the Commission delegate who shall check that the tenders conform to the regulations laid down and give his comments within the time limit specified in Article 228(3)(c) and (d), with effect from the date on which the delegate receives the proposal.

(b) After this time limit, the National Authorizing Officer's proposal shall be deemed to have been approved by the Commission.

4. The National Authorizing Officer shall clear and authorize expenditure within the limits of the funds assigned to this. He shall remain financially liable until the Commission gives final clearance for the operations for the execution of which he is responsible.

5. During the execution operations, and subject to the requirement to inform the Commission delegate, the National Authorizing Officer shall make any adaptation arrangements necessary to ensure the proper execution of approved operations from the economic and technical viewpoint.

Accordingly, the National Authorizing Officer shall decide on:

(a) technical adjustments and alterations in matters of detail, so long as they do not affect the technical solutions adopted and remain within the limits of the reserve for minor adjustments;

(b) minor alterations to estimates during execution;

(c) transfers from item to item within estimates;

(d) changes of site for multiple-unit projects where justified on technical, economic or social grounds;

(e) imposition or remission of penalties for delay;



(f) acts discharging guarantors;

(g) purchase of goods, irrespective of their origin, on the local market;

(h) use of construction equipment and machinery not originating in the Member States or ACP States provided there is no production of comparable equipment and machinery in the Member States or ACP States;

(i) subcontracting;

(j) final acceptance; however, the delegate must be present at provisional acceptances, endorse the corresponding minutes and, where appropriate, be present at the final acceptance, in particular where the extent of the reservations recorded at the provisional acceptance necessitates major additional work;

(k) hiring of consultants and other technical assistance experts.

6. For contracts of less than 4 million ECU and generally for any contract subject to an expedited procedure, decisions taken by the National Authorizing Officer, under the powers conferred upon him, shall be deemed approved by the Commission within thirty days of their notification to the Commission delegate.

## **Article 228.**

1. (a) For the purpose of implementing this Convention and in respect of the resources administered by the Commission, the latter shall be represented in each ACP State, or in each regional grouping which expressly so requests, by a delegate approved by the ACP State or States concerned.

(b) Where a delegate is appointed to a group of ACP States, appropriate steps shall be taken to ensure that the delegate is represented by a deputy resident in each of the States in which the delegate is not resident.

2. At the express request of the ACP State, the delegate shall give technical assistance in preparing and appraising projects financed from the Fund's resources. To this end, he may participate in preparing dossiers, in negotiating, with external technical assistance, contracts for studies, for the services of experts and for works supervision, in seeking ways to simplify project appraisal and implementation procedures and in preparing invitation to tender dossiers.

3. The Commission shall give its delegate the necessary instructions and delegated powers to facilitate and expedite the preparation, appraisal and execution of projects financed from the Fund's resources administered by it. The delegate shall work in close co-operation with the National Authorizing Officer and deal with that Officer on behalf of the Commission.

In this capacity the delegate shall:

(a) approve the invitation to tender dossier within one month wherever invitations to tender are to be issued by expedited procedure, or in other cases transmit it, within one month of receiving it, to the Chief Authorizing Officer for publication;

(b) be present at the opening of tenders, and receive a copy of them and of the results of their examination;

(c) approve within one month the proposal for the placing of the contract in all cases where invitations to tender are issued by expedited procedure;

(d) approve within one month the National Authorizing Officer's proposal for the placing of the contract, irrespective of its value, wherever the following three conditions are fulfilled :

- the tender selected is the lowest;

- is economically the most advantageous and

- does not exceed the sum earmarked for the contract;

(e) where the conditions set out in (d) are not fulfilled, forward the proposal for the placing of the contract to the Chief Authorizing Officer for agreement, and the Chief Authorizing Officer shall decide thereon within two months of the receipt by the Commission delegate of the final outcome of the examination of the tenders and the proposal for the placing of the contract; in any event, the decision on the award of the contract shall be taken before the expiry of the tender validity period.

4. The delegate shall prepare the financing proposals.

5. The delegate shall, on a regular basis, and in certain cases acting on specific instructions from the Commission, inform the

national authorities of Community activities which may directly concern co-operation between the Community and the ACP States.

6. The delegate shall co-operate with the national authorities in evaluating operations regularly. He shall draw up reports on the outcome of such evaluations and communicate them to the ACP State concerned and the Commission.

7. Each year the delegate shall assess the Fund's operations in the ACP State or regional grouping where he represents the Commission. Reports drawn up in this connection shall be communicated to the Commission and the ACP State concerned.

8. (a) The delegate shall make sure, on behalf of the Commission, that the projects and programmes financed from the Fund's resources administered by the Commission are executed properly from the financial and technical angles;

(b) accordingly, the delegate shall endorse contracts, riders thereto and estimates, as well as payment authorizations issued by the National Authorizing Officer.

## **Article 229.**

1. For the purpose of effecting payments in the national currencies of the ACP States, accounts denominated in the currency of one of the Member States or in ECUs shall be opened in each ACP State in the Commission's name with a national public or semi-public financial institution, chosen by agreement between the ACP State and the Commission. This institution shall exercise the functions of paying agent.

2. The accounts referred to in paragraph 1 shall be replenished by the Commission by reference to actual cash requirements, account being taken of the advance timetable for payments provided for in Article 216(2). Transfers shall be made in the currency of one of the Member States or in ECUs and shall be converted into the currency of the ACP State as and when payments fall due.

3. The paying agent shall not be remunerated for its services; no interest shall be payable on deposited funds.

4. Within the limits of the funds available, the paying agent shall make the disbursements authorized after verifying that the supporting documents provided are substantively correct and in order, and that the discharge is valid.

5. In order to contribute towards the servicing of the debt resulting from Community loans from the Bank's own resources, special loans and risk capital, the ACP States may, in accordance with arrangements to be made on a case-by-case basis with the Commission, use the available foreign currency referred to in paragraph 2 for such servicing, as and when debt repayment falls due and up to the amount required for payments in national currency.

6. For the purpose of effecting payments in currencies other than the currencies of the ACP States, payment for services provided shall be made on instructions from the Commission by drawing on its accounts.

## **Article 230.**

In general, payments shall be made in the form of advances to the ACP States, so that they shall be spared any prefinancing burden; the Community may, however, effect payment direct to contractors, subject to the prior authorization of the ACP States concerned and upon submission of relevant certificates of conformity.

## **Article 231.**

The procedures for clearance, authorization and payment of expenditure shall be completed within a maximum of:

- two months, in the case of supply and service contracts,

- three months, in the case of works contracts, from the date on which the payment was due.

## **Section 3. Competition and Preferences**

### **Article 232.**

1. As a general rule, works and supply contracts financed from the Fund's resources administered by the Commission shall be concluded following an open invitation to tender.

2. As regards operations financed by the Community, participation in invitations to tender and contracts shall be open on

equal terms to all natural persons and companies or firms falling within the scope of the Treaty and to all natural persons and companies or firms of the ACP States. The companies or firms referred to in the preceding subparagraph shall be those defined in Article 253.

3. Measures to encourage the participation of ACP States' enterprises in the performance of contracts shall be taken in order to permit optimum use of those States' physical and human resources.

4. Paragraph 2 shall not imply that the funds provided by the Community must be used exclusively for purchases of goods or payment for services in the Member States of the Community and the ACP States.

5. In order to encourage the regional co-operation of the ACP States and to ensure the optimum cost-effectiveness of the system, non-ACP developing countries associated with the Community under comprehensive co-operation agreements may be authorized, case by case and by way of exception, to participate in contracts financed by the Community, at the reasoned request of the ACP States concerned.

6. The ACP States concerned shall provide the Commission with the information needed for a decision on such derogations. The Commission shall examine the information with particular attention to:

- (a) the geographical location of the ACP State concerned;
- (b) the competitiveness of suppliers and contractors from the Community and the ACP States;
- (c) the need to avoid excessive increases in the cost of operations;
- (d) transport difficulties or delays due to delivery times or other similar problems;
- (e) technology that is the most appropriate and best suited to local conditions.

7. Participation by third countries in contracts financed by the Community may be authorized where the Community participates in the financing of regional or inter-regional co-operation schemes involving third countries and in the joint financing of projects with other providers of funds.

## **Article 233.**

1. The ACP States and the Commission shall take the necessary measures to ensure the widest possible participation on equal terms in invitations to tender and works and supply contracts financed from the Fund's resources administered by the Commission.

2. The purpose of these measures shall be in particular to:

- (a) ensure publication of invitations to tender in the Official Journal of the European Communities, the official journals of the ACP States and any other suitable information media;
- (b) eliminate discriminatory practices or technical specifications which might stand in the way of widespread participation on equal terms;
- (c) encourage co-operation between the enterprises of the Member States and of the ACP States, for example by means of prequalification and the creation of consortia.

## **Article 234.**

With the aim of ensuring the rapid and effective implementation of projects and programmes financed by the Community:

1) operations the estimated cost of which is less than 4 million ECU may be performed by direct labour subject to approval by the Community and where the recipient ACP State has sufficient suitable equipment and qualified staff available in its national departments;

2) without prejudice to the provisions of (1), an expedited procedure for issuing invitations to tender shall be organized in the case of works contracts the estimated cost of which is less than 4 million ECU.

The organization of this expedited procedure shall not rule out the possibility of issuing an international invitation to tender where it appears that the nature of the works to be performed or the usefulness of widening participation justify recourse to international competition;

3) for operations relating to emergency aid and for other operations where urgency of the situation is established or where

the nature, small scale or certain particular characteristics of the works or supplies so warrant, the ACP States may, in agreement with the Commission, authorize the placing of contracts by direct agreement or after restricted invitations to tender. However, in the case of emergency aid, it shall also be possible to have recourse to direct labour.

### **Article 235.**

To promote the widest possible participation by national enterprises of the ACP States in the performance of works and supply contracts financed from the Fund's resources administered by the Commission, the following measures shall be adopted:

- 1) for carrying out works the value of which is less than 4 million ECU, national enterprises of the ACP States shall be accorded a 10% preference where tenders of equivalent economic and technical quality are compared. This preference shall be confined to national enterprises of the ACP States within the means of the national laws of these States, provided that their residence for tax purposes and main business headquarters are established in an ACP State and that a significant share of the capital and management staff is supplied by one or more ACP States;
- 2) for the delivery of supplies, irrespective of their value, enterprises of the ACP States shall be accorded a 15% preference where tenders of equivalent economic and technical quality are compared. This preference shall be confined to national enterprises of the ACP States which account for a sufficient margin of added value.

### **Article 236.**

1. For each operation the criteria for selecting the tender that is economically the most advantageous shall take into account inter alia the qualifications of and the guarantees offered by the tenderers, the nature and conditions of implementation of the works or supplies and the price, operating costs, and technical value of those works or supplies and the offer of an after-sales service in the ACP State concerned.
2. Where two tenders are acknowledged to be equivalent on the basis of the criteria stated above, preference shall be given to the tender of the enterprise which is a national of an ACP State or if no such tender is forthcoming, to the one which permits the greatest possible use of the physical and human resources of the ACP States.
3. The ACP States and the Commission shall ensure that all the selection criteria are specified in the invitation to tender dossier.

### **Article 237.**

1. The general conditions applicable to the award and performance of works and supply contracts financed from the Fund's resources administered by the Commission are contained in the general conditions, which shall be adopted by decision of the Council of Ministers at its first meeting following the entry into force of this Convention, after consultation of the ACP-EEC Committee referred to in Article 193.
2. Until the implementation of the decision provided for in paragraph 1, the award and performance of public contracts financed by the Fund shall be governed:
  - in respect of the ACP States party to the Convention signed at Yaoundé on 29 July 1969, by the legislation in force at 31 January 1975,
  - in respect of the other ACP States, by their national legislation or established practices regarding international contracts.

### **Article 238.**

1. Any dispute arising between the authorities of an ACP State and a contractor, supplier or provider of services, candidate or tenderer, on the occasion of the placing or performance of a contract financed by the Fund shall be settled by arbitration in accordance with procedural rules adopted by the Council of Ministers.
2. The procedural rules referred to in paragraph 1 shall be adopted by decision of the Council of Ministers not later than its first meeting following the entry into force of this Convention, after consultation of the ACP-EEC Committee referred to in Article 193.
3. As a transitional measure pending the implementation of the decision provided for in paragraph 2, the final decision on all disputes shall be taken in accordance with the rules on conciliation and arbitration of the International Chamber of

Commerce.

## **Section 4. Tax and Customs Arrangements**

### **Article 239.**

The tax and customs arrangements applicable in the ACP States to contracts financed by the Community are set out in Protocol 6.

## **Title IV. Investment, Capital Movements, Establishment and Services**

### **Chapter 1. Investment**

#### **Article 240.**

The Contracting Parties recognize the importance of private investment for the promotion of their development co-operation and acknowledge in this respect the need to take such steps as would promote such investment. In this regard the Contracting Parties jointly and severally agree to:

- (a) implement measures to encourage private economic operators who comply with the objectives and priorities of their development co-operation and with the appropriate laws and regulations of their respective States to participate in their development efforts;
- (b) accord fair and equitable treatment to such investors, and encourage and create clear and stable conditions conducive to the participation of such investors;
- (c) maintain a predictable and secure investment climate and be prepared to enter into negotiations on agreements which will improve such a climate and, in so doing, further mutual interests;
- (d) promote effective co-operation amongst their respective economic operators

#### **Article 241.**

1. In order to accelerate further their development co-operation and the expansion of directly productive investment, the Contracting Parties, using the technical and financial assistance provided within this Convention, agree to study measures which will facilitate an increased and more stable flow of private capital and which will further enhance:

- (a) joint financing of productive investments with the private sector;
- (b) access by interested ACP States to international financial markets;
- (c) the activity and effectiveness of domestic financial markets.

2. To this end, the Contracting Parties agree to review the economic, technical, legal or institutional obstacles which currently hamper such developments as well as the action required to remove these obstacles, with due respect for international commitments, in order to promote further the development of productive investment.

#### **Article 242.**

1. Taking account of the link between investment decisions, the capacity of the ACP States to generate adequate export earnings to service the investment and the ability effectively to support existing and new productive investment, the Community undertakes to explore ways and means to provide, within the framework of financial and technical co-operation:

- (a) credit lines to finance imports of intermediate materials needed for the export industries of a requesting ACP State;
- (b) appropriate and effective

2. Taking account of the role of domestic development financing institutions as channel and intermediary for attracting private capital flows into development co-operation, the Contracting Parties agree, within the framework of financial and technical co-operation, to encourage the setting-up or the strengthening of:

- (a) national or regional financing institutions to finance ex- ports and guarantee export credits;

(b) regional payment mechanisms that would facilitate intra- ACP trade.

### **Article 243.**

1. The Contracting Parties affirm the need to promote and protect either party's investments on their respective territories, and in this context affirm the importance of concluding between States, in their mutual interest, investment promotion and protection agreements which could also provide the basis for insurance and guarantee schemes.

2. In order to further encourage European investment in development projects of special importance to, and promoted by, the ACP States, the Community and the Member States on the one hand, and the ACP States on the other, may also conclude agreements relating to specific projects of mutual interest where the Community and European enterprises contribute towards their financing.

### **Article 244.**

1. The Contracting Parties agree to undertake a joint study of the scope and appropriate mechanisms of a joint ACP-EEC insurance and guarantee system, complementary to existing national systems, that could have a positive effect on the flow of private-sector resources from the Community to the ACP States.

2. The Contracting Parties further agree to explore the use of private sector market insurance to insure additional private capital flows to the ACP States that could have a positive effect on the flow of private-sector resources from the Community to the ACP States.

### **Article 245.**

In order to promote the development of private investment flows, the Community and the ACP States hereby agree, within the framework of this Convention and in co-operation with other interested bodies, to:

(a) encourage the flow of information on investment opportunities between financial or development finance institutions, other specialized financial institutions and other potential investors and sponsors by organizing periodic investment promotion meetings, making available periodic information on existing financial or other specialized institutions, their facilities and conditions and encouraging the establishment of focal points in ACP States;

(b) make a detailed analysis, taking full account of work being done in other institutions, of possible net increases in the flow of funds for investment financing that might result from greater use of co-financing and joint ventures and, in this regard, enable suggestions to be made to multilateral, regional and other institutions regarding ways and means of improving and increasing the number of such arrangements in order to expand the funds available to ACP States in the form of equity and long-term capital;

(c) strengthen, with financial and technical assistance from the Community, existing activities to promote European private investment in the ACP States by organizing discussions between any ACP State interested and potential private investors on the legal and financial framework which that ACP State offers or might offer to a potential investor;

(d) encourage the dissemination, to all interested parties, of information on the nature and availability of investment guarantees and insurance mechanisms to facilitate investment in ACP States, and encourage or prepare, wherever appropriate, the creation or expansion of such mechanisms in ACP States, if necessary in collaboration with other appropriate agencies;

(e) provide assistance to small and medium-sized enterprises in ACP States in designing and obtaining equity and loan financing on optimal terms and conditions;

(f) explore ways and means of overcoming or reducing the host country risk for individual investment projects that are in themselves viable and could contribute to economic progress;

(g) help ACP States to:

(i) improve the quality of feasibility studies and the preparation of projects with appropriate economic and financial effects;

(ii) introduce integrated project management covering the entire project development cycle within the framework of the development programme of the State.

### **Article 246.**

1. The Contracting Parties hereby recognize that the least-developed, landlocked and island ACP States suffer from certain unique disadvantages which render them less attractive to private investment.
2. The Contracting Parties therefore commit themselves to undertaking, as soon as possible after the entry into force of this Convention, a joint study to identify the specific measures it may be desirable to adopt in relation to those States in order to improve their attractiveness to investment.

## **Article 247.**

1. In order to improve understanding of the issues involved in private-sector flows and the effectiveness of attempts to encourage such flows, the Contracting Parties hereby agree that the Commission shall, with their assistance, produce regular reports for the information of the Council of Ministers on flows of investment, lending, payment arrears and capital movements between the Community and the ACP States.
2. The Contracting Parties hereby agree that the issues relating to the promotion and protection of investment in their respective territories may be the subject of discussions in the appropriate ACP-EEC co-operation forum or of consultations between the ACP State concerned and the Community, especially where particular investment promotion schemes are being implemented.
3. The Contracting Parties hereby agree to launch all the studies referred to in this Chapter in the shortest possible time and, in any event, not later than one year after the entry into force of this Convention. The result of these studies will be submitted upon completion to the interested parties for consideration and appropriate action, not later than two years after the entry into force of this Convention.

## **Chapter 2. Provisions Relating to Current Payments and Capital Movements**

### **Article 248.**

With regard to capital movements linked with investments and to current payments, the Contracting Parties shall refrain from taking action in the field of foreign exchange transactions which would be incompatible with their obligations under this Convention resulting from the provisions relating to trade in goods, services, establishment and industrial co-operation.

These obligations shall not, however, prevent the Contracting Parties from adopting the necessary protective measures should this be justified by reasons relating to serious economic difficulties or severe balance-of-payments problems.

### **Article 249.**

In respect of foreign exchange transactions linked with investments and current payments, the ACP States on the one hand and the Member States on the other shall avoid, as far as possible, taking discriminatory measures vis-a-vis each other or according more favourable treatment to third states, taking full account of the evolving nature of the international monetary system, the existence of specific monetary arrangements and balance-of-payments problems.

To the extent that such measures or treatment are unavoidable, they shall be maintained or introduced in accordance with international monetary rules and every effort shall be made to minimize any adverse effects on the parties concerned.

### **Article 250.**

Throughout the duration of the loans and risk capital operations provided for in Article 194, each of the ACP States hereby undertakes to:

- (a) place at the disposal of the beneficiaries referred to in Article 191 the currency necessary for the payment of interest and commission on and amortization of loans and quasi-capital aid granted for the implementation of aid measures on their territory;
- (b) make available to the Bank the foreign currency necessary for the transfer of all sums received by it in national currency which represent the net revenue and proceeds from transactions involving the acquisition by the Community of holdings in the capital of companies or firms.

### **Article 251.**

At the request of the Community or of the ACP States, the Council of Ministers shall examine any problems raised by the application of Articles 248, 249 and 250. It shall also formulate any relevant recommendations.

## **Chapter 3. Provisions Relating to Establishment and Services**

### **Article 252.**

As regards the arrangements that may be applied in matters of establishment and provision of services, the ACP States on the one hand and the Member States on the other shall treat nationals and companies or firms of Member States and nationals and companies or firms of the ACP States respectively on a non-discriminatory basis. However, if, for a given activity, an ACP State or a Member State is unable to provide such treatment, the Member States or the ACP States, as the case may be, shall not be bound to accord such treatment for this activity to the nationals and companies or firms of the State concerned.

### **Article 253.**

For the purpose of this Convention "companies or firms" mean companies or firms constituted under civil or commercial law, including co-operative societies and other legal persons governed by public or private law, save those which are non-profit-making.

"Companies or firms of a Member State or of an ACP State" means companies or firms formed in accordance with the law of a Member State or an ACP State and whose registered office, central administration or principal place of business is in a Member State or ACP State; however, a company or firm having only its registered office in a Member State or an ACP State must be engaged in an activity which has an effective and continuous link with the economy of that Member State or the ACP State.

### **Article 254.**

At the request of the Community or of the ACP States, the Council of Ministers shall examine any problems raised by the application of Articles 252 and 253. It shall also formulate any relevant recommendations.

## **Title V. General Provisions for the Least-developed, Landlocked and Island ACP States**

### **Article 255.**

Special attention shall be paid to the least-developed, land-locked and island ACP States and the specific needs and problems of each of these three groups of countries in order to enable them to take full advantage of the opportunities offered by this Convention.

In this spirit, the following Articles contain specific provisions and adjustments to the general provisions applicable to all ACP States, with details of derogations from such provisions in different fields.

## **Chapter 1. Least-developed ACP States**

### **Article 256.**

The least-developed ACP States shall be accorded special treatment in order to enable them to overcome the serious economic and social difficulties hindering their development.

### **Article 257.**

1. The following shall be considered least-developed ACP States for the purposes of this Convention:

Antigua and Barbuda

Belize

Benin

Botswana



Burkina Faso  
Burundi  
Cape Verde  
Central African Republic  
Chad  
Comoros  
Djibouti  
Dominica  
Equatorial Guinea  
Ethiopia  
Gambia  
Grenada  
Guinea  
Guinea-Bissau  
Kiribati  
Lesotho  
Malawi  
Mali  
Mauritania  
Mozambique  
Niger  
Rwanda  
Saint Christopher and Nevis  
Saint Lucia  
Saint Vincent and the Grenadines  
Sao Tome and Principe  
Seychelles  
Sierra Leone  
Solomon Islands  
Somalia  
Sudan  
Swaziland  
Tanzania  
Togo  
Tonga

Tuvalu

Uganda

Vanuatu

Western Samoa

2. The list of least-developed ACP States may be amended by decision of the Council of Ministers where:

- a third state in a comparable situation accedes to this Convention;
- the economic situation of an ACP State undergoes a significant and lasting change, either so as to necessitate its inclusion in the category of least-developed ACP States or so that its inclusion in that category is no longer warranted.

## **Article 258.**

The provisions laid down pursuant to Article 256 in respect of the least-developed ACP States are contained in the following Articles:

- Agricultural co-operation and food security: Article 36 first indent, Article 37(3)
- Industrial development: Article 74 second and third paragraph
- Transport and communications: Article 93
- Development of trade and services: Article 96(3)
- Regional co-operation: Article 111
- General trade arrangements: Article 142
- Stabilization of export earnings from agricultural commodities: Article 155(2) and (3)(c), Article 161(2), Article 162(2), Article 172
- Mining products: special financing facility (Sysmin): Article 180, Article 184
- Financial and technical co-operation: Article 185 under (i), Article 188(2)(c), Article 190(2) second indent, Article 196(2)(c), Article 197(11), Article 201(4), Article 219(6)
- Investment: Article 246
- Rules of origin: Protocol 1: Articles 29 and 30(4) and (8)(a).

## **Chapter 2. Landlocked ACP States**

### **Article 259.**

Specific provisions and measures shall be established to support landlocked ACP States in their efforts to overcome the geographical difficulties and obstacles hampering their development.

### **Article 260.**

1. The Landlocked ACP States are:

Botswana

Burkina Faso

Burundi

Central African Republic

Chad

Lesotho

Malawi

Mali

Niger

Rwanda

Swaziland

Uganda

Zambia

Zimbabwe

2. The list of landlocked ACP States may be amended by decision of the Council of Ministers where a third state in a comparable situation accedes to this Convention.

## **Article 261.**

The provisions laid down pursuant to Article 259 in respect of the landlocked ACP States are contained in the following Articles:

- Agricultural co-operation and food security: Article 36 second indent
- Industrial development: Article 74 second paragraph
- Transport and communications: Article 93
- Development of trade and services: Article 96(3)
- Regional co-operation: Article 111
- General trade arrangements: Article 142
- Stabilization of export earnings from agricultural commodities: Article 155(2) and (3)c, Article 161(2), Article 162(2)
- Mining products: special financing facility (Sysmin): Article 180
- Financial and technical co-operation: Article 185 under i), Article 190(2) second indent, Article 197(11)
- Investment: Article 246

## **Chapter 3. Island ACP States**

### **Article 262.**

Specific provisions and measures shall be established to support island ACP States in their efforts to overcome the specific natural and geographical difficulties and obstacles, such as their fragmentation and the consequences of natural disasters, hampering their development.

### **Article 263.**

The Island ACP States are:

Antigua and Barbuda

Bahamas

Barbados

Cap Verde

Comoros

Dominica

Fiji

Grenada

Jamaica

Kiribati

Madagascar

Mauritius

Papua New Guinea

Saint Christopher and Nevis

Saint Lucia

Saint Vincent and the Grenadines

Sao Tome and Principe

Seychelles

Solomon Islands

Tonga

Trinidad and Tobago

Tuvalu

Vanuatu

Western Samoa

2. The list of island ACP States may be amended by decision of the Council of Ministers where a third state in a comparable situation accedes to this Convention.

## **Article 264.**

The provision laid down pursuant to Article 262 in respect of the island ACP States are contained in the following Articles:

- Agricultural co-operation and food security: Article 36 third indent
- Industrial development: Article 74 second paragraph
- Transport and communications: Article 93
- Development of trade and services: Article 96(3)
- Regional co-operation: Article 111
- General trade arrangements: Article 142
- Stabilization of export earnings from agricultural commodities: Article 155(2), Article 161(2), Article 162(2)
- Mining products: special financing facility (Sysmin): Article 180
- Financial and technical co-operation: Article 185 under (i), Article 190(2) second indent, Article 197(11)
- Investment: Article 246.

# **Part Four. Operation of the Institutions**

## **Chapter I. The Council of Ministers**

## **Article 265.**

The Council of Ministers shall act by agreement between the Community on the one hand and the ACP States on the other.

## **Article 266.**

1. The proceedings of the Council of Ministers shall be valid only if half the members of the Council of the European Communities, one member of the Commission and two-thirds of the members representing the governments of the ACP States are present.
2. Any member of the Council of Ministers unable to attend may be represented. The representative shall exercise all the rights of that member.
3. The Council of Ministers shall lay down its rules of procedure. These rules shall provide for the possibility at each Council meeting of a thorough examination of major areas of co-operation, if need be after preparatory work in accordance with Article 269(6).

## **Article 267.**

The office of the President of the Council of Ministers shall be held alternately by a member of the Council of the European Communities and a member of the government of an ACP State.

## **Article 268.**

1. Meetings of the Council of Ministers shall be called once a year by its President.
2. The Council of Ministers shall, in addition, meet whenever necessary, in accordance with the conditions laid down in the rules of procedure.
3. The co-Presidents, assisted by advisers, may have regular consultations and exchanges of views between meetings of the Council of Ministers.

## **Article 269.**

1. The Council of Ministers shall review periodically the results of the arrangements under this Convention and shall take such measures as may be necessary for the attainment of the objectives of this Convention.

The Council of Ministers shall, to that end and at the request of one of the parties, examine and may take into consideration any resolutions or recommendations made in that respect by the Joint Assembly.

2. Decisions taken by the Council of Ministers in the cases provided for by this Convention shall be binding on the Contracting Parties, which shall take such measures as are necessary to implement those decisions.
3. The Council of Ministers may also formulate such resolutions, declarations, recommendations or opinions as it may deem necessary to attain the objectives and to ensure the smooth functioning of this Convention.
4. The Council of Ministers shall publish an annual report and such other information as it considers appropriate.
5. The Community or the ACP States may raise in the Council of Ministers any problems arising from the application of this Convention.
6. The Council of Ministers may set up committees or ad hoc working parties to undertake such activities as it deems necessary, in particular, to prepare, if appropriate, its deliberations on specific co-operation areas or problems, in accordance with the provisions of Article 272(2).

## **Article 270.**

Without prejudice to Article 269(6), the Council of Ministers may, at its meetings, delegate the task of preparing its discussions and conclusions on specific items of the agenda to restricted ministerial working parties constituted on a basis of parity.

## **Article 271.**

The Council of Ministers may delegate to the Committee of Ambassadors any of its powers. In this event, the Committee of Ambassadors shall take its decisions in accordance with the conditions laid down in Article 265.

## **Chapter 2. The Committee of Ambassadors**

### **Article 272.**

1. The Committee of Ambassadors shall account for its actions to the Council of Ministers, particularly in matters which have been the subject of delegation of powers. It shall also submit to the Council of Ministers any proposals, resolutions, recommendations or opinions which it may deem necessary or consider appropriate.

2. The Committee of Ambassadors shall supervise the work of all the committees and all other bodies, groups or working parties, whether standing or ad hoc, established or provided for below ministerial level under this Convention and submit periodic reports to the Council of Ministers.

3. In the performance of its duties the Committee of Ambassadors shall meet at least every six months.

### **Article 273.**

1. The office of Chairman of the Committee of Ambassadors shall be held alternately by a Permanent Representative of a Member State designated by the Community and a head of mission representing an ACP State designated by the ACP States.

2. Any member of the Committee of Ambassadors unable to attend may be represented. The representative shall exercise all the rights of that member.

3. The Committee of Ambassadors shall lay down its rules of procedure, which shall be submitted to the Council of Ministers for approval.

## **Chapter 3. Provisions Common to the Council of Ministers and the Committee of Ambassadors**

### **Article 274.**

A representative of the Bank shall be present at meetings of the Council of Ministers or Committee of Ambassadors when matters from the areas which concern the Bank are on the agenda.

### **Article 275.**

The secretariat duties and other work necessary for the functioning of the Council of Ministers and the Committee of Ambassadors or other joint bodies shall be carried out on a basis of parity and in accordance with the conditions laid down in the rules of procedure of the Council of Ministers.

## **Chapter 4. The Joint Assembly**

### **Article 276.**

The Joint Assembly shall consider the annual report drawn up under Article 269(4).

It may adopt resolutions on matters concerning or covered by this Convention.

It may, in order to attain the objectives of this Convention, submit to the Council of Ministers any conclusions and make any recommendations it considers appropriate, in particular when examining the Council of Ministers' annual report.

### **Article 277.**

1. The Joint Assembly shall appoint its Bureau and shall adopt its own rules of procedure.

2. It shall hold a general session twice a year, alternately in the Community and in an ACP State.
3. It may set up ad hoc working parties to undertake such specific preparatory activities as it shall determine.
4. The secretariat duties and other work necessary for the functioning of the Joint Assembly shall be carried out on the basis of parity and in accordance with the conditions laid down in its rules of procedure.

## **Chapter 5. Other Provisions**

### **Article 278.**

1. Any dispute which arises between one or more Member States or the Community on the one hand, and one or more ACP States on the other, concerning the interpretation or the application of this Convention shall be referred to the Council of Ministers.
2. Between meetings of the Council of Ministers, such disputes shall be referred to the Committee of Ambassadors for settlement.
3. If the Committee of Ambassadors fails to settle the dispute, it shall refer the matter to the Council of Ministers at its next meeting.
4. If the Council of Ministers fails to settle the dispute at that meeting it may, at the request of either Contracting Party, initiate a good offices procedure, the result of which shall be transmitted to the Council in the form of a report at its next meeting.
5. (a) If a settlement of the dispute is not reached, the Council of Ministers shall initiate an arbitration procedure at the request of either Contracting Party. Two arbitrators shall be appointed by the parties to the dispute within thirty days, one by either side as set out in paragraph 1. The two arbitrators in question shall then appoint a third arbitrator within two months. Should the latter not be appointed within the time-limit set, he shall be appointed by the co-Presidents of the Council of Ministers from among eminent persons providing every guarantee of independence.  
(b) The decision of the arbitrators shall be taken by majority vote, as a general rule within five months.  
(c) Each party to the dispute must take the measures required for the implementation of the arbitrators' decision.

### **Article 279.**

The Contracting Parties shall endeavour, without prejudice to the provisions of this Convention, to reach a joint interpretation where there are differences of opinion between the Community and the ACP States as to the interpretation of the texts in connection with the application of this Convention. To this end, such problems shall undergo joint examination by the institutions with a view to resolving them.

### **Article 280.**

The operating expenses of the institutions of this Convention shall be defrayed in accordance with the terms set out in Protocol 2.

### **Article 281.**

The privileges and immunities for the purposes of this Convention shall be as laid down in Protocol 3.

## **Part Five. Final Provisions**

### **Article 282.**

No treaty, convention, agreement or arrangement of any kind between one or more Member States of the Community and one or more ACP States may impede the implementation of this Convention.

### **Article 283.**

Subject to the special provisions regarding the relations between the ACP States and the French overseas departments provided for therein, this Convention shall apply, on the one hand, to the territories in which the Treaty is applied and under the conditions laid down in that Treaty and, on the other hand, to the territories of the ACP States.

## **Article 284.**

1. Should a third country wish to accede to the Community, the latter shall, as soon as it has decided to enter into negotiations on such accession, inform the ACP States of its decision.

2. The Contracting Parties further agree:

(a) to establish, in the course of accession negotiations, regular contacts during which:

- the Community shall provide the ACP States with all relevant information on the progress of the negotiations;

- the ACP States shall inform the Community of their concerns and positions so that they may be taken fully into account;

(b) to examine without delay, after the conclusion of the accession negotiations, the effects of such accession on this Convention, and to engage in negotiations in order to establish a protocol of accession and adopt the measures of adaptation or transition that may become necessary, to be annexed to the said protocol, of which they shall constitute an integral part.

3. Without prejudice to any transitional arrangements that may be adopted, the Contracting Parties recognize that the provisions of the Convention do not apply in relations between the ACP States and a new Member State of the Community as long as the protocol of accession to the Convention referred to in paragraph 2(b) has not entered into force.

## **Article 285.**

1. (a) As regards the Community, this Convention shall be validly concluded in accordance with the provisions of the EEC and ECSC Treaties; the conclusion shall be notified to the parties.

(b) This Convention shall be ratified by the Signatory States in conformity with their respective constitutional requirements.

2. The instruments of ratification and the act of notification of the conclusion of this Convention shall be deposited, as concerns the ACP States, with the Secretariat of the Council of the European Communities and, as concerns the Community and the Member States, with the Secretariat of the ACP States. The Secretariats shall give notice thereof forthwith to the Signatory States and the Community.

## **Article 286.**

1. This Convention shall enter into force on the first day of the second month following the date of deposit of the instruments of ratification of the Member States and of at least two thirds of the ACP States, and of the act of notification of the conclusion of this Convention by the Community.

2. Any ACP State which has not completed the procedures set out in Article 285 by the date of the entry into force of this Convention as specified in paragraph 1 may do so only within the twelve months following such entry into force and shall be able to proceed with these procedures only during the twelve months following such entry into force, unless before the expiry of this period it gives notice to the Council of Ministers of its intention to complete these procedures not later than six months after this period and on the condition that it undertakes the deposit of its instrument of ratification within the same time-limit.

3. As regards those ACP States which have not completed the procedures set out in Article 285 by the date of entry into force of this Convention as specified in paragraph 1, this Convention shall become applicable on the first day of the second month following the completion of the said procedures.

4. Signatory ACP States which ratify this Convention in accordance with the conditions laid down in paragraph 2 shall recognize the validity of all measures taken in implementation of this Convention between the date of its entry into force and the date when its provisions become applicable to them. Subject to any extension which may be granted to them by the Council of Ministers they shall, not later than six months following the completion of the procedures referred to in Article 285, carry out all the obligations which devolve upon them under the terms of this Convention or of implementing decisions adopted by the Council of Ministers.

5. The rules of procedure of the joint institutions set up under this Convention shall lay down whether and under what



conditions the representatives of Signatory States which, on the date of entry into force of this Convention have not yet completed the procedures referred to in Article 285, shall sit in those institutions as observers. The arrangements thus adopted shall be effective only until the date on which this Convention becomes applicable to these states: such arrangements shall in any case cease to apply on the date on which, pursuant to paragraph 2, the state concerned may no longer ratify this Convention.

## **Article 287.**

1. The Council of Ministers shall be informed of any request by any state for membership of, or association with, the Community.
2. The Council of Ministers shall be informed of any request made by any state wishing to become a member of an economic grouping composed of ACP States.

## **Article 288.**

1. Any request for accession to this Convention by a country or territory to which Part Four of the Treaty applies, and which becomes independent, shall be referred to the Council of Ministers.
2. With the approval of the Council of Ministers, the country in question shall accede to this Convention by depositing an instrument of accession with the Secretariat of the Council of the European Communities, which shall transmit a certified copy to the Secretariat of the ACP States and shall give notice thereof to the Signatory States.
3. That country shall then enjoy the same rights and be subject to the same obligations as the ACP States. Such accession shall not adversely affect the advantages accruing to the ACP States signatory to this Convention from the provisions on financial and technical co-operation and on the stabilization of export earnings.

## **Article 289.**

1. Any request for accession to this Convention submitted by a state whose economic structure and production are comparable with those of the ACP States shall require approval by the Council of Ministers. The state concerned may accede to this Convention by concluding an agreement with the Community.
2. That state shall then enjoy the same rights and be subject to the same obligations as the ACP States.
3. The agreement may, however, stipulate the date on which certain of those rights and obligations shall become applicable to that state.
4. Such accession shall not, however, adversely affect the advantages accruing to the ACP States signatory to this Convention under the provisions on financial and technical co-operation, the stabilization of export earnings and industrial co-operation.

## **Article 290.**

As from the entry into force of this Convention, the powers conferred upon the Council of Ministers by the second ACP- EEC Convention of Lomé, signed at Lomé on 31 October 1979, shall be exercised, insofar as is necessary and in compliance with the relevant provisions of the said Convention, by the Council of Ministers set up by this Convention.

## **Article 291.**

This Convention shall expire after a period of five years from the first day of March 1985, namely on the twenty-eighth day of February 1990.

Eighteen months before the end of this period the Contracting Parties shall enter into negotiations in order to examine what provisions shall subsequently govern relations between the Community and the Member States on the one hand and the ACP States on the other.

The Council of Ministers shall adopt any transitional measures that may be required until the new Convention comes into force.

## **Article 292.**

This Convention may be denounced by the Community in respect of each ACP State and by each ACP State in respect of the Community, upon six months' notice.

## **Article 293.**

The Protocols annexed to this Convention shall form an integral part thereof.

## **Article 294.**

This Convention, drawn up in two copies in the Danish, Dutch, English, French, German, Greek and Italian languages, all texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the Euro-pean Communities and the Secretariat of the ACP States, which shall both transmit a certified copy to the government of each of the Signatory States.

Done at Lome on the eighth day of December in the year one thousand nine hundred and eighty-four.

For His Majesty the King of the Belgians,

For Her Majesty the Queen of Denmark,

For The President of the Federal Republic of Germany,

For The President of the Hellenic Republic,

For The President of the French Republic,

For The President of Ireland,

For The President of the Italian Republic,

For His Royal Highness the Grand Duke of Luxembourg,

For Her Majesty the Queen of the Netherlands,

For Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland,

For the Council and the Commission of the European Communities,

For Her Majesty the Queen of Antigua and Barbuda,

For The Head of State of the Bahamas,

For The Head of State of Barbados,

For Her Majesty the Queen of Belize,

For The President of the People's Republic of Benin,

For The President of the Republic of Botswana,

For The President of the National Revolutionary Council, President of Burkina Faso, Head of the Government,

For The President of the Republic of Burundi,

For The President of the Republic of Cameroon,

For The President of the Republic of Cape Verde,

For The President of the Central African Republic,

For The President of the Islamic Federal Republic of the Comoros,

For The President of the People's Republic of the Congo,

For The President of the Republic of the Ivory Coast,

For The President of the Republic of Djibouti,

For The Government of the Commonwealth of Dominica,

For The General Secretary of the Ethiopian Workers' Party, Chairman of the Provisional Military Administrative Council and of the Council of Ministers and Commander-in-Chief of the Revolutionary Army of Ethiopia,

For Her Majesty the Queen of Fiji,

For The President of the Gabonese Republic,

For The President of the Republic of the Gambia,

For The Head of State and Chairman of the Provisional National Defence Council of the Republic of Ghana,

For Her Majesty the Queen of Grenada,

For The President of the Republic of Guinea,

For The President of the Council of State of Guinea-Bissau,

For The President of the Republic of Equatorial Guinea,

For The President of the Cooperative Republic of Guyana,

For The Head of the State of Jamaica,

For The President of the Republic of Kenya,

For The President of the Republic of Kiribati,

For His Majesty the King of the Kingdom of Lesotho,

For The President of the Republic of Liberia,

For The President of the Democratic Republic of Madagascar,

For The President of the Republic of Malawi,

For The President of the Republic of Mali,

For The Chairman of the Military Committee for National Safety, Head of State of the Islamic Republic of Mauritania,

For Her Majesty the Queen of Mauritius,

For The President of the People's Republic of Mozambique,

For The President of the Supreme Military Council, Head of State of Niger,

For The Head of the Federal Military Government of Nigeria,

For The President of the Republic of Uganda,

For Her Majesty the Queen of Papua New Guinea,

For The President of the Rwandese Republic,

For Her Majesty the Queen of St Christopher and Nevis,

For Her Majesty the Queen of Saint Lucia,

For Her Majesty the Queen of Saint Vincent and the Grenadines,

For The Head of Sate of Western Samoa,

For The President of the Democratic Republic of Sao Tome and Principe,

For The President of the Republic of Senegal,

For The President of the Republic of Seychelles,

For The President of the Republic of Sierra Leone,  
For Her Majesty the Queen of the Solomon Islands,  
For The President of the Somali Democratic Republic,  
For The President of the Democratic Republic of the Sudan,  
For The President of the Republic of Suriname,  
For Her Majesty the Queen Regent of the Kingdom of Swaziland,  
For The President of the United Republic of Tanzania,  
For The President of the Republic of Chad,  
For The President of the Togolese Republic,  
For His Majesty King Taufa'ahau Tupou IV of Tonga,  
For The President of the Republic of Trinidad and Tobago,  
For Her Majesty the Queen of Tuvalu,  
For The Government of the Republic of Vanuatu,  
For The President of the Republic of Zaire,  
For The President of the Republic of Zambia,  
For The President of the Republic of Zimbabwe.

## **ANNEX XXVI. Joint declaration on Article 243(1)**

1. A contracting State may request the negotiation of an investment promotion and protection agreement with another contracting State.

2. The States party to such agreements shall practise no discrimination between contracting States party to this Convention or against each other in relation to third countries when opening negotiations for, concluding, applying and interpreting bilateral or multilateral investment promotion and protection agreements.

By "non-discrimination" the Parties understand that, in negotiating such agreements, either side may be entitled to provisions in agreements negotiated between the ACP States or Member States concerned and another State, provided that in every case reciprocity is accorded.

3. The contracting States shall have the right to request a modification or adaptation of the non-discriminatory treatment referred to in paragraph 2 when international obligations or changed de facto circumstances so necessitate.

4. The application of the principles referred to in paragraphs 2 and 3 does not purport to, and cannot in practice, infringe the sovereignty of any contracting State party to the Convention.

5. The relation between the date of entry into force of any agreement negotiated, provisions for the settlement of disputes and the date of the investments concerned will be set out in the said agreement, account being taken of the preceding paragraphs. The Contracting Parties confirm that retroactivity shall not apply as a general principle unless contracting States stipulate otherwise.