



**TREATY SERIES 2003
N° 9**

**Partnership Agreement between the members of the
African, Caribbean and Pacific Group of States, of the
one part, and the European Community and its
Member States, of the other part
(including Protocols, Final Act and Declarations)**

Done at Cotonou on 23 June 2000

Signed on behalf of Ireland on 23 June 2000

**Ireland's Instrument of Ratification deposited with the
General Secretariat of the ACP States
on 28 May 2002**

**Entered into force with respect to Ireland
on 1 April 2003**

Presented to Dáil Éireann by the Minister for Foreign Affairs

**PARTNERSHIP AGREEMENT BETWEEN THE MEMBERS OF THE
AFRICAN, CARIBBEAN AND PACIFIC GROUP OF STATES, OF THE
ONE PART, AND THE EUROPEAN COMMUNITY AND ITS MEMBER
STATES, OF THE OTHER PART**

Preamble

Having Regard To the Treaty establishing the European Community, on the one hand, and the Georgetown Agreement establishing the Group of African, Caribbean and Pacific States (ACP), on the other;

Affirming their commitment to work together towards the achievement of the objectives of poverty eradication, sustainable development and the gradual integration of the ACP countries into the world economy;

Asserting their resolve to make, through their cooperation, a significant contribution to the economic, social and cultural development of the ACP States and to the greater well-being of their population, helping them facing the challenges of globalisation and strengthening the ACP-EU Partnership in the effort to give the process of globalisation a stronger social dimension;

Reaffirming their willingness to revitalise their special relationship and to implement a comprehensive and integrated approach for a strengthened partnership based on political dialogue, development cooperation and economic and trade relations;

Acknowledging that a political environment guaranteeing peace, security and stability, respect for human rights, democratic principles and the rule of law, and good governance is part and parcel of long term development; acknowledging that responsibility for establishing such an environment rests primarily with the countries concerned;

Acknowledging that sound and sustainable economic policies are prerequisites for development;

Referring to the principles of the Charter of the United Nations, and recalling the Universal Declaration of Human Rights, the conclusions of the 1993 Vienna Conference on Human Rights, the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination against Women, the International Convention on the Elimination of all forms of Racial Discrimination, the 1949 Geneva Conventions and the other instruments of international humanitarian law, the 1954 Convention relating to the status of stateless persons, the 1951 Geneva Convention relating to the Status of Refugees and the 1967 New York Protocol relating to the Status of Refugees;

Considering the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, the African Charter on Human and Peoples' Rights and the American Convention on Human Rights as positive regional contributions to the respect of human rights in the European Union and in the ACP States;

Recalling the Libreville and Santo Domingo declarations of the Heads of State and Government of the ACP countries at their Summits in 1997 and 1999;

Considering that the development targets and principles agreed in United Nations Conferences and the target, set by the OECD Development Assistance Committee, to reduce by one half the proportion of people living in extreme poverty by the year 2015 provide a clear vision and must underpin ACP-EU cooperation within this Agreement;

Paying particular attention to the pledges made at the Rio, Vienna, Cairo, Copenhagen, Beijing, Istanbul and Rome UN conferences and acknowledging the need for further action to be taken in order to achieve the goals and implement the action programmes which have been drawn up in those fora;

Anxious to respect basic labour rights, taking account of the principles laid down in the relevant conventions of the International Labour Organisation;

Recalling the commitments within the framework of the World Trade Organisation,

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

PART 1

GENERAL PROVISIONS

TITLE I OBJECTIVES, PRINCIPLES AND ACTORS

CHAPTER 1

Objectives and principles

Article 1

Objectives of the partnership

The Community and its Member States, of the one part, and the ACP States, of the other part, hereinafter referred to as the "Parties" hereby conclude this Agreement in order to promote and expedite the economic, cultural and social development of the ACP States, with a view to contributing to peace and security and to promoting a stable and democratic political environment.

The partnership shall be centred on the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy.

These objectives and the Parties' international commitments shall inform all development strategies and shall be tackled through an integrated approach taking account at the same time of the political, economic, social, cultural and environmental aspects of development. The partnership shall provide a coherent support framework for the development strategies adopted by each ACP State.

Sustained economic growth, developing the private sector, increasing employment and improving access to productive resources shall all be part of this framework. Support shall be given to the respect of the rights of the individual and meeting basic needs, the promotion of social development and the conditions for an equitable distribution of the fruits of growth. Regional and sub-regional integration processes which foster the integration of the ACP countries into the world economy in terms of trade and private investment shall be encouraged and supported. Building the capacity of the actors in development and improving the institutional framework necessary for social cohesion, for the functioning of a democratic society and market economy, and for the emergence of an active and organised civil society shall be integral to the approach. Systematic account shall be taken of the situation of women and gender issues in all areas - political, economic and social. The principles of

sustainable management of natural resources and the environment shall be applied and integrated at every level of the partnership.

Article 2

Fundamental principles

ACP-EC cooperation, underpinned by a legally binding system and the existence of joint institutions, shall be exercised on the basis of the following fundamental principles:

- equality of the partners and ownership of the development strategies: for the purposes of implementing the objectives of the partnership, the ACP States shall determine the development strategies for their economies and societies in all sovereignty and with due regard for the essential elements described in Article 9; the partnership shall encourage ownership of the development strategies by the countries and populations concerned;
- participation: apart from central government as the main partner, the partnership shall be open to different kinds of other actors in order to encourage the integration of all sections of society, including the private sector and civil society organisations, into the mainstream of political, economic and social life;
- the pivotal role of dialogue and the fulfilment of mutual obligations: the obligations assumed by the Parties in the framework of their dialogue shall be central to their partnership and cooperation relations;
- differentiation and regionalisation: cooperation arrangements and priorities shall vary according to a partner's level of development, its needs, its performance and its long-term development strategy. Particular emphasis shall be placed on the regional dimension. Special treatment shall be given to the least-developed countries. The vulnerability of landlocked and island countries shall be taken into account.

Article 3

Achievement of this Agreement's objectives

The Parties shall, each as far as it is concerned in the framework of this Agreement, take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from this Agreement and to facilitate the attainment of the objectives thereof. They shall refrain from any measures liable to jeopardise these objectives.

CHAPTER 2

The actors of the partnership

Article 4 *General approach*

The ACP States shall determine the development principles, strategies and models of their economies and societies in all sovereignty. They shall establish, with the Community, the cooperation programmes provided for under this Agreement. However, the parties recognise the complementary role of and potential for contributions by non-State actors to the development process. To this end, under the conditions laid down in this Agreement, non-State actors shall, where appropriate:

- be informed and involved in consultation on cooperation policies and strategies, on priorities for cooperation especially in areas that concern or directly affect them, and on the political dialogue;
- be provided with financial resources, under the conditions laid down in this Agreement in order to support local development processes;
- be involved in the implementation of cooperation project and programmes in areas that concern them or where these actors have a comparative advantage;
- be provided with capacity-building support in critical areas in order to reinforce the capabilities of these actors, particularly as regards organisation and representation, and the establishment of consultation mechanisms including channels of communication and dialogue, and to promote strategic alliances.

Article 5 *Information*

Cooperation will support operation to provide more information and create greater awareness of the basic features of ACP-EU Partnership. Cooperation will also:

- encourage partnership and build links between ACP and EU actors;
- strengthen networking and exchange of expertise and experience among the actors.

Article 6
Definitions

1. The actors of cooperation will include:
 - (a) State (local, national and regional);
 - (b) Non-State:
 - Private sector;
 - Economic and social partners, including trade union organisations;
 - Civil Society in all its forms according to national characteristics.
2. Recognition by the parties of non-governmental actors shall depend on the extent to which they address the needs of the population, on their specific competencies and whether they are organised and managed democratically and transparently.

Article 7
Capacity building

The contribution of civil society to development can be enhanced by strengthening community organisations and non-profit non-governmental organisations in all spheres of cooperation. This will require:

- encouraging and supporting the creation and development of such organisations;
- establishing arrangements for involving such organisations in the design, implementation and evaluation of development strategies and programmes.

TITLE II THE POLITICAL DIMENSION

Article 8 *Political dialogue*

1. The Parties shall regularly engage in a comprehensive, balanced and deep political dialogue leading to commitments on both sides.
2. The objective of this dialogue shall be to exchange information, to foster mutual understanding, and to facilitate the establishment of agreed priorities and shared agendas, in particular by recognising existing links between the different aspects of the relations between the Parties and the various areas of cooperation as laid down in this Agreement. The dialogue shall facilitate consultations between the Parties within international fora. The objectives of the dialogue shall also include preventing situations arising in which one Party might deem it necessary to have recourse to the non-execution clause.
3. The dialogue shall cover all the aims and objectives laid down in this Agreement as well as all questions of common, general, regional or sub-regional interest. Through dialogue, the Parties shall contribute to peace, security and stability and promote a stable and democratic political environment. It shall encompass cooperation strategies as well as global and sectoral policies, including environment, gender, migration and questions related to the cultural heritage.
4. The dialogue shall focus, *inter alia*, on specific political issues of mutual concern or of general significance for the attainment of the objectives of this Agreement, such as the arms trade, excessive military expenditure, drugs and organised crime, or ethnic, religious or racial discrimination. The dialogue shall also encompass a regular assessment of the developments concerning the respect for human rights, democratic principles, the rule of law and good governance.
5. Broadly based policies to promote peace and to prevent, manage and resolve violent conflicts shall play a prominent role in this dialogue, as shall the need to take full account of the objective of peace and democratic stability in the definition of priority areas of cooperation.
6. The dialogue shall be conducted in a flexible manner. Dialogue shall be formal or informal according to the need, and conducted within and outside the institutional framework, in the appropriate format, and at the appropriate level including regional, sub-regional or national level.
7. Regional and sub-regional organisations as well as representatives of civil society organisations shall be associated with this dialogue.

Article 9
Essential Elements and Fundamental Element

1. Cooperation shall be directed towards sustainable development centred on the human person, who is the main protagonist and beneficiary of development; this entails respect for and promotion of all human rights.

Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development.

2. The Parties refer to their international obligations and commitments concerning respect for human rights. They reiterate their deep attachment to human dignity and human rights, which are legitimate aspirations of individuals and peoples. Human rights are universal, indivisible and inter-related. The Parties undertake to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural. In this context, the Parties reaffirm the equality of men and women.

The Parties reaffirm that democratisation, development and the protection of fundamental freedoms and human rights are interrelated and mutually reinforcing. Democratic principles are universally recognised principles underpinning the organisation of the State to ensure the legitimacy of its authority, the legality of its actions reflected in its constitutional, legislative and regulatory system, and the existence of participatory mechanisms. On the basis of universally recognised principles, each country develops its democratic culture.

The structure of government and the prerogatives of the different powers shall be founded on rule of law, which shall entail in particular effective and accessible means of legal redress, an independent legal system guaranteeing equality before the law and an executive that is fully subject to the law.

Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.

3. In the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and

capacity building for elaborating and implementing measures aiming in particular at preventing and combating corruption.

Good governance, which underpins the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute a fundamental element of this Agreement. The Parties agree that only serious cases of corruption, including acts of bribery leading to such corruption, as defined in Article 97 constitute a violation of that element.

4. The Partnership shall actively support the promotion of human rights, processes of democratisation, consolidation of the rule of law, and good governance.

These areas will be an important subject for the political dialogue. In the context of this dialogue, the Parties shall attach particular importance to the changes underway and to the continuity of the progress achieved. This regular assessment shall take into account each country's economic, social, cultural and historical context.

These areas will also be a focus of support for development strategies. The Community shall provide support for political, institutional and legal reforms and for building the capacity of public and private actors and civil society in the framework of strategies agreed jointly between the State concerned and the Community.

Article 10

Other elements of the political environment

1. The Parties consider the following elements as contributing to the maintenance and consolidation of a stable and democratic political environment:

- sustainable and equitable development involving, *inter alia*, access to productive resources, essential services and justice;
- greater involvement of an active and organised civil society and the private sector.

2. The Parties recognise that the principles of the market economy, supported by transparent competition rules and sound economic and social policies, contribute to achieving the objectives of the partnership.

Article 11

Peace-building policies, conflict prevention and resolution

1. The Parties shall pursue an active, comprehensive and integrated policy of peace-building and conflict prevention and resolution within the framework of the Partnership. This policy shall be based on the principle of ownership. It shall in particular focus on building regional, sub-regional and national capacities, and on preventing violent conflicts at an early stage by addressing their root-causes in a targeted manner, and with an adequate combination of all available instruments.
2. The activities in the field of peace-building, conflict prevention and resolution shall in particular include support for balancing political, economic, social and cultural opportunities among all segments of society, for strengthening the democratic legitimacy and effectiveness of governance, for establishing effective mechanisms for the peaceful conciliation of group interests, for bridging dividing lines among different segments of society as well as support for an active and organised civil society.
3. Relevant activities shall also include, *inter alia*, support for mediation, negotiation and reconciliation efforts, for effective regional management of shared, scarce natural resources, for demobilisation and reintegration of former combatants into the society, for addressing the problem of child soldiers, as well as for suitable action to set responsible limits to military expenditure and the arms trade, including through support for the promotion and application of agreed standards and codes of conduct. In this context, particular emphasis shall be given to the fight against anti-personnel landmines as well as to addressing an excessive and uncontrolled spread, illegal trafficking and accumulation of small arms and light weapons.
4. In situations of violent conflict the Parties shall take all suitable action to prevent an intensification of violence, to limit its territorial spread, and to facilitate a peaceful settlement of the existing disputes. Particular attention shall be paid to ensuring that financial resources for cooperation are used in accordance with the principles and objectives of the Partnership, and to preventing a diversion of funds for belligerent purposes.
5. In post-conflict situations, the Parties shall take all suitable action to facilitate the return to a non-violent, stable and self-sustainable situation. The Parties shall ensure the creation of the necessary links between emergency measures, rehabilitation and development cooperation.

Article 12
*Coherence of Community policies and their impact on
the implementation of this Agreement*

Without prejudice to Article 96, 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 Agreement's objectives are concerned, it shall inform in good time the said States of its intentions. Towards this end, the Commission shall communicate simultaneously to the Secretariat of the ACP States its proposal for such measures. Where necessary, a request for information may also take place on the initiative of the ACP States.

At their request, consultations shall be held promptly so that account may be taken of their concerns as to the impact of those measures before any final decision is made.

After such consultations have taken place, the ACP States may, in addition, transmit their concerns in writing to the Community as soon as possible and submit suggestions for amendments indicating the way their concerns should be met.

If the Community does not accede to the ACP States' submissions, it shall advise them as soon as possible giving its reasons.

The ACP States shall also be provided with adequate information on the entry into force of such decisions, in advance whenever possible.

Article 13
Migration

1. The issue of migration shall be the subject of in-depth dialogue in the framework of the ACP-EU Partnership.

The Parties reaffirm their existing obligations and commitments in international law to ensure respect for human rights and to eliminate all forms of discrimination based particularly on origin, sex, race, language and religion.

2. The Parties agree to consider that a partnership implies, with relation to migration, fair treatment of third country nationals who reside legally on their territories, integration policy aiming at granting them rights and obligations comparable to those of their citizens, enhancing non-discrimination in economic, social and cultural life and developing measures against racism and xenophobia.

3. The treatment accorded by each Member State to workers of ACP countries legally employed in its territory, shall be free from any

discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals. Further in this regard, each ACP State shall accord comparable non-discriminatory treatment to workers who are nationals of a Member State.

4. The Parties consider that strategies aiming at reducing poverty, improving living and working conditions, creating employment and developing training contribute in the long term to normalising migratory flows.

The Parties will take account, in the framework of development strategies and national and regional programming, of structural constraints associated with migratory flows with the purpose of supporting the economic and social development of the regions from which migrants originate and of reducing poverty.

The Community shall support, through national and regional Cooperation programmes, the training of ACP nationals in their country of origin, in another ACP country or in a Member State of the European Union. As regards training in a Member State, the Parties shall ensure that such action is geared towards the vocational integration of ACP nationals in their countries of origin.

The Parties shall develop cooperation programmes to facilitate the access of students from ACP States to education, in particular through the use of new communication technologies.

5. (a) In the framework of the political dialogue the Council of Ministers shall examine issues arising from illegal immigration with a view to establishing, where appropriate, the means for a prevention policy.

(b) In this context the Parties agree in particular to ensure that the rights and dignity of individuals are respected in any procedure initiated to return illegal immigrants to their countries of origin. In this connection the authorities concerned shall extend to them the administrative facilities necessary for their return.

(c) The Parties further agree that:

(i) - each Member State of the European Union shall accept the return of and readmission of any of its nationals who are illegally present on the territory of an ACP State, at that State's request and without further formalities;

- each of the ACP States shall accept the return of and readmission of any of its nationals who are illegally present

on the territory of a Member State of the European Union, at that Member State's request and without further formalities.

The Member States and the ACP States will provide their nationals with appropriate identity documents for such purposes.

In respect of the Member States of the European Union, the obligations in this paragraph apply only in respect of those persons who are to be considered their nationals for the Community purposes in accordance with Declaration No 2 to the Treaty establishing the European Community. In respect of ACP States, the obligations in this paragraph apply only in respect of those persons who are considered as their nationals in accordance with their respective legal system.

(ii) at the request of a Party, negotiations shall be initiated with ACP States aiming at concluding in good faith and with due regard for the relevant rules of international law, bilateral agreements governing specific obligations for the readmission and return of their nationals. These agreements shall also cover, if deemed necessary by any of the Parties, arrangements for the readmission of third country nationals and stateless persons. Such agreements will lay down the details about the categories of persons covered by these arrangements as well as the modalities of their readmission and return.

Adequate assistance to implement these agreements will be provided to the ACP States.

(iii) for the purposes of this point (c), the term "Parties" shall refer to the Community, any of its Member States and any ACP State.

PART 2

INSTITUTIONAL PROVISIONS

Article 14

The joint institutions

The institutions of this Agreement are the Council of Ministers, the Committee of Ambassadors and the Joint Parliamentary Assembly.

Article 15

The Council of Ministers

1. The Council of Ministers shall comprise, on the one hand, the members of the Council of the European Union and members of the Commission of the European Communities and, on the other, a member of the government of each ACP State.

The office of the President of the Council of Ministers shall be held alternately by a member of the Council of the European Union and a member of the government of an ACP State.

The Council shall meet as a rule once a year on the initiative of the President and whenever it seems necessary, in a form and a geographical composition appropriate to the issues to be addressed.

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

(a) conduct the political dialogue;

(b) adopt the policy guidelines and take the decisions necessary for the implementation of the provisions of this Agreement, in particular as regards development strategies in the specific areas provided for by this Agreement or any other area that should prove relevant, and as regards procedures;

(c) examine and resolve any issue liable to impede the effective and efficient implementation of this Agreement or present an obstacle to achieving its objectives;

(d) ensure the smooth functioning of the consultation mechanisms.

3. The Council of Ministers shall take its decisions by common agreement of the Parties. The proceedings of the Council of Ministers shall be valid only if half the members of the Council of the European Union, one member of the Commission and two-thirds of the members representing the governments of the ACP States are present. Any member

of the Council of Ministers unable to attend may be represented. The representative shall exercise all the rights of that member.

It may take decisions that are binding on the Parties and frame resolutions, recommendations and opinions. It shall examine and take into consideration resolutions and recommendations adopted by the Joint Parliamentary Assembly.

The Council of Ministers shall conduct an ongoing dialogue with the representatives of the social and economic partners and other actors of civil society in the ACP and the EU. To that end, consultations may be held alongside its meetings.

4. The Council of Ministers may delegate powers to the Committee of Ambassadors.

5. The Council of Ministers shall adopt its rules of procedure within six months of the entry into force of this Agreement.

Article 16

The Committee of Ambassadors

1. The Committee of Ambassadors shall comprise, on the one hand, the permanent representative of each Member State to the European Union and a representative of the Commission and, on the other, the head of mission of each ACP State to the European Union.

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. The Committee shall assist the Council of Ministers in the fulfilment of its tasks and carry out any mandate entrusted to it by the Council. In this context, it shall monitor implementation of this Agreement and progress towards achieving the objectives set therein.

The Committee of Ambassadors shall meet regularly, in particular to prepare the Council sessions and whenever it proves necessary.

3. The Committee shall adopt its rules of procedure within six months of the entry into force of this Agreement.

Article 17

The Joint Parliamentary Assembly

1. The Joint Parliamentary Assembly shall be composed of equal numbers of EU and ACP representatives. The members of the Joint

Parliamentary Assembly shall be, on the one hand, members of the European Parliament and, on the other, members of parliament or, failing this, representatives designated by the parliament of each ACP State. In the absence of a parliament, the attendance of a representative from the ACP State concerned shall be subject to the prior approval of the Joint Parliamentary Assembly.

2. The role of the Joint Parliamentary Assembly, as a consultative body, shall be to:

- promote democratic processes through dialogue and consultation;
- facilitate greater understanding between the peoples of the European Union and those of the ACP States and raise public awareness of development issues;
- discuss issues pertaining to development and the ACP-EU Partnership;
- adopt resolutions and make recommendations to the Council of Ministers with a view to achieving the objectives of this Agreement.

3. The Joint Parliamentary Assembly shall meet twice a year in plenary session, alternately in the European Union and in an ACP State. With a view to strengthening regional integration and fostering cooperation between national parliaments, meetings between EU and ACP members of parliament may be arranged at regional or subregional level.

The Joint Parliamentary Assembly shall organise regular contacts with representatives of the ACP-EU economic and social partners and the other actors of civil society in order to obtain their views on the attainment of the objectives of this Agreement.

4. The Joint Parliamentary Assembly shall adopt its rules of procedure within six months of the entry into force of this Agreement.

PART 3

COOPERATION STRATEGIES

Article 18

The cooperation strategies shall be based on development strategies and economic and trade cooperation which are interlinked and complementary. The Parties shall ensure that the efforts undertaken in both aforementioned areas are mutually reinforcing.

TITLE I

DEVELOPMENT STRATEGIES

CHAPTER 1

General framework

Article 19

Principles and objectives

1. The central objective of ACP-EC cooperation is poverty reduction and ultimately its eradication; sustainable development; and progressive integration of the ACP countries into the world economy. In this context, cooperation framework and orientations shall be tailored to the individual circumstances of each ACP country, shall promote local ownership of economic and social reforms and the integration of the private sector and civil society actors into the development process.
2. Cooperation shall refer to the conclusions of United Nations Conferences and to the objectives, targets and action programmes agreed at international level and to their follow up as a basis for development principles. Cooperation shall also refer to the international development cooperation targets and shall pay particular attention to putting in place qualitative and quantitative indicators of progress.
3. Governments and non-State actors in each ACP country shall initiate consultations on country development strategies and community support thereto.

Article 20

The Approach

1. The objectives of ACP-EC development cooperation shall be pursued through integrated strategies that incorporate economic, social, cultural, environmental and institutional elements that must be locally owned. Cooperation shall thus provide a coherent enabling framework of support to the ACP's own development strategies, ensuring complementarity and

interaction between the various elements. In this context and within the framework of development policies and reforms pursued by the ACP States, ACP-EC cooperation strategies shall aim at:

(a) achieving rapid and sustained job-creating economic growth, developing the private sector, increasing employment, improving access to productive economic activities and resource, and fostering regional cooperation and integration;

(b) promoting human and social development helping to ensure that the fruits of growth are widely and equitably shared and promoting gender equality;

(c) promoting cultural values of communities and specific interactions with economic, political and social elements;

(d) promoting institutional reforms and development, strengthening the institutions necessary for the consolidation of democracy, good governance and for efficient and competitive market economies; and building capacity for development and partnership; and

(e) promoting environmental sustainability, regeneration and best practices, and the preservation of natural resource base.

2. Systematic account shall be taken in mainstreaming into all areas of cooperation the following thematic or cross-cutting themes: gender issues, environmental issues and institutional development and capacity building. These areas shall also be eligible for Community support.

3. The detailed texts as regards development cooperation objectives and strategies, in particular sectoral policies and strategies shall be incorporated in a compendium providing operational guidelines in specific areas or sectors of cooperation. These texts may be revised, reviewed and/or amended by the Council of Ministers on the basis of a recommendation from the ACP-EC Development Finance Cooperation Committee.

CHAPTER 2

Areas of support

SECTION 1

Economic development

Article 21

Investment and private sector development

1. Cooperation shall support the necessary economic and institutional reforms and policies at national and/or regional level, aiming at creating a favourable environment for private investment, and the development of a dynamic, viable and competitive private sector. Cooperation shall further support:

- (a) the promotion of public-private sector dialogue and cooperation;
- (b) the development of entrepreneurial skills and business culture;
- (c) privatisation and enterprise reform; and
- (d) development and modernisation of mediation and arbitration systems.

2. Cooperation shall also support improving the quality, availability and accessibility of financial and non-financial services to private enterprises, both formal and informal; by:

- (a) catalysing and leveraging flows of private savings, both domestic and foreign, into the financing of private enterprises by supporting policies for developing a modern financial sector including a capital market, financial institutions and sustainable microfinance operations;
- (b) the development and strengthening of business institutions and intermediary organisations, associations, chambers of commerce and local providers from the private sector supporting and providing non-financial services to enterprises such as professional, technical, management, training and commercial support services; and
- (c) supporting institutions, programmes, activities and initiatives that contribute to the development and transfer of technologies and know-how and best practices on all aspects of business management.

3. Cooperation shall promote business development through the provision of finance, guarantee facilities and technical support aimed at

encouraging and supporting the creation, establishment, expansion, diversification, rehabilitation, restructuring, modernisation or privatisation of dynamic, viable and competitive enterprises in all economic sectors as well as financial intermediaries such as development finance and venture capital institutions, and leasing companies by:

(a) creating and/or strengthening financial instruments in the form of investment capital;

(b) improving access to essential inputs such as business information and advisory, consultancy or technical assistance services;

(c) enhancement of export activities, in particular through capacity building in all trade-related areas; and

(d) encouraging inter-firm linkages, networks and cooperation including those involving the transfer of technology and know-how at national, regional and ACP-EU levels, and partnerships with private foreign investors which are consistent with the objectives and guidelines of ACP-EC Development cooperation.

4. Cooperation shall support microenterprise development through better access to financial and non-financial services; an appropriate policy and regulatory framework for their development; and provide training and information services on best practices in microfinance.

5. Support for investment and private sector development shall integrate actions and initiatives at macro, meso and micro economic levels.

Article 22

Macroeconomic and structural reforms and policies

1. Cooperation shall support ACP efforts to implement:

(a) macroeconomic growth and stabilisation through disciplined fiscal and monetary policies that result in the reduction of inflation, and improve external and fiscal balances, by strengthening fiscal discipline, enhancing budgetary transparency and efficiency, improving the quality, the equity and composition of fiscal policy; and

(b) structural policies designed to reinforce the role of the different actors, especially the private sector and improve the environment for increases in business, investment and employment, as well as:

- (i) liberalise trade and foreign exchange regimes and current account convertibility, having regard to the particular circumstances of each country;
- (ii) strengthen labour and product-market reforms;
- (iii) encourage financial systems reforms which help to develop viable banking and non-banking systems, capital markets and financial services, including micro-finance;
- (iv) improve the quality of private and public services; and
- (v) encourage regional cooperation and progressive integration of macroeconomic and monetary policies.

2. The design of macroeconomic policies and structural adjustment programmes shall reflect the socio-political background and institutional capacity of the countries concerned, ensure a positive impact on poverty reduction and social services access and shall be based on the following principles:

- (a) the ACP States shall bear primary responsibility for the analysis of the problems to be solved, the design and the implementation of the reforms;
- (b) support programmes shall be adapted to the different situation in each ACP State and be sensitive to the social conditions, culture and environment of these States;
- (c) the right of the ACP States to determine the direction and the sequencing of their development strategies and priorities shall be recognised and respected;
- (d) the pace of reforms shall be realistic and compatible with each ACP State's capacities and resources; and
- (e) strengthening the communication and the information of populations on economic and social reforms and policies.

Article 23

Economic sector development

Cooperation shall support sustainable policy and institutional reforms and the investments necessary for equitable access to economic activities and productive resources, particularly:

- (a) the development of training systems that help increase productivity in both the formal and the informal sectors;

- (b) capital, credit, land, especially as regards property rights and use;
- (c) development of rural strategies aimed at establishing a framework for participatory decentralised planning, resource allocation and management;
- (d) agricultural production strategies, national and regional food security policies, sustainable development of water resources and fisheries as well as marine resources within the economic exclusive zones of the ACP States. Any fishery agreement that may be negotiated between the Community and the ACP States shall pay due consideration to consistency with the development strategies in this area;
- (e) economic and technological infrastructure and services, including transport, telecommunication systems, communication services and the development of information society;
- (f) development of competitive industrial, mining and energy sectors, while encouraging private sector involvement and development;
- (g) trade development, including the promotion of fair trade;
- (h) development of business, finance and banking; and other service sectors;
- (i) tourism development; and
- (j) development of scientific, technological and research infrastructure and services; including the enhancement, transfer and absorption of new technologies;
- (k) the strengthening of capacities in productive areas, especially in public and private sectors.

Article 24
Tourism

Cooperation will aim at the sustainable development of the tourism industry in ACP countries and sub-regions, recognising its increasing importance to the growth of the services sector in ACP countries and to the expansion of their global trade, its ability to stimulate other sectors of economic activity, and the role it can play in poverty eradication.

Cooperation programmes and projects will support the efforts of ACP countries to establish and improve the countries legal and institutional framework and resources for the development and implementation of sustainable tourism policies and programmes, as well as *inter alia*, improving the competitive position of the sector, especially small and medium-sized enterprises (SMEs), investment support and promotion, product development including the development of indigenous cultures in ACP countries, and strengthening linkages between tourism and other sectors of economic activity.

SECTION 2 Social and human development

Article 25 *Social sector development*

1. Cooperation shall support ACP States' efforts at developing general and sectoral policies and reforms which improve the coverage, quality of and access to basic social infrastructure and services and take account of local needs and specific demands of the most vulnerable and disadvantaged, thus reducing the inequalities of access to these services. Special attention shall be paid to ensuring adequate levels of public spending in the social sectors. In this context, cooperation shall aim at:

- (a) improving education and training, and building technical capacity and skills;
- (b) improving health systems and nutrition, eliminating hunger and malnutrition, ensuring adequate food supply and security;
- (c) integrating population issues into development strategies in order to improve reproductive health, primary health care, family planning; and prevention of female genital mutilation;
- (d) promoting the fight against HIV/AIDS;
- (e) increasing the security of household water and improving access to safe water and adequate sanitation;
- (f) improving the availability of affordable and adequate shelter for all through supporting low-cost and low-income housing programs and improving urban development; and
- (g) encouraging the promotion of participatory methods of social dialogue as well as respect for basic social rights.

2. Cooperation shall also support capacity-building in social areas such as programmes for training in the design of social policies and modern methods for managing social projects and programmes; policies conducive to technological innovation and research; building local expertise and promoting partnerships; and round-table discussions at national and/or regional level.

3. Cooperation shall promote and support the development and implementation of policies and of systems of social protection and security in order to enhance social cohesion and to promote self-help and community solidarity. The focus of the support shall, inter-alia, be on developing initiatives based on economic solidarity, particularly by setting-up social development funds adapted to local needs and actors.

Article 26 *Youth issues*

Cooperation shall also support the establishment of a coherent and comprehensive policy for realising the potential of youth so that they are better integrated into society to achieve their full potential. In this context, cooperation shall support policies, measures and operations aimed at:

- (a) protecting the rights of children and youth, especially those of girl children;
- (b) promoting the skills, energy, innovation and potential of youth in order to enhance their economic, social and cultural opportunities and enlarge their employment opportunities in the productive sector;
- (c) helping community-based institutions to give children the opportunity to develop their physical, psychological, social and economic potential; and
- (d) reintegrating into society children in post-conflict situations through rehabilitation programmes.

Article 27 *Cultural development*

Cooperation in the area of culture shall aim at:

- (a) integrating the cultural dimension at all levels of development cooperation;
- (b) recognising, preserving and promoting cultural values and identities to enable inter-cultural dialogue;

- (c) recognising, preserving and promoting the value of cultural heritage; supporting the development of capacity in this sector; and
- (d) developing cultural industries and enhancing market access opportunities for cultural goods and services.

SECTION 3

Regional cooperation and integration

Article 28

General approach

Cooperation shall provide effective assistance to achieve the objectives and priorities which the ACP States have set themselves in the context of regional and sub-regional cooperation and integration, including inter-regional and intra-ACP cooperation. Regional Cooperation can also involve Overseas Countries and Territories (OCTs) and outermost regions. In this context, cooperation support shall aim to:

- (a) foster the gradual integration of the ACP States into the world economy;
- (b) accelerate economic cooperation and development both within and between the regions of the ACP States;
- (c) promote the free movement of persons, goods, services, capital, labour and technology among ACP countries;
- (d) accelerate diversification of the economies of the ACP States; and coordination and harmonisation of regional and sub-regional cooperation policies; and
- (e) promote and expand inter and intra-ACP trade and with third countries.

Article 29

Regional economic integration

Cooperation shall, in the area of regional economic integration, support:

- (a) developing and strengthening the capacities of:
 - (i) regional integration institutions and organisations set up by the ACP States to promote regional cooperation and integration, and

- (ii) national governments and parliaments in matters of regional integration;
- (b) fostering participation of Least Developed Countries (LDC) ACP States in the establishment of regional markets and sharing the benefits therefrom;
- (c) implementation of sectoral reform policies at regional level;
- (d) liberalisation of trade and payments;
- (e) promoting cross-border investments both foreign and domestic, and other regional or sub-regional economic integration initiatives; and
- (f) taking account of the effects of net transitional costs of regional integration on budget revenue and balance of payments.

Article 30
Regional Cooperation

1. Cooperation shall, in the area of regional cooperation, support a wide variety of functional and thematic fields which specifically address common problems and take advantage of scale of economies, including:
 - (a) infrastructure particularly transport and communications and safety thereof and services, including the development of regional opportunities in the area of Information and Communication Technologies (ICT);
 - (b) the environment; water resource management and energy;
 - (c) health, education and training;
 - (d) research and technological development;
 - (e) regional initiatives for disaster preparedness and mitigation; and
 - (f) other areas, including arms control, action against drugs, organised crimes, money laundering, bribery and corruption.
2. Cooperation shall also support inter and intra-ACP cooperation schemes and initiatives.
3. Cooperation shall help promote and develop a regional political dialogue in areas of conflict prevention and resolution; human rights and

democratisation; exchange, networking, and promotion of mobility between the different actors of development, in particular in civil society.

SECTION 4

Thematic and cross-cutting issues

Article 31

Gender issues

Cooperation shall help strengthen policies and programmes that improve, ensure and broaden the equal participation of men and women in all spheres of political, economic, social and cultural life. Cooperation shall help improve the access of women to all resources required for the full exercise of their fundamental rights. More specifically, cooperation shall create the appropriate framework to:

- (a) integrate a gender-sensitive approach and concerns at every level of development cooperation including macroeconomic policies, strategies and operations; and
- (b) encourage the adoption of specific positive measures in favour of women such as:
 - (i) participation in national and local politics;
 - (ii) support for women's organisations;
 - (iii) access to basic social services, especially to education and training, health care and family planning;
 - (iv) access to productive resources, especially to land and credit and to labour market; and
 - (v) taking specific account of women in emergency aid and rehabilitation operations.

Article 32

Environment and natural resources

1. Cooperation on environmental protection and sustainable utilisation and management of natural resources shall aim at:

- (a) mainstreaming environmental sustainability into all aspects of development cooperation and support programmes and projects implemented by the various actors;

(b) building and/or strengthening the scientific and technical human and institutional capacity for environmental management for all environmental stakeholders;

(c) supporting specific measures and schemes aimed at addressing critical sustainable management issues and also relating to current and future regional and international commitments concerning mineral and natural resources such as:

(i) tropical forests, water resources, coastal, marine and fisheries resources, wildlife, soils, biodiversity;

(ii) protection of fragile ecosystems (e.g. coral reef);

(iii) renewable energy sources notably solar energy and energy efficiency;

(iv) sustainable rural and urban development;

(v) desertification, drought and deforestation;

(vi) developing innovative solutions to urban environmental problems; and

(vii) promotion of sustainable tourism.

(d) Taking into account issues relating to the transport and disposal of hazardous waste.

2. Cooperation shall also take account of:

(a) the vulnerability of small island ACP countries, especially to the threat posed by climate change;

(b) the worsening drought and desertification problems especially of least developed and land-locked countries; and

(c) institutional development and capacity building.

Article 33

Institutional development and capacity building

1. Cooperation shall pay systematic attention to institutional aspects and in this context, shall support the efforts of the ACP States to develop and strengthen structures, institutions and procedures that help to:

(a) promote and sustain democracy, human dignity, social justice and pluralism, with full respect for diversity within and among societies;

(b) promote and sustain universal and full respect for and observance and protection of all human rights and fundamental freedoms;

(c) develop and strengthen the rule of law; and improve access to justice, while guaranteeing the professionalism and independence of the judicial systems; and

(d) ensure transparent and accountable governance and administration in all public institutions.

2. The Parties shall work together in the fight against bribery and corruption in all their societies.

3. Cooperation shall support ACP States' efforts to develop their public institutions into a positive force for growth and development and to achieve major improvements in the efficiency of government services as they affect the lives of ordinary people. In this context, cooperation shall assist the reform, rationalisation and the modernisation of the public sector. Specifically, cooperation support shall focus on:

(a) the reform and modernisation of the civil service;

(b) legal and judicial reforms and modernisation of justice systems;

(c) improvement and strengthening of public finance management;

(d) accelerating reforms of the banking and financial sector;

(e) improvement of the management of public assets and reform of public procurement procedures; and

(f) political, administrative, economic and financial decentralisation.

4. Cooperation shall also assist to restore and/or enhance critical public sector capacity and to support institutions needed to underpin a market economy, especially support for:

(a) developing legal and regulatory capabilities needed to cope with the operation of a market economy, including competition policy and consumer policy;

(b) improving capacity to analyse, plan, formulate and implement policies, in particular in the economic, social, environmental, research, science and technology and innovation fields;

(c) modernising, strengthening and reforming financial and monetary institutions and improving procedures;

(d) building the capacity at the local and municipal levels which is required to implement decentralisation policy and to increase the participation of the population in the development process; and

(e) developing capacity in other critical areas such as:

(i) international negotiations; and

(ii) management and coordination of external aid.

5. Cooperation shall span all areas and sectors of cooperation to foster the emergence of non-State actors and the development of their capacities; and to strengthen structures for information, dialogue and consultation between them and the national authorities, including at regional level.

TITLE II ECONOMIC AND TRADE COOPERATION

CHAPTER 1

Objectives and principles

Article 34 *Objectives*

1. Economic and trade cooperation shall aim at fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries.

2. The ultimate objective of economic and trade cooperation is to enable the ACP States to play a full part in international trade. In this context, particular regard shall be had to the need for the ACP States to participate actively in multilateral trade negotiations. Given the current level of development of the ACP countries, economic and trade cooperation shall be directed at enabling the ACP States to manage the challenges of globalisation and to adapt progressively to new conditions of international trade thereby facilitating their transition to the liberalised global economy.

3. To this end economic and trade cooperation shall aim at enhancing the production, supply and trading capacity of the ACP countries as well as their capacity to attract investment. It shall further aim at creating a new trading dynamic between the Parties, at strengthening the ACP countries trade and investment policies and at improving the ACP countries' capacity to handle all issues related to trade.

4. Economic and trade cooperation shall be implemented in full conformity with the provisions of the WTO, including special and differential treatment, taking account of the Parties' mutual interests and their respective levels of development.

Article 35 *Principles*

1. Economic and trade cooperation shall be based on a true, strengthened and strategic partnership. It shall further be based on a comprehensive approach which builds on the strengths and achievements of the previous ACP-EC Conventions, using all means available to achieve the objectives set out above by addressing supply and demand side constraints. In this context, particular regard shall be had to trade development measures as a means of enhancing ACP States' competitiveness. Appropriate weight shall therefore be given to trade development within the ACP States' development strategies, which the Community shall support.

2. Economic and trade cooperation shall build on regional integration initiatives of ACP States, bearing in mind that regional integration is a key instrument for the integration of ACP countries into the world economy.

3. Economic and trade cooperation shall take account of the different needs and levels of development of the ACP countries and regions. In this context, the Parties reaffirm their attachment to ensuring special and differential treatment for all ACP countries and to maintaining special treatment for ACP LDCs and to taking due account of the vulnerability of small, landlocked and island countries.

CHAPTER 2

New trading arrangements

Article 36 *Modalities*

1. In view of the objectives and principles set out above, the Parties agree to conclude new World Trade Organisation (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade.
2. The Parties agree that the new trading arrangements shall be introduced gradually and recognise the need, therefore, for a preparatory period.
3. In order to facilitate the transition to the new trading arrangements, the non-reciprocal trade preferences applied under the Fourth ACP-EC Convention shall be maintained during the preparatory period for all ACP countries, under the conditions defined in Annex V to this Agreement.
4. In this context, the Parties reaffirm the importance of the commodity protocols, attached to Annex V of this Agreement. They agree on the need to review them in the context of the new trading arrangements, in particular as regards their compatibility with WTO rules, with a view to safeguarding the benefits derived therefrom, bearing in mind the special legal status of the Sugar Protocol.

Article 37 *Procedures*

1. Economic partnership agreements shall be negotiated during the preparatory period which shall end by 31 December 2007 at the latest. Formal negotiations of the new trading arrangements shall start in September 2002 and the new trading arrangements shall enter into force by 1 January 2008, unless earlier dates are agreed between the Parties.
2. All the necessary measures shall be taken so as to ensure that the negotiations are successfully concluded within the preparatory period. To this end, the period up to the start of the formal negotiations of the new trading arrangements shall be actively used to make initial preparations for these negotiations.
3. The preparatory period shall also be used for capacity-building in the public and private sectors of ACP countries, including measures to enhance competitiveness, for strengthening of regional organisations and for support to regional trade integration initiatives, where appropriate

with assistance to budgetary adjustment and fiscal reform, as well as for infrastructure upgrading and development, and for investment promotion.

4. The Parties will regularly review the progress of the preparations and negotiations and, will in 2006 carry out a formal and comprehensive review of the arrangements planned for all countries to ensure that no further time is needed for preparations or negotiations.

5. Negotiations of the economic partnership agreements will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, taking into account regional integration process within the ACP.

6. In 2004, the Community will assess the situation of the non-LDC which, after consultations with the Community decide that they are not in a position to enter into economic partnership agreements and will examine all alternative possibilities, in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules.

7. Negotiations of the economic partnership agreements shall aim notably at establishing the timetable for the progressive removal of barriers to trade between the Parties, in accordance with the relevant WTO rules. On the Community side trade liberalisation shall build on the *acquis* and shall aim at improving current market access for the ACP countries through *inter alia*, a review of the rules of origin. Negotiations shall take account of the level of development and the socio-economic impact of trade measures on ACP countries, and their capacity to adapt and adjust their economies to the liberalisation process. Negotiations will therefore be as flexible as possible in establishing the duration of a sufficient transitional period, the final product coverage, taking into account sensitive sectors, and the degree of asymmetry in terms of timetable for tariff dismantlement, while remaining in conformity with WTO rules then prevailing.

8. The Parties shall closely cooperate and collaborate in the WTO with a view to defending the arrangements reached, in particular with regard to the degree of flexibility available.

9. The Community will start by the year 2000, a process which by the end of multilateral trade negotiations and at the latest 2005 will allow duty free access for essentially all products from all LDC building on the level of the existing trade provisions of the Fourth ACP-EC Convention and which will simplify and review the rules of origin, including cumulation provisions, that apply to their exports.

Article 38
Joint Ministerial Trade Committee

1. A Joint ACP-EC Ministerial Trade Committee shall be established.
2. The Ministerial Trade Committee shall pay special attention to current multilateral trade negotiations and shall examine the impact of the wider liberalisation initiatives on ACP-EC trade and the development of ACP economies. It shall make any necessary recommendations with a view to preserving the benefits of the ACP-EC trading arrangements.
3. The Ministerial Trade Committee shall meet at least once a year. Its rules of procedure shall be laid down by the Council of Ministers. It shall be composed of representatives of the ACP States and of the Community.

CHAPTER 3

Cooperation in the international fora

Article 39
General Provisions

1. The Parties underline the importance of their active participation in the WTO as well as in other relevant international organisations by becoming members of these organisations and closely following their agenda and activities.
2. They agree to cooperate closely in identifying and furthering their common interests in international economic and trade cooperation in particular in the WTO, including participation in setting and conducting the agenda in future multilateral trade negotiations. In this context, particular attention shall be paid to improve access to the Community and other markets for products and services originating in the ACP countries.
3. They also agree on the importance of flexibility in WTO rules to take account of the ACP's level of development as well of the difficulties faced in meeting their obligations. They further agree on the need for technical assistance to enable the ACP countries to implement their commitments.
4. The Community agrees to assist the ACP States in their efforts, in accordance with the provisions set out in this Agreement, to become active members of these organisations, by developing the necessary capacity to negotiate, participate effectively, monitor and implement these agreements.

Article 40
Commodities

1. The Parties recognise the need to ensure a better operation of international commodity markets and to increase market transparency.
2. They confirm their willingness to step up consultations between them in the international fora and organisations dealing with commodities.
3. To this end, exchange of views shall take place at the request of either Party:
 - regarding the operation of existing international agreements or specialised intergovernmental working parties with the aim of improving them and making them more effective, consistent with market trends;
 - when it is proposed to conclude or renew an international agreement or set up a specialised intergovernmental working party.

The aim of such exchanges of views shall be to take account of the respective interest of each party. They may take place, where necessary, in the framework of the Ministerial Trade Committee.

CHAPTER 4

Trade in services

Article 41
General Provisions

1. The Parties underline the growing importance of services in international trade and their major contribution to economic and social development.
2. They reaffirm their respective commitments under the General Agreement on Trade in Services (GATS), and underline the need for special and differential treatment to ACP suppliers of services;
3. In the framework of the negotiations for progressive liberalisation in trade and services, as provided for in Article XIX of GATS, the Community undertakes to give sympathetic consideration to the ACP States' priorities for improvement in the EC schedule, with a view to meeting their specific interests.
4. The Parties further agree on the objective of extending under the economic partnership agreements, and after they have acquired some

experience in applying the Most Favoured Nation (MFN) treatment under GATS, their partnership to encompass the liberalisation of services in accordance with the provisions of GATS and particularly those relating to the participation of developing countries in liberalisation agreements.

5. The Community shall support the ACP States' efforts to strengthen their capacity in the supply of services. Particular attention shall be paid to services related to labour, business, distribution, finance, tourism, culture and construction and related engineering services with a view to enhancing their competitiveness and thereby increasing the value and the volume of their trade in goods and services.

Article 42

Maritime Transport

1. The Parties acknowledge the importance of cost-effective and efficient maritime transport services in a safe and clean marine environment as the main mode of transportation facilitating international trade and thereby constituting one of the forces behind economic development and the development of trade.

2. They undertake to promote the liberalisation of maritime transport and to this end apply effectively the principle of unrestricted access to the international maritime transport market on a non-discriminatory and commercial basis.

3. Each Party shall grant, *inter alia*, a treatment no less favourable than that accorded to its own ships, for ships operated by nationals or companies of the other Party, and for ships registered in the territory of either party, with respect to access to ports, the use of infrastructure and auxiliary maritime services of those ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

4. The Community shall support the ACP States' efforts to develop and promote cost-effective and efficient maritime transport services in the ACP States with a view to increasing the participation of ACP operators in international shipping services.

Article 43

Information and Communication Technologies, and Information Society

1. The Parties recognise the important role of information and communication technologies, as well as the active participation in the Information Society, as a pre-requisite for the successful integration of the ACP countries into the world economy.

2. They therefore reconfirm their respective commitments under existing multilateral agreements, in particular the protocol on Basic Telecommunications attached to the GATS, and invite those ACP countries, which are not yet members of these agreements, to accede to them.

3. They furthermore agree to participate fully and actively in any future international negotiation, which might be conducted in this area.

4. The Parties will therefore take measures that will enable inhabitants of ACP countries easy access to information and communication technologies, through, amongst other, the following measures:

- the development and encouragement of the use of affordable renewable energy resources;

- the development and deployment of more extensive low-cost wireless networks.

5. The Parties also agree to step up cooperation between them in the area of information and communication technologies, and the Information Society. This cooperation shall, in particular, be directed towards greater complementarity and harmonisation of communication systems, at national, regional and international level and their adaptation to new technologies.

CHAPTER 5

Trade-related areas

Article 44

General Provisions

1. The Parties acknowledge the growing importance of new areas related to trade in facilitating progressive integration of the ACP States into the world economy. They therefore agree to strengthen their cooperation in these areas by establishing full and coordinated participation in the relevant international fora and agreements.

2. The Community shall support the ACP States' efforts, in accordance with the provisions set out in this Agreement and the development strategies agreed between the Parties to strengthen their capacity to handle all areas related to trade, including, where necessary, improving and supporting the institutional framework.

Article 45 *Competition Policy*

1. The Parties agree that the introduction and implementation of effective and sound competition policies and rules are of crucial importance in order to improve and secure an investment friendly climate, a sustainable industrialisation process and transparency in the access to markets.
2. To ensure the elimination of distortions to sound competition and with due consideration to the different levels of development and economic needs of each ACP country, they undertake to implement national or regional rules and policies including the control and under certain conditions the prohibition of agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition. The Parties further agree to prohibit the abuse by one or more undertakings of a dominant position in the common market of the Community or in the territory of ACP States.
3. The Parties also agree to reinforce cooperation in this area with a view to formulating and supporting effective competition policies with the appropriate national competition agencies that progressively ensure the efficient enforcement of the competition rules by both private and state enterprises. Cooperation in this area shall, in particular, include assistance in the drafting of an appropriate legal framework and its administrative enforcement with particular reference to the special situation of the least developed countries.

Article 46 *Protection of Intellectual Property Rights*

1. Without prejudice to the positions of the Parties in multilateral negotiations, the Parties recognise the need to ensure an adequate and effective level of protection of intellectual, industrial and commercial property rights, and other rights covered by TRIPS including protection of geographical indications, in line with the international standards with a view to reducing distortions and impediments to bilateral trade.
2. They underline the importance, in this context, of adherence to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to the WTO Agreement and the Convention on Biological Diversity (CBD).
3. They also agree on the need to accede to all relevant international conventions on intellectual, industrial and commercial property as referred to in Part I of the TRIPS Agreement, in line with their level of development.

4. The Community, its Member States and the ACP States may consider the conclusion of agreements aimed at protecting trademarks and geographical indications for products of particular interest of either Party.

5. For the purpose of this Agreement, intellectual property includes in particular copyright, including the copyright on computer programmes, and neighbouring rights, including artistic designs, and industrial property which includes utility models, patents including patents for biotechnological inventions and plant varieties or other effective sui generis systems, industrial designs, geographical indications including appellations of origin, trademarks for goods or services, topographies of integrated circuits as well as the legal protection of data bases and the protection against unfair competition as referred to in Article 10a of the Paris Convention for the Protection of Industrial Property and protection of undisclosed confidential information on know how.

6. The Parties further agree to strengthen their cooperation in this field. Upon request and on mutually agreed terms and conditions cooperation shall *inter alia* extend to the following areas: the preparation of laws and regulations for the protection and enforcement of intellectual property rights, the prevention of the abuse of such rights by rightholders and the infringement of such rights by competitors, the establishment and reinforcement of domestic and regional offices and other agencies including support for regional intellectual property organisations involved in enforcement and protection, including the training of personnel.

Article 47

Standardisation and Certification

1. The Parties agree to cooperate more closely in the field of standardisation, certification and quality assurance to remove unnecessary technical barriers and to reduce differences between them in those areas, so as to facilitate trade.

In this context, they reaffirm their commitment under the Agreement on Technical Barriers to trade, annexed to the WTO Agreement (TBT Agreement).

2. Cooperation in standardisation and certification shall aim at promoting compatible systems between the Parties and in particular include:

- measures, in accordance with the TBT Agreement, to promote greater use of international technical regulations, standards and conformity assessment procedures, including sector specific measures, in accordance with the level of economic development of ACP countries,

- cooperation in the area of quality management and assurance in selected sectors of importance to the ACP States,
 - support for capacity building initiatives in the ACP countries in the fields of conformity assessment, metrology and standardisation,
 - developing functioning links between ACP and European standardisation, conformity assessment and certification institutions.
3. The Parties undertake to consider, in due course, negotiating mutual recognition agreements in sectors of mutual economic interest.

Article 48

Sanitary and Phytosanitary Measures

1. The Parties recognise the right of each Party to adopt or to enforce sanitary and phytosanitary measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures do not constitute a means of arbitrary discrimination or a disguised restriction to trade, generally. To this end, they reaffirm their commitments under the Agreement on the Application of Sanitary and Phytosanitary Measures, annexed to the WTO Agreement (SPS-Agreement), taking account of their respective level of development.
2. They further undertake to reinforce coordination, consultation and information as regards notification and application of proposed sanitary and phytosanitary measures, in accordance with the SPS-Agreement whenever these measures might affect the interests of either Party. They also agree on prior consultation and coordination within the Codex Alimentarius, the International Office of Epizootics and the International Plant Protection Convention, with a view to furthering their common interests.
3. The Parties agree to strengthen their cooperation with a view to reinforcing the capacity of the public and the private sector of the ACP countries in this field.

Article 49

Trade and Environment

1. The Parties reaffirm their commitment to promoting the development of international trade in such a way as to ensure sustainable and sound management of the environment, in accordance with the international conventions and undertakings in this area and with due regard to their respective level of development. They agree that the special needs and requirements of ACP States should be taken into account in the design and implementation of environment measures.

2. Bearing in mind the Rio Principles and with a view to reinforcing the mutual supportiveness of trade and environment, the Parties agree to enhance their cooperation in this field. Cooperation shall in particular aim at the establishment of coherent national, regional and international policies, reinforcement of quality controls of goods and services related to the environment, the improvement of environment-friendly production methods in relevant sectors.

Article 50

Trade and Labour Standards

1. The Parties reaffirm their commitment to the internationally recognised core labour standards, as defined by the relevant International Labour Organisation (ILO) Conventions, and in particular the freedom of association and the right to collective bargaining, the abolition of forced labour, the elimination of worst forms of child labour and non-discrimination in respect to employment.

2. They agree to enhance cooperation in this area, in particular in the following fields:

- exchange of information on the respective legislation and work regulation;
- the formulation of national labour legislation and strengthening of existing legislation;
- educational and awareness-raising programmes;
- enforcement of adherence to national legislation and work regulation.

3. The Parties agree that labour standards should not be used for protectionist trade purposes.

Article 51

Consumer Policy and Protection of Consumer Health

1. The Parties agree to step up their cooperation in the area of consumer policy and consumer health protection, having due regard to domestic legislation to avoid barriers to trade.

2. Cooperation shall, in particular, aim at improving the institutional and technical capacity in this area, establishing rapid-alert systems of mutual information on dangerous products, exchanging information and experiences on the establishment and operation of post market surveillance of products and product safety, improving information provided to consumers on prices, characteristics of products and services offered, encouraging the development of independent consumer

associations and contacts between consumer interest representatives, improving compatibility of consumer policies and systems, notifying enforcement of the legislation and promoting cooperation in investigating harmful or unfair business practices and implementing exports prohibitions in the trade between the Parties of goods and services the marketing of which has been prohibited in their country of production.

Article 52
Tax Carve-out Clause

1. Without prejudice to the provisions of Article 31 of Annex IV, the Most Favoured Nation treatment granted in accordance with the provisions of this Agreement, or any arrangement adopted under this Agreement, does not apply to tax advantages which the Parties are providing or may provide in the future on the basis of agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation.

2. Nothing in this Agreement, or in any arrangements adopted under this Agreement, may be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation.

3. Nothing in this Agreement, or in any arrangements adopted under this Agreement, shall be construed to prevent the Parties from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence, or with regard to the place where their capital is invested.

CHAPTER 6

Cooperation in other areas

Article 53
Fishery Agreements

1. The Parties declare their willingness to negotiate fishery agreements aimed at guaranteeing sustainable and mutually satisfactory conditions for fishing activities in ACP States.

2. 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 54
Food security

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.
2. Advance fixing shall be for one year and shall be applied each year throughout the life of this Agreement, it being understood that the level of the refund will be determined in accordance with the methods normally followed by the Commission.
3. Specific agreements may be concluded with those ACP States which so request in the context of their food security policies.
4. The specific agreements referred to in paragraph 3 shall not place in jeopardy production and trade flows in ACP regions.

PART 4

DEVELOPMENT FINANCE COOPERATION

TITLE I GENERAL PROVISIONS

CHAPTER 1

Objectives, principles, guidelines and eligibility

Article 55 *Objectives*

The objectives of development finance cooperation shall be, through the provision of adequate financial resources and appropriate technical assistance, to support and promote the efforts of ACP States to achieve the objectives set out in this Agreement on the basis of mutual interest and in a spirit of interdependence.

Article 56 *Principles*

1. Development finance cooperation shall be implemented on the basis of and be consistent with the development objectives, strategies and priorities established by the ACP States, at both national and regional levels. Their respective geographical, social and cultural characteristics, as well as their specific potential, shall be taken into account. In addition, cooperation shall:

- (a) promote local ownership at all levels of the development process;
- (b) reflect a partnership based on mutual rights and obligations;
- (c) emphasise the importance of predictability and security in resource flows, granted on highly concessional terms and on a continuous basis;
- (d) be flexible and appropriate to the situation in each ACP State as well as adapted to the specific nature of the project or programme concerned; and
- (e) ensure efficiency, coordination and consistency.

2. Cooperation shall ensure special treatment for LDC ACP countries and duly take into account the vulnerability of landlocked and island ACP countries. In addition, the specific needs of post-conflict countries shall also be addressed.

Article 57
Guidelines

1. Operations financed within the framework of this Agreement shall be implemented by the ACP States and the Community in close cooperation, the concept of equality between the partners being recognised.

2. The ACP States shall be responsible for:
 - (a) defining the objectives and priorities on which the indicative programmes are based;
 - (b) choosing projects and programmes;
 - (c) preparing and presenting the dossiers of projects and programmes;
 - (d) preparing, negotiating and concluding contracts;
 - (e) implementing and managing projects and programmes; and
 - (f) maintaining projects and programmes.

3. Without prejudice to the provisions above, eligible non-State actors may also be responsible for proposing and implementing programmes and projects in areas concerning them.

4. The ACP States and the Community shall be jointly responsible for:
 - (a) establishing, within the joint institutions, the guidelines for development finance cooperation;
 - (b) adopting the indicative programmes;
 - (c) appraising projects and programmes;
 - (d) ensuring equality of conditions for participation in invitations to tender and contracts;
 - (e) monitoring and evaluating the effects and results of projects and programmes; and
 - (f) ensuring the proper, prompt and efficient execution of projects and programmes.

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

6. Unless otherwise provided for in this Agreement, all decisions requiring the approval of either Party shall be approved, or be deemed approved, within 60 days of notification by the other Party.

Article 58
Eligibility for financing

1. The following entities or bodies shall be eligible for financial support provided under the Agreement:

(a) ACP States;

(b) regional or inter-State bodies to which one or more ACP States belong and which are authorised by those States; and

(c) joint bodies set up by the ACP States and the Community to pursue certain specific objectives.

2. Subject to the agreement of the ACP State or ACP States concerned, the following shall also be eligible for financial support:

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

(b) companies, firms and other private organisations and private operators of ACP States;

(c) enterprises of a Community Member State to enable them, in addition to their own contribution, to undertake productive projects in the territory of an ACP State;

(d) ACP or Community financial intermediaries providing, promoting and financing private investments in ACP States; and

(e) agents of decentralised cooperation and other non-State actors from the ACP States and from the Community.

CHAPTER 2

Scope and nature of financing

Article 59

Within the framework of the priorities established by the ACP State or States concerned at both national and regional levels, support may be given to projects, programmes and other forms of operations contributing to the objectives set out in this Agreement.

Article 60

Scope of financing

The scope of financing may include, *inter alia*, depending on the needs and the types of operation considered most appropriate, support to:

- (a) measures which contribute to attenuate the debt burden and balance of payments problems of the ACP countries;
- (b) macroeconomic and structural reforms and policies;
- (c) mitigation of adverse effects of instability in export earnings;
- (d) sectoral policies and reforms;
- (e) institutional development and capacity building;
- (f) technical cooperation programmes; and
- (g) humanitarian and emergency assistance including assistance to refugees and displaced persons, short-term rehabilitation measures and disaster preparedness.

Article 61

Nature of financing

1. The nature of financing shall, *inter alia*, include:
 - (a) projects and programmes;
 - (b) credit lines, guarantee schemes and equity participation;
 - (c) budgetary support, either directly, for the ACP States whose currencies are convertible and freely transferable, or indirectly, from counterparts funds generated by the various Community instruments;

(d) the human and material resources necessary for effective administration and supervision of projects and programmes;

(e) sectoral and general import support programmes which may take the form of:

(i) sectoral import programmes through direct procurement including financing of inputs in the productive system and supplies to improve social services;

(ii) sectoral import programmes in the form of foreign exchange released in instalments for financing sectoral imports; and

(iii) general import programmes in the form of foreign exchange released in instalments for financing general imports covering a wide range of products.

2. Direct budgetary assistance in support of macroeconomic or sectoral reforms shall be granted where:

(a) public expenditure management is sufficiently transparent, accountable and effective;

(b) well defined macroeconomic or sectoral policies established by the country itself and agreed to by its main donors are in place; and

(c) public procurement is open and transparent.

3. Similar direct budgetary assistance shall be granted gradually to sectoral policies in substitution for individual projects.

4. The instruments of import programmes or budgetary support defined above can also be used to support eligible ACP States implementing reforms aimed at intra-regional economic liberalisation which generate net transitional costs.

5. In the framework of the Agreement, the European Development Fund (hereinafter referred to as the Fund) including counterpart funds, unexpended balance from previous Funds, own resources of the European Investment Bank (hereinafter referred to as the Bank) and where appropriate resources drawn from the European Community's budget, shall be used to finance projects, programmes and other forms of operations contributing to the achievement of the objectives of this Agreement.

6. The funds provided under the Agreement may be used to cover the total costs of both the local and foreign expenditure of projects and programmes, including recurrent cost financing.

TITLE II FINANCIAL COOPERATION

CHAPTER 1

Financial resources

Article 62 *Overall amount*

1. For the purposes set out in this Agreement, the overall amount of the Community's financial assistance and the detailed terms and conditions of financing are provided for in the Annexes to this Agreement.

2. Should an ACP State fail to ratify this Agreement or denounce it, the Parties shall adjust the amounts of the resources provided for in the Financial Protocol set out in Annex I. Adjustment of the financial resources shall also apply upon:

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

Article 63 *Methods of financing*

The methods of financing for each project or programme shall be determined jointly by the ACP State or States concerned and the Community by reference to:

- (a) the level of development, the geographical situation and economic and financial circumstances of these States;
- (b) the nature of the project or programme, its economic and financial return as well as its social and cultural impact; and
- (c) in the case of loans, factors guaranteeing their servicing.

Article 64
On-lending operations

1. Financial assistance may be made available to or through the ACP States concerned or, subject to the provisions of this Agreement through eligible financial institutions or directly to any other eligible beneficiary. Where financial assistance is granted to the final recipient through an intermediary or directly to the final beneficiary in the private sector:

(a) the terms and conditions on which the assistance may be made available by the intermediary to the final recipient or directly to the final beneficiary in the private sector shall be laid down in the financing agreement or loan contract; and

(b) any financial benefit accruing to the intermediary from the on-lending transaction or resulting from direct lending operations to the final beneficiary in the private sector, shall be used for development purposes on the conditions laid down in the financing agreement or the loan contract, after taking into account administrative costs, exchange and financial risks and the cost of technical assistance given to the final recipient.

2. Where the financing is undertaken through an on-lending body based and/or operating in the ACP States, it shall be the responsibility of that body to select and appraise individual projects and to administer the funds placed at its disposal under the conditions provided for in this Agreement and by mutual agreement between the Parties.

Article 65
Co-financing

1. The financial resources provided for in this Agreement may be applied, at the request of the ACP States, to co-financing undertaken in particular with development agencies and institutions, Community Member States, ACP States, third countries or international or private financial institutions, firms or export credit agencies.

2. Special consideration shall be given to the possibility of co-financing in cases where Community participation will encourage the participation of other sources of finance and where such financing may lead to an advantageous financial package for the ACP State concerned.

3. Co-financing may be in the form of joint or parallel financing. Preference shall be given in each case to the solution, which is more suitable from the point of view of cost-effectiveness. In addition, measures shall be taken to coordinate and harmonise operations of the Community and those of other co-financing bodies in order to minimise the number of

procedures to be undertaken by the ACP States and to render those procedures more flexible.

4. The process of consultation and coordination with other donors and co-financiers should be strengthened and developed, where possible, through the establishment of co-financing framework agreements and co-financing policies and procedures should be reviewed to ensure effectiveness and the best terms and conditions possible.

CHAPTER 2

Debt and structural adjustment support

Article 66

Support for debt relief

1. In order to attenuate the debt burden of the ACP States and their balance-of-payment problems, the Parties agree to use the resources provided for in this Agreement to contribute to debt relief initiatives approved at international level for the benefit of ACP countries. In addition, on a case by case basis, the use of resources which have not been committed in the framework of past indicative programmes shall be accelerated through the quick-disbursing instruments provided for in this Agreement. The Community furthermore commits itself to examine how in the longer term other resources than the EDF can be mobilised in support of internationally agreed debt relief initiatives.

2. At the request of an ACP State, the Community may grant:

(a) assistance in studying and finding practical solutions to indebtedness including domestic debt, debt-servicing difficulties and balance of payments problems;

(b) training in debt management and international financial negotiations as well as support for training workshops, courses and seminars in these fields; and

(c) assistance to develop flexible techniques and instruments of debt management.

3. In order to contribute to the servicing of the debt resulting from 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 this Agreement for such servicing, as and when debt repayment falls due and up to the amount required for payments in national currency.

4. Given the seriousness of the international debt problem and its impact on economic growth, the Parties declare their readiness to continue to exchange views, within the context of international discussions, on the general problem of debt, and without prejudice to specific discussions taking place in the relevant fora.

Article 67

Structural adjustment support

1. The Agreement shall provide support for macroeconomic and sectoral reforms implemented by the ACP States. In this framework, the Parties shall ensure that adjustment is economically viable and socially and politically bearable. Support shall be given in the context of a joint assessment between the Community and the ACP State concerned on the reform measures being undertaken or contemplated either at macroeconomic or sectoral level, and permit an overall evaluation of the reform efforts. Quick disbursement shall be an important feature of support programmes.

2. The ACP States and the Community recognise the necessity to encourage reform programmes at regional level ensuring that, in the preparation and execution of national programmes, due consideration is given to regional activities which have an influence on national development. To this end, support for structural adjustment shall also seek to:

(a) incorporate, from the beginning of the diagnosis, measures to encourage regional integration and take account of the consequences of trans-border adjustment;

(b) support the harmonisation and coordination of macroeconomic and sectoral policies, including fiscal and customs areas, so as to fulfil the dual aim of regional integration and of structural reform at national level; and

(c) take account of the effects of net transitional costs of regional integration on budget revenue and balance of payments, either through general import programmes or budgetary support.

3. ACP States undertaking or contemplating reform at the macroeconomic or sectoral level shall be eligible for structural adjustment assistance, giving consideration to the regional context, their effectiveness and the likely impact on the economic, social and political dimension of development and on economic and social hardships being experienced.

4. The ACP States undertaking reform programmes that are acknowledged and supported at least by the principal multilateral donors,

or that are agreed with such donors but not necessarily financially supported by them, shall be treated as having automatically satisfied the requirements for adjustment assistance.

5. Structural adjustment support shall be mobilised in a flexible manner and in the form of sectoral and general import programmes or budgetary support.

6. The preparation, appraisal and financing decision for structural adjustment programmes shall be carried out according to the provisions on implementation procedures of this Agreement with due regard to the quick disbursing feature of structural adjustment programmes. On a case-by-case basis, retroactive financing of a limited part of imports of ACP-EC origin may be permissible.

7. The implementation of each support programme shall ensure that the eligibility of ACP economic operators for access to the resources of the programme is as wide and transparent as possible and that the procurement procedures accord with the administrative and commercial practices in the State concerned, while ensuring the best possible price/quality ratio on imported goods and the necessary consistency with the progress achieved internationally for harmonising the procedures for supporting structural adjustment.

CHAPTER 3

Support in cases of short-term fluctuations in export earnings

Article 68

1. The Parties recognise that instability of export earnings, particularly in the agricultural and mining sectors, may adversely affect the development of the ACP States and jeopardise the attainment of their development requirements. A system of additional support in order to mitigate the adverse effects of any instability in export earnings, including in the agricultural and mining sectors, is therefore set up within the financial envelope for support to long-term development.

2. The purpose of support in cases of short-term fluctuations in export earnings is to safeguard macroeconomic and sectoral reforms and policies that are at risk as a result of a drop in revenue and remedy the adverse effects of instability of export earnings in particular from agricultural and mining products.

3. The extreme dependence of the ACP States' economies on exports, in particular from the agricultural and mining sectors, shall be taken into account in the allocation of resources in the year of application. In this

context, the least developed, landlocked and island ACP States shall receive more favourable treatment.

4. The additional resources shall be provided in accordance with the specific modalities of the support mechanism as set out in Annex II on Terms and Conditions of Financing.

5. The Community shall also provide support for market based insurance schemes designed for ACP States seeking to protect themselves against the risk of fluctuations in export earnings.

CHAPTER 4

Support for sectoral policies

Article 69

1. Cooperation shall support, through the various instruments and modalities provided for in the Agreement:

- (a) social and economic sectoral policies and reforms;
- (b) measures to enhance productive sector activity and export competitiveness;
- (c) measures to expand social sector services; and
- (d) thematic and cross cutting issues.

2. This support shall be provided as appropriate through:

- (a) sectoral programmes;
- (b) budgetary support;
- (c) investments;
- (d) rehabilitation;
- (e) training;
- (f) technical assistance; and
- (g) institutional support.

CHAPTER 5

Microprojects and decentralised cooperation

Article 70

In order to respond to the needs of local communities with regard to development, and to encourage all agents of decentralised cooperation which are in a position to contribute to the autonomous development of the ACP States to put forward and implement initiatives, cooperation shall support, within the framework laid down in the rules and national legislation of the ACP States concerned and the provisions of the indicative programme, such development operations. In this context, cooperation shall support:

(a) micro-projects at local level which have an economic and social impact on the life of the people, meet a demonstrated and observed priority need, and shall be undertaken at the initiative and with the active participation of the local community which shall benefit therefrom; and

(b) decentralised cooperation, in particular where such operations combine efforts and resources of decentralised agents from the ACP States and their counterparts from the Community. This form of cooperation shall enable the mobilisation of capabilities, innovative operating methods and resources of decentralised agents for the development of the ACP State.

Article 71

1. Microprojects and decentralised cooperation operations may be supported from the financial resources of the Agreement. Projects or programmes under this form of cooperation may or may not be linked to programmes in the sectors of concentration of the indicative programmes, but may be a way of achieving the specific objectives of the indicative programme or the results of initiatives by local communities or decentralised agents.

2. Contributions for the financing of micro-projects and decentralised cooperation shall be made by the Fund, in which case the contribution shall not normally exceed three-quarters of the total cost of each project and may not exceed the limit set in the indicative programme. The remaining balance shall be provided:

(a) by the local community concerned in case of micro-projects (either in kind or in the form of services or cash and adapted to its capacity to contribute);

(b) by the agents of decentralised cooperation, provided that the financial, technical, material and other resources brought in by such agents shall not normally be less than 25 % of the estimated cost of the project/programme; and

(c) exceptionally by the ACP State concerned, either in the form of a financial contribution or through the use of public equipment or the supply of services.

3. The procedures applicable to projects and programmes financed within the framework of microprojects or decentralised cooperation shall be those laid down in the Agreement, in particular those referred to in multi-annual programmes.

CHAPTER 6

Humanitarian and emergency assistance

Article 72

1. Humanitarian and emergency assistance shall be accorded to the population in ACP States faced with serious economic and social difficulties of an exceptional nature resulting from natural disasters, man-made crises such as wars and other conflicts or extraordinary circumstances having comparable effects. The humanitarian and emergency assistance shall be maintained for as long as necessary to deal with the emergency needs resulting from these situations.

2. Humanitarian and emergency assistance shall be granted exclusively according to the needs and interests of victims of disasters and in line with the principles of international humanitarian law. In particular, there shall be no discrimination between victims on grounds of race, ethnic origin, religion, gender, age, nationality or political affiliation and free access to and protection of victims shall be guaranteed as well as the security of humanitarian personnel and equipment.

3. Humanitarian and emergency assistance shall aim to:

(a) safeguard human lives in crises and immediate post-crisis situations brought about by natural disasters, conflict or war;

(b) contribute to the financing and delivery of humanitarian aid and to the direct access to it of its intended beneficiaries by all logistical means available;

(c) carry out short-term rehabilitation and reconstruction to enable the parts of the population affected to benefit once more from a

minimum of socio-economic integration and, as soon as possible, create the conditions for a resumption of development on the basis of long-term objectives set by the ACP country concerned;

(d) address the needs arising from the displacement of people (refugees, displaced persons and returnees) following natural or man-made disasters so as to meet, for as long as necessary, all the needs of refugees and displaced persons (wherever they may be) and facilitate action for their voluntary repatriation and re-integration in their country of origin; and

(e) assist the ACP State in setting up disaster prevention and preparedness mechanisms, including prediction and early-warning systems, with a view to reducing the consequences of disasters.

4. Similar assistance, as set out above, may be granted to ACP States taking in refugees or returnees to meet acute needs not covered by emergency assistance.

5. Underlining the developmental nature of the assistance granted in accordance with this Article, assistance may be used exceptionally together with the indicative programme at the request of the State concerned.

6. Humanitarian and emergency assistance operations shall be undertaken either at the request of the ACP country affected by the crisis situation, the Commission, international organisations or local or international non-State organisations. Such assistance shall be administered and implemented under procedures permitting operations that are rapid, flexible and effective. The Community shall take adequate steps to facilitate speedy action, which is required to meet the immediate needs for which emergency assistance is needed.

Article 73

1. Post-emergency action, aimed at physical and social rehabilitation consequent on the results of natural disasters or extraordinary circumstances having comparable effects, may be undertaken with Community assistance under this Agreement. Such action, using effective and flexible mechanisms, must ease the transition from the emergency phase to the development phase, promote the socio-economic reintegration of the parts of the population affected, remove as far as possible the causes of the crisis and strengthen institutions and the ownership by local and national actors of their role in formulating a sustainable development policy for the ACP country concerned.

2. Short-term emergency action shall only in exceptional circumstances be financed under the Fund where such assistance cannot be financed from the Community's budget.

CHAPTER 7

Investment and private sector development support

Article 74

Cooperation shall, through financial and technical assistance, support the policies and strategies for investment and private sector development as set out in this Agreement.

Article 75

Investment promotion

The ACP States, the Community and its Member States, within the scope of their respective competencies, recognising the importance of private investment in the promotion of their development cooperation and acknowledging the need to take steps to promote such investment, shall:

- (a) implement measures to encourage participation in their development efforts by private investors who comply with the objectives and priorities of ACP-EC development cooperation and with the appropriate laws and regulations of their respective States;
- (b) take measures and actions which help to create and maintain a predictable and secure investment climate as well as enter into negotiations on agreements which will improve such climate;
- (c) encourage the EU private sector to invest and to provide specific assistance to its counterparts in the ACP countries under mutual business cooperation and partnerships;
- (d) facilitate partnerships and joint ventures by encouraging co-financing;
- (e) sponsor sectoral investment fora to promote partnerships and external investment;
- (f) support efforts of the ACP States to attract financing, with particular emphasis on private financing, for infrastructure investments and revenue generating infrastructure critical for the private sector;

(g) support capacity building for domestic investment promotion agencies and institutions involved in promoting and facilitating foreign investment;

(h) disseminate information on investment opportunities and business operating conditions in the ACP States; and

(i) promote national, regional and ACP-EU private sector business dialogue, cooperation and partnerships, in particular through an ACP-EU private sector business forum. Support for operations of an ACP-EU private sector business forum shall be provided in pursuit of the following objectives:

(i) to facilitate dialogue within the ACP/EU private sector and between the ACP/EU private sector and the bodies established under the Agreement;

(ii) to analyse and periodically provide the relevant bodies with information on the whole range of issues concerning relations between the ACP and EU private sectors in the context of the Agreement or, more generally, of economic relations between the Community and the ACP countries; and

(iii) to analyse and provide the relevant bodies with information on specific problems of a sectoral nature relating to, *inter alia*, branches of production or types of products at regional or sub-regional level.

Article 76

Investment finance and support

1. Cooperation shall provide long-term financial resources, including risk capital, to assist in promoting growth in the private sector and help to mobilise domestic and foreign capital for this purpose. To this end, cooperation shall provide, in particular:

(a) grants for financial and technical assistance to support policy reforms, human resource development, institutional capacity-building or other forms of institutional support related to a specific investment, measures to increase the competitiveness of enterprises and to strengthen the capacities of the private financial and non-financial intermediaries, investment facilitation and promotion and competitiveness enhancement activities;

(b) advisory and consultative services to assist in creating a responsive investment climate and information base to guide and encourage the flow of capital;

(c) risk-capital for equity or quasi-equity investments, guarantees in support of domestic and foreign private investment and loans or lines of credit on the conditions laid down in Annex II "Terms and Conditions of Financing" to this Agreement; and

(d) loans from the Bank's own resources.

2. Loans from the Bank's own resources shall be granted in accordance with its statute and with the terms and conditions laid down in Annex II to this Agreement.

Article 77

Investment guarantees

1. Investment guarantees are an increasingly important tool for development finance as they contribute to reducing project risks and inducing private capital flows. Cooperation shall therefore ensure the increasing availability and use of risk insurance as a risk-mitigating mechanism in order to boost investor confidence in the ACP States.

2. Cooperation shall offer guarantees and assist with guarantees funds covering risks for qualified investment. Specifically, cooperation shall provide support to:

(a) reinsurance schemes to cover foreign direct investment by eligible investors; against legal uncertainties and the major risks of expropriation, currency transfer restriction, war and civil disturbance, and breach of contract. Investors may insure projects for any combination of the four types of coverage;

(b) guarantee programmes to cover risk in the form of partial guarantees for debt financing. Both partial risk and partial credit guarantee shall be available; and

(c) national and regional guarantee funds, involving, in particular, domestic financial institutions or investors for encouraging the development of the financial sector.

3. Cooperation shall also provide support to capacity-building, institutional support and participation in the core funding of national and/or regional initiatives to reduce the commercial risks for investors (*inter alia* guarantee funds, regulatory bodies, arbitration mechanisms and judiciary systems to enhance the protection of investments improving the export credit systems).

4. Cooperation shall provide such support on the basis of complementary and added value with respect to private and/or public

initiatives and, whenever feasible, in partnership with private and other public organisations. The ACP and the EC will within the framework of the ACP-EC Development Finance Cooperation Committee undertake a joint study on the proposal to set up an ACP-EC Guarantee Agency to provide and manage investment guarantee programmes.

Article 78
Investment protection

1. The ACP States and the Community and its Member States, within the scope of their respective competencies, affirm the need to promote and protect either Party's investments on their respective territories, and in this context affirm the importance of concluding, in their mutual interest, investment promotion and protection agreements which could also provide the basis for insurance and guarantee schemes.

2. In order to 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.

3. The Parties also agree to introduce, within the economic partnership agreements, and while respecting the respective competencies of the Community and its Member States, general principles on protection and promotion of investments, which will endorse the best results agreed in the competent international fora or bilaterally.

TITLE III
TECHNICAL COOPERATION

Article 79

1. Technical cooperation shall assist the ACP States in the development of national and regional manpower resources, the sustained development of the institutions critical for development success, including *inter alia* strengthening ACP consulting firms and organisations, as well as exchange arrangements involving consultants from both ACP and EU firms.

2. Furthermore, technical cooperation, shall be cost-effective and relevant to the need for which it is intended, and shall also favour the transfer of know-how and increase national and regional capabilities. Technical cooperation shall contribute to the achievement of project and programme goals, including efforts to strengthen management capacity of

the National and Regional Authorising Officers. Technical assistance shall:

- (a) be demand-driven and thus made available only at the request of the ACP State or States concerned, and adapted to recipient needs;
- (b) complement and support ACP efforts to identify their own requirements;
- (c) be monitored and followed up to guarantee effectiveness;
- (d) encourage the participation of ACP experts, consultancy firms and educational and research institutions in contracts financed from the Fund and identify ways of employing qualified national and regional personnel on Fund projects;
- (e) encourage the secondment of ACP national cadres as consultants to an institution in their own country, or a neighbouring country, or to a regional organisation;
- (f) aim at developing knowledge of national and regional manpower constraints and potential and establish a register of ACP experts, consultants and consultancy firms suitable for employment on projects and programmes financed from the Fund;
- (g) support intra-ACP technical assistance in order to promote the exchange between the ACP States of technical assistance, management and professional expertise;
- (h) develop action programmes for long-term institution building and staff development as an integral part of project and programme planning, account being taken of the necessary financial requirements;
- (i) support arrangements to enhance the capacity of the ACP States to build up their own expertise; and
- (j) give special attention to the development of the ACP States' capacities in project planning, implementation and evaluation, as well budget management.

3. Technical assistance may be provided in all areas of cooperation and within the limits of the mandate of this Agreement. The activities covered would be diverse in scope and nature, and would be tailored to meet the needs of the ACP States.

4. Technical cooperation may be either of a specific or a general nature. The ACP-EC Development Finance Cooperation Committee shall establish the guidelines for the implementation of technical cooperation.

Article 80

With a view to reversing the brain drain from the ACP States, the Community shall assist ACP States which so request to facilitate the return of qualified ACP nationals resident in developed countries through appropriate re-installation incentives.

TITLE IV PROCEDURES AND MANAGEMENT SYSTEMS

Article 81 *Procedures*

Management procedures shall be transparent, easy to apply and shall enable the decentralisation of tasks and responsibilities to the field. The implementation of ACP-EU development cooperation shall be open to non-State actors in areas that concern them. The detailed procedural provisions for programming, preparation, implementation and the management of financial and technical cooperation are laid down in Annex IV on Implementation and Management Procedures. The Council of Ministers may review, revise and amend these provisions on the basis of a recommendation from the ACP-EC Development Finance Cooperation Committee.

Article 82 *Executing agents*

For the implementation of financial and technical cooperation under this Agreement, executing agents are designated. Detailed provisions for the responsibilities of the executing agents are laid down in Annex IV on Implementation and Management Procedures.

Article 83 *ACP-EC Development Finance Cooperation Committee*

1. The Council of Ministers shall at least once a year examine whether the objectives of development finance cooperation are being attained and shall examine the general and specific problems resulting from the implementation of that cooperation. To this end, an ACP-EC Development Finance Cooperation Committee, hereinafter referred to as "the ACP-EC Committee", shall be set up within the Council of Ministers.

2. The ACP-EC Committee shall, *inter alia*:

(a) ensure the overall achievement of the objectives and principles of development finance cooperation and establish general guidelines for their effective and timely implementation;

(b) examine the problems arising from the implementation of development cooperation activities and propose appropriate measures;

(c) review the annexes to the Agreement to ensure their continued relevance and recommend any appropriate amendments to the Council of Ministers for approval; and

(d) examine the operations deployed within the framework of the Agreement to attain the objectives of promoting private sector development and investment and the operations of the Investment Facility.

3. The ACP-EC Committee, which shall meet every quarter, shall be composed, on a basis of parity, of representatives of the ACP States and of the Community, or their authorised representatives. It shall meet at ministerial level whenever one of the parties so requests and at least once a year.

4. The Council of Ministers shall lay down the ACP-EC 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. The ACP-EC Committee may convene meetings of experts to study the cause of any difficulties and bottlenecks, which may impede the efficient implementation of development cooperation. These experts shall make recommendations to the Committee on possible ways of removing such difficulties and bottlenecks.

PART 5

GENERAL PROVISIONS FOR THE LEAST-DEVELOPED, LANDLOCKED AND ISLAND ACP STATES (LDLICS)

CHAPTER 1

General provisions

Article 84

1. To enable LDLICs to take full advantage of the opportunities offered by the Agreement so as to step up their respective rates of development, cooperation shall ensure special treatment for the least developed ACP countries and take due account of the vulnerability of landlocked and island ACP countries. It shall also take into consideration the needs of countries in post-conflict situations.
2. Independently of the specific measures and provisions for the least-developed, landlocked and island countries in the different chapters of the Agreement, special attention shall be paid in respect of these groups as well as countries in post-conflict situations to:
 - (a) the strengthening of regional cooperation;
 - (b) transport and communications' infrastructure;
 - (c) the efficient exploitation of marine resources and the marketing of products so produced and, in the case of landlocked countries, inland fisheries;
 - (d) structural adjustment where account shall be taken of the level of development of these countries and equally, at the implementation stage, of the social dimension of adjustment; and
 - (e) the implementation of food strategies and integrated development programmes.

CHAPTER 2

Least-developed ACP States

Article 85

1. The least-developed ACP States shall be accorded a special treatment in order to enable them to overcome the serious economic and

social difficulties hindering their development so as to step up their respective rates of development.

2. The list of least-developed countries is given in Annex VI. It may be amended by a decision of the Council of Ministers where:

(a) a third State in a comparable situation accedes to this Agreement; and

(b) the economic situation of an ACP State changes considerably and durably to the extent that it needs to be included in the least-developed category or its inclusion in that category is no longer justified.

Article 86

The provisions adopted in respect of the least-developed ACP States are contained in the following Articles: 2, 29, 32, 35, 37, 56, 68, 84, 85.

CHAPTER 3

Landlocked ACP States

Article 87

1. Specific provisions and measures shall be established to support landlocked ACP States in their efforts to overcome the geographical difficulties and other obstacles hampering their development so as to enable them to step up their respective rates of development.

2. The list of landlocked ACP States is given in Annex VI. It may be amended by decision of the Council of Ministers when a third State in a comparable situation accedes to the Agreement.

Article 88

The provisions adopted in respect of the landlocked ACP States are contained in the following Articles: 2, 32, 35, 56, 68, 84, 87.

CHAPTER 4

Island ACP States

Article 89

1. Specific provisions and measures shall be established to support island ACP States in their efforts to overcome the natural and geographical difficulties and other obstacles hampering their development so as to enable them to step up their respective rates of development.

2. The list of island ACP States is given in Annex VI. It may be amended by decision of the Council of Ministers when a third State in a comparable situation accedes to the Agreement.

Article 90

The provisions adopted in respect of the island ACP States are contained in the following Articles: 2, 32, 35, 56, 68, 84, 89.

PART 6

FINAL PROVISIONS

Article 91

Conflict between this Agreement and other treaties

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 Agreement.

Article 92

Scope of territorial application

Subject to the special provisions regarding the relations between the ACP States and the French overseas departments provided for therein, this Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territories of the ACP States.

Article 93

Ratification and entry into force

1. This Agreement shall be ratified or approved by the signatory Parties in accordance with their respective constitutional rules and procedures.
2. The instruments of ratification or approval of this Agreement shall be deposited in the case of the ACP States, with the General Secretariat of the Council of the European Union and in the case of the Community and the Member States, with the General Secretariat of the ACP States. The Secretariats shall promptly notify the signatory States and the Community.
3. This Agreement 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 instrument of approval of this Agreement by the Community.
4. An ACP signatory State that has not completed the procedures set out in paragraphs 1 and 2 by the date on which this Agreement enters into force as provided for in paragraph 3 may do so only within the 12 months following that date, without prejudice to the provisions of paragraph 6.

For such States this Agreement shall become applicable on the first day of the second month following the completion of these procedures. These

States shall recognise the validity of any measure taken to implement the Agreement after the date of its entry into force.

5. The rules of procedure of the joint institutions set up under this Agreement shall lay down the conditions under which the representatives of signatory States referred to in paragraph 4 may attend those institutions as observers.

6. The Council of Ministers may decide to accord special support to ACP States party to previous ACP-EC Conventions which, in the absence of normally established government institutions, have not been able to sign or ratify this Agreement. This support may concern institution building and economic and social development activities, taking particular account of the needs of the most vulnerable sections of the population. In this context, such countries will be able to draw on the funds provided for in Part 4 of this Agreement for financial and technical cooperation.

By way of derogation from paragraph 4, the countries concerned which are signatories to the Agreement may complete the ratification procedures within twelve months of the restoration of government institutions.

The countries concerned which have neither signed nor ratified the Agreement may accede to it by means of the accession procedure provided for in Article 94.

Article 94 *Accession*

1. Any request for accession to this Agreement made by an independent State whose structural characteristics and economic and social situation are comparable to those of the ACP States shall be presented to the Council of Ministers.

If the request is approved by the Council of Ministers, the State concerned shall accede to this Agreement by depositing an act of accession with the General Secretariat of the Council of the European Union, which shall send a certified copy to the ACP Secretariat and notify the Member States. The Council of Ministers may lay down any amending measures that might be necessary.

The State concerned shall enjoy the same rights and be subject to the same obligations as the ACP States. Its accession may not infringe on the benefits enjoyed by the ACP States signatory to this Agreement under the provisions on development cooperation financing. The Council of Ministers may lay down the conditions and specific arrangements for the accession of an individual State in a special protocol that shall form an integral part of the Agreement.

2. The Council of Ministers shall be advised of any request made by a third State to become a member of an economic grouping of ACP States.

3. The Council of Ministers shall be advised of any request made by a third State to become a member of the European Union. During the negotiations between the Union and the applicant State, the Community shall provide the ACP States with any relevant information and they in turn shall convey their concerns to the Community so that it can take them fully into account. The ACP Secretariat shall be notified by the Community of any accession to the European Union.

Any new Member State of the European Union shall become a Party to this Agreement from the date of its accession by means of a clause to that effect in the act of accession. If the act of accession to the Union does not provide for such automatic accession of the Member State to this Agreement, the Member State concerned shall accede by depositing an act of accession with the General Secretariat of the Council of the European Union, which shall send a certified copy to the ACP Secretariat and notify the Member States.

The Parties shall review the effects of the accession of new Member States on this Agreement. The Council of Ministers may decide on any transitional or amending measures that might be necessary.

Article 95

Duration of the agreement and revision clause

1. This Agreement is hereby concluded for a period of twenty years, commencing on 1 March 2000.

2. Financial protocols are defined for each five-year period.

3. The Community and the Member States, on the one hand, and the ACP States, on the other, shall notify the other Party not later than 12 months before the expiry of each five-year period of any review of the provisions they desire to make with a view to a possible amendment of the Agreement. This shall not apply, however, to the provisions on economic and trade cooperation, for which a special review procedure is provided for. Notwithstanding this time limit, if one Party requests the review of any provisions of the Agreement, the other Party shall have a period of two months in which to request the extension of the review to other provisions related to those which were the subject of the initial request.

Ten months before the expiry of this five-year period, the Parties shall enter into negotiations with a view to examining any possible amendments to the provisions that were the subject of the notification.

Article 93 shall also apply to the amendments made.

The Council of Ministers shall adopt any transitional measures that may be required in respect of the amended provisions until they come into force.

4. Eighteen months before the end of the total period of the Agreement, the Parties shall enter into negotiations in order to examine what provisions shall subsequently govern their relations.

The Council of Ministers shall adopt any transitional measures that may be required until the new Agreement comes into force.

Article 96

Essential elements: consultation procedure and appropriate measures as regards human rights, democratic principles and the rule of law

1. Within the meaning of this Article, the term "Party" refers to the Community and the Member States of the European Union, of the one part, and each ACP State, of the other part.

2. (a) If, despite the political dialogue conducted regularly between the Parties, a Party considers that the other Party has failed to fulfil an obligation stemming from respect for human rights, democratic principles and the rule of law referred to in paragraph 2 of Article 9, it shall, except in cases of special urgency, supply the other Party and the Council of Ministers with the relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties. To this end, it shall invite the other Party to hold consultations that focus on the measures taken or to be taken by the party concerned to remedy the situation.

The consultations shall be conducted at the level and in the form considered most appropriate for finding a solution.

The consultations shall begin no later than 15 days after the invitation and shall continue for a period established by mutual agreement, depending on the nature and gravity of the violation. In any case, the consultations shall last no longer than 60 days.

If the consultations do not lead to a solution acceptable to both Parties, if consultation is refused, or in cases of special urgency, appropriate measures may be taken. These measures shall be revoked as soon as the reasons for taking them have disappeared.

(b) The term "cases of special urgency" shall refer to exceptional cases of particularly serious and flagrant violation of one of the essential elements referred to in paragraph 2 of Article 9, that require an immediate reaction.

The Party resorting to the special urgency procedure shall inform the other Party and the Council of Ministers separately of the fact unless it does not have time to do so.

(c) The “appropriate measures” referred to in this Article are measures taken in accordance with international law, and proportional to the violation. In the selection of these measures, priority must be given to those which least disrupt the application of this agreement. It is understood that suspension would be a measure of last resort.

If measures are taken in cases of special urgency, they shall be immediately notified to the other Party and the Council of Ministers. At the request of the Party concerned, consultations may then be called in order to examine the situation thoroughly and, if possible, find solutions. These consultations shall be conducted according to the arrangements set out in the second and third subparagraphs of paragraph (a).

Article 97

Consultation procedure and appropriate measures as regards corruption

1. The Parties consider that when the Community is a significant partner in terms of financial support to economic and sectoral policies and programmes, serious cases of corruption should give rise to consultations between the Parties.
2. In such cases either Party may invite the other to enter into consultations. Such consultations shall begin no later than 21 days after the invitation and shall last no longer than 60 days.
3. If the consultations do not lead to a solution acceptable to both Parties or if consultation is refused, the Parties shall take the appropriate measures. In all cases, it is above all incumbent on the Party where the serious cases of corruption have occurred to take the measures necessary to remedy the situation immediately. The measures taken by either Party must be proportional to the seriousness of the situation. In the selection of these measures, priority must be given to those which least disrupt the application of this agreement. It is understood that suspension would be a measure of last resort.
4. Within the meaning of this Article, the term "Party" refers to the Community and the Member States of the European Union, of the one part, and each ACP State, of the other part.

Article 98
Dispute settlement

1. Any dispute arising from the interpretation or application of this Agreement between one or more Member States or the Community, on the one hand, and one or more ACP States on the other, shall be submitted to the Council of Ministers.

Between meetings of the Council of Ministers, such disputes shall be submitted to the Committee of Ambassadors.

2. (a) If the Council of Ministers does not succeed in settling the dispute, either Party may request settlement of the dispute by arbitration. To this end, each Party shall appoint an arbitrator within thirty days of the request for arbitration. In the event of failure to do so, either Party may ask the Secretary-General of the Permanent Court of Arbitration to appoint the second arbitrator.

(b) The two arbitrators shall in turn appoint a third arbitrator within thirty days. In the event of failure to do so, either Party may ask the Secretary-General of the Permanent Court of Arbitration to appoint the third arbitrator.

(c) Unless the arbitrators decide otherwise, the procedure applied shall be that laid down in the optional arbitration regulation of the Permanent Court of Arbitration for International Organisations and States. The arbitrators' decisions shall be taken by majority vote within three months.

(d) Each Party to the dispute shall be bound to take the measures necessary to carry out the decision of the arbitrators.

(e) For the application of this procedure, the Community and the Member States shall be deemed to be one Party to the dispute.

Article 99
Denunciation clause

This Agreement may be denounced by the Community and its Member States in respect of each ACP State and by each ACP State in respect of the Community and its Member States, upon six months' notice.

Article 100
Status of the texts

The Protocols and Annexes attached to this Agreement shall form an integral part thereof. Annexes II, III, IV and VI may be revised, reviewed and/or amended by the Council of Ministers on the basis of a

recommendation from the ACP-EC Development Finance Cooperation Committee. This Agreement, drawn up in two copies in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, all texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union and the Secretariat of the ACP States, which shall both transmit a certified copy to the government of each of the Signatory States.

Hecho en Cotonú, el veintitrés de junio del año dos mil.

Udfærdiget i Cotonou den treogtyvende juni to tusind.

Geschehen zu Cotonou am dreiundzwanzigsten Juni zweitausend.

Έγινε στην Κοτονού, στις είκοσι τρεις Ιουνίου δύο χιλιάδες.

Done at Cotonou on the twenty-third day of June in the year two thousand.

Fait à Cotonou, le vingt-trois juin deux mille.

Fatto a Cotonou, addì ventitré giugno duemila.

Gedaan te Cotonou, de drieëntwintigste juni tweeduizend.

Feito em Cotonu, em vinte e três de Junho de dois mil.

Tehty Cotonoussa kahdentenakymmenentenäkolmantena päivänä kesäkuuta vuonna kaksituhatta.

Som skedde i Cotonou den tjugotredje juni tjugohundra.

Pour Sa Majesté le Roi des Belges

Voor Zijne Majesteit de Koning der Belgen
Für Seine Majestät den König der Belgier

Cette signature engage également la Communauté française, la Communauté flamande, la Communauté germanophone, la Région wallonne, la Région flamande et la Région de Bruxelles-Capitale.

Deze handtekening verbindt eveneens de Vlaamse Gemeenschap, de Franse Gemeenschap, de Duitstalige Gemeenschap, het Vlaamse Gewest, het Waalse Gewest en het Brusselse Hoofdstedelijke Gewest.

Diese Unterschrift bindet zugleich die Deutschsprachige Gemeinschaft, die Flämische Gemeinschaft, die Französische Gemeinschaft, die Wallonische Region, die Flämische Region und die Region Brüssel-Hauptstadt.

For Hendes Majestæt Danmarks Dronning

Für den Präsidenten der Bundesrepublik Deutschland

Για τον Πρόεδρο της Ελληνικής Δημοκρατίας

Por Su Majestad el Rey de España

Pour le Président de la République française

Thar ceann Uachtarán na hÉireann

For the President of Ireland

Per il Presidente della Repubblica italiana

Pour Son Altesse Royale le Grand-Duc de Luxembourg

Voor Hare Majesteit de Koningin der Nederlanden

Für den Bundespräsidenten der Republik Österreich

Pelo Presidente da República Portuguesa

Suomen Tasavallan Presidentin puolesta

För Republiken Finlands President

På svenska regeringens vägnar

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

Por la Comunidad Europea

For Det Europæiske Fællesskab

Für die Europäische Gemeinschaft

Για την Ευρωπαϊκή Κοινότητα

For the European Community

Pour la Communauté européenne

Per la Comunità europea

Voor de Europese Gemeenschap

Pela Comunidade Europeia

Euroopan yhteisön puolesta

På Europeiska gemenskapens vägnar

Pour le Président de la République d'Angola

For Her Majesty the Queen of Antigua and Barbuda

For the Head of State of the Commonwealth of the Bahamas

For the Head of State of Barbados

For the Government of Belize

Pour le Président de la République du Bénin

For the President of the Republic of Botswana

Pour le Président du Burkina Faso

Pour le Président de la République du Burundi

Pour le Président de la République du Cameroun

Pour le Président de la République du Cap-Vert

Pour le Président de la République Centrafricaine

Pour le Président de la République Fédérale Islamique des Comores

Pour le Président de la République démocratique du Congo

Pour le Président de la République du Congo

For the Government of the Cook Islands

Pour le Président de la République de Côte d'Ivoire

Pour le Président de la République de Djibouti

For the Government of the Commonwealth of Dominica

For the President of the Dominican Republic

For the President of the State of Eritrea

For the President of the Federal Republic of Ethiopia

For the President of the Sovereign Democratic Republic of Fiji

Pour le Président de la République gabonaise

For the President and Head of State of the Republic of The Gambia

For the President of the Republic of Ghana

For Her Majesty the Queen of Grenada

Pour le Président de la République de Guinée

Pour le Président de la République de Guinée-Bissau

Pour le Président de la République de Guinée équatoriale

For the President of the Republic of Guyana

Pour le Président de la République d'Haïti

For the Head of 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

Pour le Président de la République de Madagascar

For the President of the Republic of Malawi

Pour le Président de la République du Mali

For the Government of the Republic of the Marshall Islands

Pour le Président de la République Islamique de Mauritanie

For the President of the Republic of Mauritius

For the Government of the Federated States of Micronesia

Pour le Président de la République du Mozambique

For the President of the Republic of Namibia

For the Government of the Republic of Nauru

Pour le Président de la République du Niger

For the President of the Federal Republic of Nigeria

For the Government of Niue

For the Government of the Republic of Palau

For Her Majesty the Queen of the Independent State of Papua New Guinea

Pour le Président de la République Rwandaise

For Her Majesty the Queen of Saint Kitts 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 State of the Independent State of Samoa

Pour le Président de la République démocratique de São Tomé et Príncipe

Pour le Président de la République du Sénégal

Pour le Président de la République des Seychelles

For the President of the Republic of Sierra Leone

For Her Majesty the Queen of the Solomon Islands

For the President of the Republic of South Africa

For the President of the Republic of the Sudan

For the President of the Republic of Suriname

For His Majesty the King of the Kingdom of Swaziland

For the President of the United Republic of Tanzania

Pour le Président de la République du Tchad

Pour le Président de la République togolaise

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 President of the Republic of Uganda

For the Government of the Republic of Vanuatu

For the President of the Republic of Zambia

For the Government of the Republic of Zimbabwe

ANNEXES TO THE AGREEMENT

ANNEX I

FINANCIAL PROTOCOL

1. For the purposes set out in this Agreement and for a period of five years commencing 1 March 2000, the overall amount of the Community's financial assistance to the ACP States shall be EUR 15 200 million.
2. The Community's financial assistance shall comprise an amount up to EUR 13 500 million from the 9th European Development Fund (EDF).
3. The 9th EDF shall be allocated between the instruments of cooperation as follows:
 - (a) EUR 10 000 million in the form of grants shall be reserved for an envelope for support for long-term development. This envelope shall be used to finance national indicative programmes in accordance with Articles 1 to 5 of Annex IV "Implementation and management procedures" to this Agreement. From the envelope for support for long-term development:
 - (i) EUR 90 million shall be reserved for the financing of the budget of the Centre for the Development of Enterprise (CDE);
 - (ii) EUR 70 million shall be reserved for the financing of the budget of the Centre for the Development of Agriculture (CTA); and
 - (iii) an amount not exceeding EUR 4 million shall be reserved for the purposes referred to in Article 17 of this Agreement (Joint Parliamentary Assembly).
 - (b) EUR 1 300 million in the form of grants shall be reserved for the financing of support for regional cooperation and integration of the ACP States in accordance with Articles 6 to 14 of Annex IV "Implementation and management procedures" to this Agreement.
 - (c) EUR 2 200 million shall be allocated to finance the Investment Facility according to the terms and conditions set out in Annex II "Terms and conditions of financing" to this Agreement without prejudice to the financing of the interest rate subsidies provided for in Articles 2 and 4 of Annex II to this Agreement funded from the resources mentioned in paragraph 3(a) of this Annex.
4. An amount of up to EUR 1 700 million shall be provided from the European Investment Bank in the form of loans made from its own resources. These resources shall be granted for the purposes set out in

Annex II “Terms and conditions of financing” to this Agreement in accordance with the conditions provided for by its statutes and the relevant provisions of the terms and conditions for investment financing as laid down in the aforementioned Annex. The Bank may, from the resources it manages, contribute to the financing of regional projects and programmes.

5. Any balances remaining from previous EDFs on the date of entry into force of this Financial Protocol, as well as any amounts that shall be decommitted at a later date from ongoing projects under these Funds, shall be transferred to the 9th EDF and shall be used in accordance with the conditions laid down in this Agreement. Any resources thus transferred to the 9th EDF that previously had been allocated to the indicative programme of an ACP State or region shall remain allocated to that State or region. The overall amount of this Financial Protocol, supplemented by the transferred balances from previous EDFs, will cover the period of 2000-2007.

6. The Bank shall administer the loans made from its own resources, as well as the operations financed under the Investment Facility. All other financial resources of this Agreement shall be administered by the Commission.

7. Before the expiry of this Financial Protocol, the Parties shall assess the degree of realisation of commitments and disbursements. This assessment shall constitute the basis for re-evaluating the overall amount of resources as well for evaluating the need for new resources to support financial cooperation under this Agreement.

8. In the event of the funds provided for in any of the instruments of the Agreement being exhausted before the expiry of this Financial Protocol, the joint ACP-EC Council of Ministers shall take the appropriate measures.

ANNEX II

TERMS AND CONDITIONS OF FINANCING

CHAPTER 1

INVESTMENT FINANCING

Article 1

The terms and conditions of financing in relation to the operations of the Investment Facility (Facility), the loans from own resources of the European Investment Bank (Bank) and special operations shall be as laid down in this Chapter. These resources may be channelled to eligible enterprises, either directly or indirectly, through eligible investment funds and/or financial intermediaries.

Article 2

Resources of the investment facility

1. The resources of the Facility may be used, *inter alia*, to:
 - (a) provide risk capital in the form of:
 - (i) equity participation in ACP enterprises, including financial institutions;
 - (ii) quasi-capital assistance to ACP enterprises, including financial institutions; and
 - (iii) guarantees and other credit enhancements which may be used to cover political and other investment-related risks, both for foreign and local investors or lenders.
 - (b) provide ordinary loans.
2. Equity participation shall normally be for non-controlling minority holdings and shall be remunerated on the basis of the performance of the project concerned.
3. Quasi-capital assistance may consist of shareholders' advances, convertible bonds, conditional, subordinated and participating loans or any other similar form of assistance. Such assistance may consist in particular of:

- (a) conditional loans, the servicing and/or the duration of which shall be linked to the fulfilment of certain conditions with regard to the performance of the project; in the specific case of conditional loans for pre-investment studies or other project-related technical assistance, servicing may be waived if the investment is not carried out;
 - (b) participating loans, the servicing and/or the duration of which shall be linked to the financial return of the project; and
 - (c) subordinated loans, which shall be repaid only after other claims have been settled.
4. The remuneration of each operation shall be specified when the loan is made. However:
- (a) in the case of conditional or participating loans, the remuneration shall normally comprise a fixed interest rate of not more than 3 % and a variable component related to the performance of the project; and
 - (b) in the case of subordinated loans, the interest rate shall be market related.
5. Guarantees shall be priced so as to reflect the risks insured and the particular characteristics of the operation.
6. The interest rate of ordinary loans shall comprise a reference rate applied by the Bank for comparable loans with the same terms and conditions as to grace and repayment periods and a mark up determined by the Bank.
7. Ordinary loans may be extended on concessional terms and conditions in the following cases:
- (a) for infrastructure projects in the Least Developed Countries or in post-conflict countries that are prerequisites for private sector development. In such cases, the interest rate of the loan will be reduced by 3 %; and
 - (b) for projects which involve restructuring operations in the framework of privatisation or for projects with substantial and clearly demonstrable social or environmental benefits. In such cases, loans may be extended with an interest rate subsidy the amount and form of which will be decided with respect to the particular characteristics of the project. However, the interest rate subsidy shall not be higher than 3 %.

The final interest rate shall, in any case, never be less than 50 % of the reference rate.

8. The funds to be provided for these concessional purposes will be made available from the Investment Facility and shall not exceed 5 % of the overall amount allocated for investment financing by the Investment Facility and by the Bank from its own resources.

9. Interest subsidies may be capitalised or may be used in the form of grants to support project-related technical assistance, particularly for financial institutions in the ACP countries.

Article 3

Operations of the investment facility

1. The Investment Facility shall operate in all economic sectors and support investments of private and commercially run public sector entities, including revenue generating economic and technological infrastructure critical for the private sector. The Facility shall:

(a) be managed as a revolving fund and aim at being financially sustainable. Its operations shall be on market-related terms and conditions and shall avoid creating distortions on local markets and displacing private sources of finances; and

(b) endeavour to have a catalytic effect by encouraging the mobilisation of long-term local resources and attracting foreign private investors and lenders to projects in the ACP States.

2. On expiry of the Financial Protocol, and in the absence of a specific decision by the Council of Ministers, the cumulative net reflows to the Investment Facility shall be carried over to the next Protocol.

Article 4

Bank own resource loans

1. The Bank shall:

(a) contribute, through the resources it manages, to the economic and industrial development of the ACP States on a national and regional basis; and to this end, finance as a priority productive projects and programmes or other investments aimed at promoting the private sector in all economic sectors;

(b) establish close cooperation links with national and regional development banks and with banking and financial institutions of the ACP States and of the EU; and

(c) in consultation with the ACP State concerned, adapt the arrangements and procedures for implementing development finance cooperation, as set out in this Agreement, if necessary, to take account of the nature of the projects and programmes and to act in accordance with the objectives of this Agreement, within the framework of the procedures laid down by its statute.

2. Loans from the Bank's own resources shall be granted under the following terms and conditions:

(a) the reference rate of interest shall be the rate applied by the Bank for a loan with the same conditions as to currency, and repayment period on the day of signature of the contract or on the date of disbursement;

(b) however:

(i) in principle, public sector projects shall be eligible for an interest rate subsidy of 3 %;

(ii) private sector projects falling into the categories specified in Article 2 (7)(b) shall be eligible for interest rates subsidies on the same terms as those specified in Article 2(7)(b).

The final interest rate shall, in any case, never be less than 50 % of the reference rate.

(c) the amount of the interest rate subsidy calculated in terms of its value at the times of disbursement of the loan shall be charged against the interest subsidy allocation of the Investment Facility as defined in Article 2(8) and 2(9), and paid directly to the Bank; and

(d) the repayment period of loans made by the Bank from its own resources shall be determined 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 of the project.

3. For investments financed by the Bank from its own resources in public sector companies, specific project-related guarantees or undertakings may be required from the ACP State concerned.

Article 5

Conditions for foreign exchange rate risk

In order to minimise the effects of exchange rate fluctuations, the problems of exchange rate risk shall be dealt with in the following way:

(a) in the case of equity participation designed to strengthen an enterprise's own funds, the exchange rate risk shall, as a general rule, be borne by the Investment Facility;

(b) in the case of risk capital financing for small-and medium-sized enterprises (SMEs), the exchange rate risk shall, as a general rule, be shared by the Community, on the one part, and by the other parties involved, on the other. On average, the foreign exchange rate risk shall be shared equally; and

(c) where feasible and appropriate, particularly in countries characterised by macroeconomic and financial stability, the Facility will endeavour to extend loans in local ACP currencies, thus de facto taking the foreign exchange risk.

Article 6

Conditions for foreign exchange transfer

The ACP States concerned shall, in respect of operations under the Agreement, and in respect of which they have given their written approval within the framework of this Agreement:

(a) grant exemption from all national or local duties, fiscal charges on interest, commission and amortisation of loans due in accordance with the law or laws of the ACP State or States concerned;

(b) place at the disposal of the beneficiaries the currency necessary for the payment of interest, commission and the amortisation of loans due in terms of financing contracts granted for the implementation of projects and programmes on their territories; and

(c) make available to the Bank the foreign currency necessary for the transfer of all sums received by it in national currency at the exchange rate applicable between the Euro or other currencies of transfer and the national currency at the date of the transfer. These include all forms of remuneration, such as, *inter alia*, interest, dividends, commissions and fees, as well as the amortisation of loans and the proceeds from the sale of shares due in terms of financing contracts granted for the implementation of projects and programmes on their territories.

CHAPTER 2

SPECIAL OPERATIONS

Article 7

1. Cooperation shall support from the grant allocation:
 - (a) low-income housing to promote long-term development of the housing sector, including secondary mortgage facilities;
 - (b) micro-finance to promote SMEs and micro-enterprises; and
 - (c) capacity building to strengthen and facilitate the effective participation of the private sector in social and economic development.
2. The ACP-EC Council of Ministers shall, after the signature of this Agreement and on a proposal by the ACP-EC Development Finance Cooperation Committee, decide on the modalities and the amount of resources allocated from the long-term development envelope to attain these objectives.

CHAPTER 3

FINANCING FOR SHORT-TERM FLUCTUATIONS IN EXPORT EARNINGS

Article 8

1. The Parties recognise that losses of export earnings as a result of short-term fluctuations may jeopardise the development financing requirements and the implementation of macroeconomic and sectoral policies. The degree of dependence of an ACP State's economy on the export of goods, and in particular from agricultural and mining products shall, therefore, be a criterion for determining the allocation of long-term development.
2. In order to mitigate the adverse effects of instability of export earnings and safeguard the development programme jeopardised by the drop in revenue, additional financial support may be mobilised from the programmable resources for the country's long-term development on the basis of Articles 9 and 10.

Article 9
Eligibility criteria

1. Eligibility for additional resources shall be established by:
 - a) - a 10 % (2 % in the case of least-developed countries) loss of export earnings from goods compared with the arithmetical average of the earnings in the first three years of the first four years preceding the application year;
 - or
 - a 10 % (2 % in the case of least-developed countries) loss of export earnings from the total of agricultural or mineral products compared with the arithmetical average of the earnings in the first three years of the first four years preceding the application year for countries where the agricultural or mineral export revenues represent more than 40 % of total export revenues from goods; and
 - (b) a 10 % worsening in the programmed public deficit programmed for the year in question or forecast for the following year.
2. Entitlement to additional support shall be limited to four successive years.
3. The additional resources shall be reflected in the public accounts of the country concerned. They shall be utilised in accordance with programming rules and methods including the specific provisions in Annex IV "Implementation and management procedures", on the basis of agreements drawn up in advance between the Community and the ACP State concerned in the year following the application. By agreement of both Parties the resources may be used to finance programmes included in national budget. However a part of the additional resources may also be set aside for specific sectors.

Article 10
Advances

The system for allocating additional resources shall provide for advances to cover any delays in obtaining consolidated trade statistics and to ensure that the resources in question can be included in the budget of the year following the application year. Advances shall be mobilised on the basis of provisional export statistics drawn up by the government and submitted to the Commission in advance of the official final consolidated statistics. The maximum advance shall be 80 % of the estimated amount of additional resources for the application year. The amounts thus mobilised shall be adjusted by common agreement between the Commission and the

government in the light of final consolidated export statistics and the final figure of the public deficit.

Article 11

The provisions in this Chapter shall be subject to review at the latest after two years of operation and subsequently at the request of either Party..

CHAPTER 4

OTHER PROVISIONS

Article 12

Current payments and capital movements

1. Without prejudice to paragraph 3 hereafter, the Parties undertake to impose no restrictions on any payments, in freely convertible currency, on the current account of balance of payments between residents of the Community and of the ACP States.

2. With regard to transactions on the capital account of balance of payments, the Parties undertake to impose no restrictions on the free movement of capital relating to direct investments made in companies formed in accordance with the law of the host country and investments made in accordance with this Agreement, and the liquidation or repatriation of these investments and of any profit stemming therefrom.

3. Where one or more ACP State or one or more Member State of the Community is in serious balance of payments difficulties, or under threat thereof, the ACP State, the Member State or the Community may, in accordance with the conditions established under the GATT, GATS and Article VIII and XIV of the Articles of Agreement of the International Monetary Fund, adopt restrictions on current transactions which shall be of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. The Party taking the measures shall inform the other Parties forthwith and shall submit to them as soon as possible a timetable for the elimination of the measures concerned.

Article 13

Qualification and treatment of business entities

As regards 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 the ACP States and nationals and companies or firms of the Member 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 ACP State or the Member State, as the case may be, shall not be bound to accord such treatment for that activity to the nationals and companies or firms of the State concerned.

Article 14

Definition of “companies and firms”

1. For the purpose of this Agreement, “companies or firms of a Member State or an ACP State” mean companies or firms constituted under civil or commercial law, including corporations, whether public or otherwise, cooperative societies and other legal persons and partnerships governed by public or private law, save for those which are non-profit-making, formed in accordance with the law of a Member State or an ACP State and whose statutory office, central administration or principal place of business is a Member State or an ACP State.

2. However, a company or firm having only its statutory 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 ACP State.

CHAPTER 5

INVESTMENT PROTECTION AGREEMENTS

Article 15

1. When implementing the provisions of Article 78 of this Agreement, the Parties shall take into account the following principles:

(a) a Contracting State may request where appropriate, the negotiation of an investment promotion and protection agreement with another Contracting State;

(b) the States party to such agreements shall practise no discrimination between Contracting States party to this Agreement 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;

(c) the Contracting States shall have the right to request a modification or adaptation of the non-discriminatory treatment referred to above when international obligations or changed circumstances so necessitate;

(d) the application of the principles referred to above does not purport to and cannot in practice infringe the sovereignty of any Contracting Party to the Agreement; and

(e) 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 provisions set out above. The Contracting Parties confirm that retroactivity shall not apply as a general principle unless Contracting States stipulate otherwise.

2. With a view to facilitating the negotiation of bilateral agreements on investment promotion and protection, the Contracting Parties agree to study the main clauses of a model protection agreement. The study, drawing on the provisions of the existing bilateral agreements between the States Parties, will give particular attention to the following issues:

(a) legal guarantees to ensure fair and equitable treatment and protection of foreign investors;

(b) the most-favoured-investor clause;

(c) protection in the event of expropriation and nationalisation;

(d) the transfer of capital and profits, and

(e) international arbitration in the event of disputes between investor and host State.

3. The Parties agree to study the capacity of the guarantee systems to give a positive answer to the specific needs of small and medium-sized enterprises of insuring their investments in ACP States. The studies referred to above shall be started as soon as possible after the signing of the Agreement. The result of these studies shall be submitted, upon completion to the ACP-EC Development Finance Cooperation Committee for consideration and appropriate action.

ANNEX III

INSTITUTIONAL SUPPORT - CDE AND CTA

Article 1

Cooperation shall support the institutional mechanisms that provide assistance for businesses and enterprises and promote agriculture and rural development. In this context, cooperation shall help to:

(a) strengthen and enhance the role of the Centre for the Development of Enterprise (CDE) so as to provide the ACP private sector with the necessary support in the promotion of private sector development activities; and

(b) strengthen and reinforce the role of the Centre for the Development of Agriculture (CTA) in ACP institutional capacity development, particularly information management, in order to improve access to technologies for increasing agricultural productivity, commercialisation, food security and rural development.

Article 2

CDE

1. The CDE shall support the implementation of private-sector development strategies in the ACP countries by providing non-financial services to ACP companies and businesses and support to joint initiatives set up by economic operators of the Community and of the ACP States.

2. The CDE shall aim to assist private ACP enterprises to become more competitive in all sectors of the economy. It shall in particular:

(a) facilitate and promote business cooperation and partnerships between ACP and EU enterprises;

(b) assist with the development of business support services through support for capacity building in private sector owned organisations or support for providers of technical, professional, management, commercial and training support services;

(c) provide assistance for investment promotion activities, such as investment promotion organisations, organisation of investment conferences, training programmes, strategy workshops and follow-up investment promotion missions; and

- (d) support for initiatives that contribute to develop and transfer technologies and know-how and best practices on all aspects of business management.
3. The CDE shall also:
- (a) inform the ACP private sector about the provisions of the Agreement;
 - (b) diffuse information within the local ACP private sector about the product quality and standards required in external markets; and
 - (c) provide information to European companies and private sector organisations on business opportunities and modalities in ACP countries.
4. The CDE shall extend its support for enterprises through qualified and competent national and/or regional service-providing intermediaries.
5. The activities of the CDE shall be based on the concept of coordination, complementarity and added value in respect of any private sector development initiatives taken by public or private entities. The CDE shall exercise selectivity in undertaking its tasks.
6. The Committee of Ambassadors shall be the supervisory authority of the Centre. It shall, after the signature of this Agreement:
- (a) lay down the statutes and rules of procedure of the Centre, including its supervisory bodies;
 - (b) lay down the statutes relating to staff, financial and staff regulations;
 - (c) supervise the work of the bodies of the Centre; and
 - (d) lay down the rules of operation and the procedures for the adoption of the Centre's budget.
7. The Committee of Ambassadors shall, in accordance with the procedures and criteria determined by it, appoint the members of the bodies of the Centre.
8. The budget of the Centre shall be financed in accordance with the rules laid down in this Agreement in respect of development finance cooperation.

Article 3
CTA

1. The mission of the CTA shall be to strengthen policy and institutional capacity development and information and communication management capacities of ACP agricultural and rural development organisations. It shall assist such organisations in formulating and implementing policies and programmes to reduce poverty, promote sustainable food security, preserve the natural resource base, and thus contribute to building self-reliance in ACP rural and agricultural development.

2. The CTA shall:

(a) develop and provide information services and ensure better access to research, training and innovations in the spheres of agricultural and rural development and extension, in order to promote agriculture and rural development; and

(b) develop and reinforce ACP capacities in order to:

(i) improve the formulation and management of agricultural and rural development policies and strategies at national and regional levels including improved capacity for data collection, policy research, analysis and formulation;

(ii) improve the information and communication management, in particular within the National Agricultural Strategy;

(iii) promote effective intra-institutional Information and Communication Management (ICM) for performance monitoring, as well as consortia with regional and international partners;

(iv) promote decentralised ICM at local and national levels;

(v) strengthen initiatives via regional cooperation; and

(vi) develop approaches for assessing the impact of policy on agricultural and rural development.

3. The Centre shall support regional initiatives and networks and shall progressively share capacity development programmes with appropriate ACP organisations. To this end, the Centre shall support decentralised regional information networks. Such networks shall be built up gradually and efficiently.

4. The Committee of Ambassadors shall be the supervisory authority of the Centre. It shall, after the signature of this Agreement:

(a) lay down the statutes and rules of procedures of the Centre, including its supervisory bodies;

(b) lay down the statutes relating to staff, financial and staff regulations;

(c) supervise the work of the bodies of the Centre; and

(d) lay down the rules of operation and the procedures for the adoption of the Centre's budget.

5. The Committee of Ambassadors shall, in accordance with the procedures and criteria determined by it, appoint the members of the bodies of the Centre.

6. The budget of the Centre shall be financed in accordance with the rules laid down in this Agreement in respect of development finance cooperation.

ANNEX IV

IMPLEMENTATION AND MANAGEMENT PROCEDURES

CHAPTER 1

PROGRAMMING (NATIONAL)

Article 1

Operations financed by grants within the framework of this Agreement shall be programmed at the beginning of the period covered by the Financial Protocol. Programming for this purpose shall mean:

- (a) the preparation and development of a Country Support Strategy (CSS) based on the country's own medium-term development objectives and strategies;
- (b) a clear indication from the Community of the indicative programmable financial allocation from which the country may benefit during the five-year period as well as any other relevant information;
- (c) the preparation and adoption of an indicative programme for implementing the CSS; and
- (d) a review process covering the CSS, the indicative programme and the volume of resources allocated to it.

Article 2

Country support strategy

The CSS shall be prepared by the ACP State concerned and the EU following consultations with a wide range of actors in the development process, and shall draw on lessons learned and best practices. Each CSS shall be adapted to the needs and respond to the specific circumstances of each ACP State. The CSS shall be an instrument to prioritise activities and to build local ownership of cooperation programmes. Any divergences between the country's own analysis and that of the Community shall be noted. The CSS shall include the following standard elements:

- (a) an analysis of the political, economic and social country context, constraints, capacities and prospects including an assessment of basic needs, such as income per capita, population size and social indicators, and vulnerability;

(b) a detailed outline of the country's medium-term development strategy, clearly defined priorities and expected financing requirements;

(c) an outline of relevant plans and actions of other donors present in the country, in particular including those of the EU Member States in their capacity as bilateral donors;

(d) response strategies, detailing the specific contribution the EU can provide. These shall, to the extent possible, enable complementarity with operations financed by the ACP State itself and by other donors present in the country; and

(e) a definition of the nature and scope of the most appropriate support mechanisms to be applied in implementing the above strategies.

Article 3 *Resource allocation*

1. Resource allocation shall be based on needs and performance, as defined in this Agreement. In this context:

(a) needs shall be assessed on the basis of criteria pertaining to per capita income, population size, social indicators and level of indebtedness, export earning losses and dependence on export earnings, in particular from the sectors of agriculture and mining. Special treatment shall be accorded to the least developed ACP States and the vulnerability of island and landlocked states shall duly be taken into account. In addition, account shall be taken of the particular difficulties of post-conflict countries; and

(b) performance shall be assessed in an objective and transparent manner on the basis of the following parameters: progress in implementing institutional reforms, country performance in the use of resources, effective implementation of current operations, poverty alleviation or reduction, sustainable development measures and macroeconomic and sectoral policy performance.

2. The allocated resources shall comprise two elements:

(a) an allocation to cover macroeconomic support, sectoral policies, programmes and projects in support of the focal or non focal areas of Community assistance; and

(b) an allocation to cover unforeseen needs such as emergency assistance where such support cannot be financed from the EU budget, contributions to internationally agreed debt relief initiatives

and support to mitigate adverse effects of instability in export earnings.

3. This indicative amount shall facilitate the long-term programming of Community aid for the country concerned. Together with the uncommitted balances of resources allocated to the country under previous EDF, and wherever possible Community budget resources, these allocations shall be the basis for the preparation of the indicative programme for the country concerned.

4. Provision will be made for those countries which, due to exceptional circumstances, can not access normal programmable resources.

Article 4

Preparation and adoption of the indicative programme

1. Upon receipt of the information referred to above, 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 as expressed in the CSS. The draft indicative programme shall contain:

- (a) the focal sector, sectors or areas on which support should be concentrated;
- (b) the most appropriate measures and operations for attaining the objectives and targets in the focal sector, sectors or areas;
- (c) the resources reserved for projects and programmes outside the focal sector(s) and/or the broad outlines of such activities, as well as an indication of the resources to be deployed for each of these elements;
- (d) identification of eligible non-State actors and the resources allocated for non-State actors;
- (e) proposals for regional projects and programmes; and
- (f) a reserve for insurance against possible claims and to cover cost increases and contingencies.

2. The draft indicative programme shall, as appropriate, contain the resources reserved to reinforce human, material and institutional ACP capacity for preparing and implementing national and regional indicative programmes and for improving the management of the ACP States' public investment projects cycle.

3. The draft indicative programme shall be the subject of an exchange of views between the ACP State concerned and the Community. The indicative programme shall be adopted by common agreement between the Community and the ACP State concerned. It shall, when adopted, be binding on both the Community and that State. This indicative programme shall be annexed to the CSS and shall in addition contain:

(a) specific and clearly identified operations, especially those that can be committed before the next review;

(b) a timetable for implementation and review of the indicative programme, including commitments and disbursements of resources; and

(c) the parameters and criteria for the reviews.

4. The Community and the ACP State concerned shall take all necessary measures to ensure that the programming process is completed within the shortest possible time and, save in exceptional circumstances, within twelve months of the signing of the Financial Protocol. In this context, the preparation of the CSS and the indicative programme must be part of a continuous process leading to the adoption of a single document.

Article 5 **Review process**

1. Financial cooperation between the ACP State and the Community shall be sufficiently flexible to ensure that operations are kept constantly in line with the objectives of this Agreement and to take account of any changes occurring in the economic situation, priorities and objectives of the ACP State concerned. In this context, the National Authorising Officer and the Head of Delegation shall:

(a) annually undertake an operational review of the indicative programme; and

(b) undertake a mid-term and end-of-term review of the CSS and the indicative programme in the light of current needs and performance.

2. In exceptional circumstances referred to in the provisions on humanitarian and emergency assistance, the review can be carried out on the demand of either Party.

3. The National Authorising Officer and the Head of Delegation shall:

(a) take all necessary measures to ensure adherence to the provisions of the indicative programme, including ensuring that the

timetable of commitments and disbursements agreed at the time of programming is adhered to; and

(b) determine any causes of delay in implementation and propose suitable measures to remedy the situation.

4. The annual operational review of the indicative programme shall consist of a joint assessment of the implementation of the programme and take into account the results of relevant activities of monitoring and evaluation. This review shall be conducted locally and shall be finalised between the National Authorising Officer and the Head of Delegation within a period of 60 days. It shall in particular cover an assessment of:

(a) the results achieved in the focal sector(s) measured against the identified targets and impact indicators and sectoral policy commitments;

(b) projects and programmes outside the focal sector(s) and/or in the framework of multi-annual programmes;

(c) the use of resources set aside for non-State actors;

(d) the effectiveness in implementation of current operations and the extent to which the timetable for commitments and payments have been respected; and

(e) an extension of the programming perspective for the following years.

5. The National Authorising Officer and the Head of Delegation shall submit the report on the conclusion of the annual review to the Development Finance Cooperation Committee, within 30 days of the completion of the operational review. The Committee shall examine the report in accordance with its responsibilities and powers under the Agreement.

6. In the light of the annual operational reviews, the National Authorising Officer and the Head of Delegation may at the mid-term and end-of-term reviews, and within the above time frames, review and adapt the CSS:

(a) where operational reviews indicate specific problems; and/or

(b) in the light of changed circumstances of an ACP State.

Such reviews shall be completed within a further period of 30 days of the finalisation of the mid-term and end-of-term reviews. The end of Financial Protocol review shall also include adaptation for the new financial protocol

in terms of both resource allocation and preparation for the next programme.

7. Following the completion of mid-term and end-of-term reviews, the Community may revise the resource allocation in the light of current needs and performance of the ACP State concerned.

CHAPTER 2

PROGRAMMING AND PREPARATION (REGIONAL)

Article 6

Participation

1. Regional cooperation shall cover operations benefiting and involving:

(a) two or more or all ACP States; and/or

(b) a regional body of which at least two ACP States are members.

2. Regional cooperation can also involve Overseas Countries and Territories and outermost regions. The funding to enable participation of these territories shall be additional to funds allocated to the ACP States under the Agreement.

Article 7

Regional programmes

The ACP States concerned shall decide on the definition of geographical regions. To the maximum extent possible, regional integration programmes should correspond to programmes of existing regional organisations with a mandate for economic integration. In principle, in case the membership of several relevant regional organisations overlaps, the regional integration programme should correspond to the combined membership of these organisations. In this context, the Community will provide specific support from regional programmes to groups of ACP States who are committed to negotiate economic partnership agreements with the EU.

Article 8

Regional programming

1. Programming shall take place at the level of each region. The programming shall be a result of an exchange of views between the Commission and the duly mandated regional organisation(s) concerned, and in the absence of such a mandate, the National Authorising Officers of

the countries in that region. Where appropriate, programming may include a consultation with eligible non-State actors.

2. Programming for this purpose shall mean:
 - (a) preparation and development of a Regional Support Strategy (RSS) based on the region's own medium-term development objectives and strategies;
 - (b) a clear indication from the Community of the indicative resource allocation from which the region may benefit during the five-year period as well as any other relevant information;
 - (c) preparation and adoption of a Regional Indicative Programme (RIP) for implementing the RSS; and
 - (d) a review process covering the RSS, the RIP and the volume of resources allocated to each region.

3. The RSS shall be prepared by the Commission and the duly mandated regional organisation(s) in collaboration with the ACP States in the region concerned. The RSS will be an instrument to prioritise activities and to build local ownership of supported programmes. The RSS shall include the following standard elements:
 - (a) an analysis of the political, economic and social context of the region;
 - (b) an assessment of the process and prospects of regional economic integration and integration into the world economy;
 - (c) an outline of the regional strategies and priorities pursued and the expected financing requirements;
 - (d) an outline of relevant activities of other external partners in regional cooperation; and
 - (e) an outline of the specific EU contribution towards achievement of the goals for regional cooperation and integration, complementary insofar as possible to operations financed by the ACP States themselves and by other external partners, particularly the EU Member States.

Article 9 *Resource allocation*

At the beginning of the period covered by the Financial Protocol, each region shall receive from the Community an indication of the volume of

resources from which it may benefit during a five-year period. The indicative resource allocation shall be based on an estimate of need and the progress and prospects in the process of regional cooperation and integration. In order to achieve an adequate scale and to increase efficiency, regional and national funds may be mixed for financing regional operations with a distinct national component.

Article 10
Regional indicative programme

1. On the basis of the resource allocation indicated above, the duly mandated regional organisation(s), and in the absence of such a mandate, the National Authorising Officers of the countries in the region, shall draw up a draft Regional Indicative Programme. In particular, the draft programme shall specify:

- (a) the focal sectors and themes of Community aid;
- (b) the most appropriate measures and operations to achieve the objectives set for those sectors and themes; and
- (c) the projects and programmes enabling those objectives to be attained, insofar as they have been clearly identified as well as an indication of the resources to be deployed for each of these elements and a timetable for their implementation.

2. The Regional Indicative Programmes shall be adopted by common agreement between the Community and the ACP States concerned.

Article 11
Review process

Financial cooperation between each ACP region and the Community shall be sufficiently flexible to ensure that operations are kept constantly in line with the objectives of this Agreement and to take account of any changes occurring in the economic situation, priorities and objectives of the region concerned. A mid-term and end-of-term review of the regional indicative programmes shall be undertaken to adapt the indicative programme to evolving circumstances and to ensure that they are correctly implemented. Following the completion of mid-term and end-of-term reviews, the Community may revise the resource allocation in the light of current needs and performance.

Article 12
Intra-ACP cooperation

At the beginning of the period covered by the Financial Protocol, the Community shall indicate to the ACP Council of Ministers the part of the

funds earmarked for regional operations that shall be set aside for operations that benefit many or all ACP States. Such operations may transcend the concept of geographic location.

Article 13
Requests for financing

1. Requests for financing of regional programmes shall be submitted by:
 - (a) a duly mandated regional body or organisation; or
 - (b) a duly mandated sub-regional body, organisation or an ACP State in the region concerned at the programming stage, provided that the operation has been identified in the RIP.
2. Requests for intra-ACP programmes shall be submitted by:
 - (a) at least 3 mandated regional bodies or organisations belonging to different geographic regions, or the National Authorising Officers of such regions; or
 - (b) the ACP Council of Ministers, or, by specific delegation, the ACP Committee of Ambassadors; or
 - (c) international organisations carrying out operations that contribute to the objectives of regional cooperation and integration, subject to prior approval by the ACP Committee of Ambassadors.

Article 14
Procedures for implementation

1. Regional programmes shall be implemented by the requesting body or any other duly authorised institution or body.
2. Intra-ACP programmes shall be implemented by the requesting body or their duly authorised agent. In the absence of a duly authorised implementing body, and without prejudice to ad hoc projects and programmes managed by the ACP Secretariat, the Commission shall be responsible for the implementation of intra-ACP operations.
3. Account being taken of the objectives and inherent characteristics of regional cooperation, operations undertaken in this sphere shall be governed by the procedures established for development finance cooperation where applicable.

CHAPTER 3

PROJECT IMPLEMENTATION

Article 15

Project identification, preparation and appraisal

1. Projects and programmes that have been presented by the ACP State shall be subject to joint appraisal. The ACP-EC Development Finance Cooperation Committee shall develop the general guidelines and criteria for appraisal of projects and programmes.
2. Project or programme dossiers prepared and submitted for financing must contain all information necessary for the appraisal of the projects or programmes or, where such projects and programmes have not been completely defined, provide the broad outlines necessary for their appraisal. Such dossiers shall be officially transmitted to the Community by the ACP States or the other eligible beneficiaries in accordance with this Agreement.
3. Project and programme appraisal shall, take due account of national human resource constraints and ensure a strategy favourable to the promotion of such resources. It shall also take into account the specific characteristics and constraints of each ACP State.

Article 16

Financing proposal and decision

1. The conclusions of the appraisal shall be summarised in a financing proposal drawn up by the Community in close collaboration with the ACP State concerned. This financing proposal shall be submitted for approval by the Commission's decision-making body.
2. The financing proposal shall contain an advance timetable for the technical and financial implementation of the project or programme, including multi-annual programmes and global allocations for operations of a small financial scale, and shall deal with the duration of the different phases of implementation. The financing proposal shall:
 - (a) take into account the comments of the ACP State or States concerned; and
 - (b) be forwarded simultaneously to the ACP State or States concerned and the Community.
3. The Commission shall finalise the financing proposal and forward it, with or without amendment, to the Community's decision-making body. The ACP State or States concerned shall be given an opportunity to

comment on any amendment of substance which the Commission intends to make to the document. These comments shall be reflected in the amended financing proposal.

4. The Community's decision-making body shall communicate its decision within 120 days from the date of communication of the financial proposal referred to above.

5. Where the financing proposal is not adopted by the Community, the ACP State or States concerned shall be informed immediately of the reasons for that decision. In such a case, the representatives of the ACP State or States concerned may, within 60 days thereafter, request either:

(a) that the matter be referred to the ACP-EC Development Finance Cooperation Committee set up under the Agreement; or

(b) that they be given a hearing by the Community's decision-making body.

6. Following such a hearing, a definitive decision to adopt or reject the financing proposal shall be taken by the relevant Community body to which the ACP State or States concerned may forward, before the decision is taken, any facts which may appear necessary to supplement the information available to it.

7. Multi-annual programmes shall, *inter alia*, finance training, decentralised operations, micro-projects, trade promotion and trade development, sets of operations of a limited scale in a specific sector, project/programme management support and technical cooperation.

8. In cases referred to above, the ACP State concerned may submit to the Head of Delegation a multi-annual programme setting out its broad outlines, the types of actions envisaged and the financial commitment proposed:

(a) the financing decision on each multi-annual programme shall be taken by the Chief Authorising Officer. The letter from the Chief Authorising Officer to the National Authorising Officer notifying such decision shall constitute the financing agreement; and

(b) within the framework of multi-annual programmes thus adopted, the National Authorising Officer or, when the case arises, the agent of decentralised cooperation which has been delegated functions for this purpose or, in appropriate cases, other eligible beneficiaries shall implement each individual action in accordance with the relevant provisions of this Agreement and the terms of the financing agreement referred to above. Where implementation is to be carried out by agents of decentralised cooperation or other

eligible beneficiaries, the National Authorising Officer and the Head of Delegation shall maintain financial responsibility and monitor the operations regularly with a view to enabling them, *inter alia*, to carry out their obligations.

9. At the end of each year, the National Authorising Officer in consultation with the Head of Delegation, shall forward a report to the Commission on the implementation of the multi-annual programmes.

Article 17 *Financing agreement*

1. Save as otherwise provided for in this Agreement, for any project or programme financed by a grant from the Fund, a financing agreement shall be drawn up between the Commission and the ACP State or States concerned. Where the direct beneficiary is not an ACP State, the Commission shall formalise the financing decision by means of an exchange of letters with the beneficiary concerned.

2. The financing agreement shall be drawn up between the Commission and the ACP State or States concerned within 60 days of the decision of the Community's decision-making body. The agreement shall:

(a) specify, in particular the details of the Fund's financial commitment and the financing arrangements and terms, the general and specific provisions relating to the project or programme concerned and shall also incorporate the advance timetable for the technical implementation of the project or programme contained in the financing proposal; and

(b) make adequate provision for appropriations to cover cost increases and contingencies.

3. Once the financing agreement has been signed, disbursements shall be made in accordance with the financing plan laid down therein. Any unexpended balance left upon closure of the accounts of projects and programmes shall accrue to the ACP State concerned and shall be so specified in the Fund's books. It may be used in the manner laid down in this Agreement for the financing of projects and programmes.

Article 18 *Cost over-runs*

1. Once it appears that cost over-runs beyond the limit set in the financing agreement are likely to be incurred, the National Authorising Officer shall, through the Head of Delegation, notify the Chief Authorising Officer accordingly, as well as of the measures which the National Authorising Officer intends to take in order to cover such cost over-runs

over the allocated appropriations, either by reducing the scale of the project or programme or by calling on national or other non-Community resources.

2. If it is decided by agreement with the Community not to scale down the project or programme or if it is not possible to cover them by other resources, then such over-runs may be financed up to 20% of the financial commitment for the project or programme concerned from the indicative programme.

Article 19 *Retroactive financing*

1. In order to ensure early project start-up, avoid gaps between sequential projects and prevent delays, the ACP States, in agreement with the Commission, may, on completion of project appraisal and before the financing decision is taken:

(a) issue invitations to tender for all types of contracts, with a suspension clause; and

(b) pre-finance activities linked to the start-up of programmes, preliminary and seasonal work, orders for equipment with long delivery lead times as well as some on-going operations. Such expenditures must satisfy the procedures provided for in the Agreement.

2. These provisions do not prejudice the powers of the Community's decision-making body.

3. Expenditure made by the ACP State in pursuance of this provision shall be retroactively financed under the project or programme, once the financing agreement is signed.

CHAPTER 4

COMPETITION AND PREFERENCES

Article 20 *Eligibility*

Save where a derogation is granted in accordance with the General Regulations for contracts or Article 22:

(a) participation in invitations to tender and the award of the contracts financed by the Fund shall be open on equal terms to:

(i) natural persons, companies or firms or public or semi-public agencies of the ACP States and the Member States;

(ii) cooperative societies and other legal persons governed by public or private law, of the Member States and/or the ACP States; and

(iii) joint ventures or groupings of companies or firms of ACP States and/or of a Member State.

(b) supplies must originate in the Community and/or the ACP States. In this context, the definition of the concept of "originating products" shall be assessed by reference to the relevant international agreements and supplies originating in the Community shall include supplies originating in the Overseas Countries and Territories.

Article 21

Participation on equal terms

The ACP States and the Commission shall take the necessary measures to ensure the widest possible participation on equal terms in invitations to tender for works, supplies and services contracts, including, as appropriate, measures to:

(a) ensure publication of invitations to tender in the Official Journal of the European Communities, the Internet, the Official Journals of all the ACP States and any other appropriate information media;

(b) eliminate discriminatory practices or technical specifications which might stand in the way of widespread participation on equal terms;

(c) encourage cooperation between the companies and firms of the Member States and of the ACP States;

(d) ensure that all the awarding criteria are specified in the tender dossier; and

(e) ensure that the tender selected conforms to the requirements of the tender dossier and meets the awarding criteria stated therein.

Article 22

Derogation

1. In order to ensure the optimum cost-effectiveness of the system, natural or legal persons from non-ACP developing countries may be authorised to participate in contracts financed by the Community at the

request of the ACP States concerned. The ACP States concerned shall, on each occasion, provide the Head of Delegation with the information needed for the Community to decide on such derogation, with particular attention being given to:

- (a) the geographical location of the ACP State concerned;
- (b) the competitiveness of contractors, suppliers and consultants from the Member States and the ACP States;
- (c) the need to avoid excessive increases in the cost of performance of the contract;
- (d) transport difficulties or delays due to delivery times or other similar problems; and
- (e) technology that is the most appropriate and best suited to local conditions.

2. Participation by third countries in contracts financed by the Community may also be authorised:

- (a) where the Community participates in the financing of regional or inter-regional schemes involving such countries;
- (b) in the case of co-financing projects and programmes; and
- (c) in the case of emergency assistance.

3. In exceptional cases and in agreement with the Commission, consultancy firms with experts who are nationals of third countries may participate in service contracts.

Article 23 Competition

1. To simplify and streamline the general rules and regulations for competition and preferences for EDF financed operations, contracts shall be awarded through open and restricted procedures as well as framework contract, direct agreement contracts and direct labour as follows:

- (a) open international invitation to tender through or after the publication of a procurement notice in accordance with the provisions of this Agreement;
- (b) open local invitation to tender where the procurement notice is published exclusively in the beneficiary ACP State;

(c) restricted international invitation to tender where the Contracting Authority invites a limited number of candidates to take part in the call for tender after the publication of a pre-information notice;

(d) direct agreement contracts which involve simplified procedure where the publication of the procurement notice is dispensed with and the Contracting Authority invites a limited number of service providers to present their offers; and

(e) direct labour agreement where contracts are performed through public or semi-public agencies and departments of the beneficiary States concerned.

2. Contracts financed from the Fund shall be concluded in accordance with the following provisions:

(a) works contracts of a value:

(i) higher than EUR 5000000 shall be awarded in an open international invitation to tender;

(ii) between EUR 300000 and EUR 5000000 shall be awarded through an open local invitation to tender; and

(iii) lower than EUR 300000 shall be awarded by direct agreement contract which involves a simplified procedure without publication of a procurement notice.

(b) supply contracts of a value:

(i) higher than EUR 150000 shall be awarded through an open international invitation to tender;

(ii) between EUR 30000 and EUR 150000 shall be awarded through an open local invitation to tender; and

(iii) below EUR 30000 shall be awarded by direct agreement contract which involves a simplified procedure without publication of a procurement notice.

(c) service contracts of a value:

(i) higher than EUR 200000 shall be awarded through a restricted international tender after publication of a procurement notice; and

(ii) below EUR 200000 shall be awarded by direct agreement contract which involves a simplified procedure or a framework contract.

3. For works, supply and service contracts with a value of EUR 5000 or less, these can be awarded directly without competition.

4. In case of restricted invitation to tender, a short-list of prospective tenderers shall be drawn up by the ACP State or States concerned in agreement with the Head of Delegation following, where applicable, a call for pre-qualification of tenders based on the publication of a procurement notice.

5. In case of direct-agreement contracts, the ACP State shall enter freely into such discussions as it may consider appropriate with the prospective tenderers whom it has short-listed in accordance with the Articles 20 to 22 and award the contract to the tenderers whom it has selected.

6. The ACP States may request the Commission to negotiate, draw up, conclude and implement service contracts directly on their behalf or through its relevant agency.

Article 24 Direct labour

1. In case of direct labour operations, projects and programmes shall be implemented through public or semi-public agencies or departments of the State or States concerned or by the person responsible for executing the operation.

2. The Community shall contribute to the costs of the department involved by providing the equipment and/or materials that it lacks and/or resources to allow it to acquire additional staff required in the form of experts from within the ACP States concerned or other ACP States. 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.

Article 25 Emergency assistance contracts

Contracts under emergency assistance shall be undertaken in such a way as to reflect the urgency of the situation. To this end, for all operations relating to emergency assistance, the ACP State may, in agreement with the Head of Delegation, authorise:

(a) the conclusion of contracts by direct agreement;

- (b) the performance of contracts by direct labour;
- (c) implementation through specialised agencies; and
- (d) direct implementation by the Commission.

Article 26
Preferences

Measures shall be taken to encourage the widest participation of the natural and legal persons of ACP States in the performance of contracts financed by the Fund in order to permit the optimisation of the physical and human resources of those States. To this end:

- (a) for works contracts of a value of less than EUR 5000000, tenderers of the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, shall be accorded a 10 % price preference where tenders of an equivalent economic, technical and administrative quality are compared;
- (b) for supply contracts, irrespective of the value of the supplies, tenderers of the ACP States who offer supplies of at least 50 % in contract value of ACP origin, shall be accorded a 15 % price preference where tenders of equivalent economic, technical and administrative quality are compared;
- (c) in respect of service contracts, given the required competence, preference shall be given to:
 - (i) experts, institutions or consultancy companies or firms from ACP States where tenders of equivalent economic and technical quality are compared,
 - (ii) offers submitted by an ACP firm in a consortium with European partners, and
 - (iii) offers presented by European tenderers with ACP subcontractors or experts.
- (d) where subcontracting is envisaged, preference shall be given by the successful tenderer to natural persons, companies and firms of ACP States capable of performing the contract required on similar terms; and
- (e) the ACP State may, in the invitation to tender, propose to the prospective tenderers the assistance of other ACP States' companies

or firms or national experts or consultants selected by mutual agreement. This cooperation may take the form either of a joint venture, or of a subcontract or of on-the-job training of trainees.

Article 27
Award of contracts

1. Without prejudice to Article 24, the ACP State shall award the contract to the tenderer:

(a) whose tender is found to be responsive to the tender dossier;

(b) for a works or supply contract, who has offered the most advantageous tender as assessed, *inter alia*, on the basis of:

(i) the price, the operating and maintenance costs;

(ii) the qualifications of, and the guarantees offered by the tenderers, as well as the technical qualities of the tender, including the offer of an after-sales service in the ACP State; and

(iii) the nature of, the conditions and the time limit for executing the contracts, and the adaptation to local conditions.

(c) for a service contract who offers the most advantageous tender taking into account, *inter alia*, the price, the technical value of the tender, the organisation and the methodology proposed for the provision of the services as well as the competence, independence and availability of the personnel proposed.

2. Where two tenders are acknowledged to be equivalent on the basis of the criteria stated above, preference shall be given:

(a) to the tenderer of an ACP State; or

(b) if no such tender is forthcoming, to the tenderer who:

(i) permits the best possible use of the physical and human resources of the ACP States;

(ii) offers the greatest subcontracting possibilities to ACP companies, firms or natural persons; or

(iii) is a consortium of natural persons, companies and firms from ACP States and the Community.

Article 28
General regulations for contracts

1. The award of contracts financed from the resources of the Fund shall be governed by this Annex and the procedures which shall be adopted by decision of the Council of Ministers at the first meeting following the signing of this Agreement, upon the recommendation of the ACP-EC Development Finance Cooperation Committee. These procedures shall respect the provisions of this Annex and the Community's procurement rules for cooperation with third countries.

2. Pending the adoption of these procedures, the current EDF rules as contained in the current general regulations and general conditions of contracts shall apply.

Article 29
General conditions for contracts

Performance of works, supply and service contracts financed from the resources of the Fund shall be governed by:

(a) the general conditions applicable to contracts financed by the Fund which shall be adopted by decision of the Council of Ministers at the first meeting following the signing of this Agreement, upon the recommendation of the ACP-EC Development Finance Cooperation Committee; or

(b) in the case of co-financed projects and programmes, or where a derogation to third parties has been granted or in accelerated procedures or in other appropriate cases, such other general conditions as may be agreed by the ACP State concerned and the Community, i.e.:

(i) the general conditions for contracts prescribed by the national legislation of the ACP State concerned or its established practices regarding international contracts; or

(ii) any other international general conditions for contracts.

Article 30
Settlement of disputes

Any dispute arising between the authorities of an ACP State and a contractor, supplier or provider of services during the performance of a contract financed by the Fund shall:

(a) in the case of a national contract, be settled in accordance with the national legislation of the ACP State concerned; and

(b) in the case of a transnational contract be settled either:

(i) if the Parties to the contract so agree, in accordance with the national legislation of the ACP State concerned or its established international practices; or

(ii) by arbitration in accordance with the procedural rules which will be adopted by decision of the Council of Ministers at the first meeting following the signing of this Agreement, upon the recommendation of the ACP-EC Development Finance Cooperation Committee.

Article 31

Tax and customs arrangements

1. The ACP States shall apply to contracts financed by the Community tax and customs arrangements no less favourable than those applied by them to the most favoured States or international development organisations with which they have relations. For the purpose of determining the most-favoured-nation (MFN) treatment, account shall not be taken of arrangements applied by the ACP State concerned to other ACP States, or to other developing countries.

2. Subject to the above provisions the following shall apply to contracts financed by the Community:

(a) the contract shall not be subject in the beneficiary ACP State to stamp or registration duties or to fiscal charges having equivalent effect, whether such charges already exist or are to be instituted in the future; however, such contracts shall be registered in accordance with the laws in force in the ACP State and a fee corresponding to the service rendered may be charged for it;

(b) profits and/or income arising from the performance of contracts shall be taxable according to the internal fiscal arrangements of the ACP State concerned, provided that the natural or legal persons who realise such profit and/or income have a permanent place of business in that State, or that the performance of the contract takes longer than six months;

(c) enterprises which must import professional equipment in order to carry out works contracts shall, if they so request, benefit from the system of temporary admission as laid down by the national legislation of the beneficiary ACP State in respect of the said equipment;

(d) professional equipment necessary for carrying out tasks defined in a service contract shall be temporarily admitted into the beneficiary ACP State or States in accordance with its national legislation free of fiscal, import and customs duties and of other charges having equivalent effect where these duties and charges do not constitute remuneration for services rendered;

(e) imports under supply contracts shall be admitted into the beneficiary ACP State without customs duties, import duties, taxes or fiscal charges having equivalent effect. The contract for supplies originating in the ACP State concerned shall be concluded on the basis of the ex-works price of the supplies to which may be added such internal fiscal charges as may be applicable to those supplies in the ACP State;

(f) fuels, lubricants and hydrocarbon binders and, in general, all materials used in the performance of works contracts shall be deemed to have been purchased on the local market and shall be subject to fiscal rules applicable under the national legislation in force in the beneficiary ACP State; and

(g) personal and household effects imported for use by natural persons, other than those recruited locally, engaged in carrying out tasks defined in a service contract and members of their families, shall be exempt from customs or import duties, taxes and other fiscal charges having equivalent effect, within the limit of the national legislation in force in the beneficiary ACP State.

3. Any matter not covered by the above provisions on tax and customs arrangements shall remain subject to the national legislation of the ACP State concerned.

CHAPTER 5

MONITORING AND EVALUATION

Article 32

Objectives

The objective of monitoring and evaluation shall consist in the regular assessment of development operations (preparation, implementation and subsequent operation) with a view to improving the development effectiveness of on-going and future operations.

Article 33
Modalities

1. Without prejudice to evaluations carried out by the ACP States or the Commission, this work will be done jointly by the ACP State(s) and the Community. The ACP-EC Development Finance Cooperation Committee shall ensure the joint character of the joint monitoring and evaluation operations. In order to assist the ACP-EC Development Finance Cooperation Committee, the Commission and the ACP General Secretariat shall prepare and implement the joint monitoring and evaluations and report to the Committee. The Committee shall, at its first meeting after the signature of the Agreement, fix the operational modalities aimed at ensuring the joint character of the operations and shall, on a yearly basis, approve the work programme.

2. Monitoring and evaluation activities shall notably:

(a) provide regular and independent assessments of the Fund's operations and activities by comparing results with objectives; and thereby

(b) enable the ACP States and the Commission and the Joint Institutions, to feed the lessons of experience back into the design and execution of future policies and operations.

CHAPTER 6

MANAGEMENT AND EXECUTING AGENTS

Article 34
The Chief Authorising Officer

1. The Commission shall appoint the Chief Authorising Officer of the Fund, who shall be responsible for managing the resources of the Fund. The Chief Authorising Officer shall be responsible for commitment, clearance, authorisation and accounting of expenditure under the Fund.

2. The Chief Authorising Officer shall:

(a) commit, clear and authorise expenditure and keep accounts of commitments and authorisations;

(b) ensure that financing decisions are carried out;

(c) in close cooperation with the National Authorising Officer, make commitment decisions and financial arrangements that prove

necessary to ensure proper execution of approved operations from the economic and technical viewpoints;

(d) prepare the tender dossier before the invitations to tender are issued, for:

(i) open international tender, and

(ii) restricted international invitation to tender with prequalification.

(e) approve the proposals for the placing of contracts subject to the powers exercised by the Head of Delegation under Article 36;

(f) ensure publication in reasonable time of international invitations to tender.

3. The Chief Authorising Officer shall, at the end of each year, make available a detailed balance sheet of the Fund showing balances of contributions paid into the Fund by the Member States and global disbursements in respect of each financing heading.

Article 35

National Authorising Officer

1. The Government of each ACP State shall appoint a National Authorising Officer to represent it in all operations financed from the resources of the Fund managed by the Commission and the Bank. The National Authorising Officer may delegate some of these functions and shall inform the Chief Authorising Officer of any such delegation. The National Authorising Officer shall:

(a) in close cooperation with the Head of Delegation be responsible for the preparation, submission and appraisal of projects and programmes;

(b) in close cooperation with the Head of Delegation, issue invitations for local open tender, receive tenders, both local and international (open and restricted), preside over the examination of tenders, establish the results of this examination, sign contracts and riders thereto and approve expenditure;

(c) submit, before issuing local open invitations to tender, the invitation to tender dossier to the Head of Delegation who shall give his agreement within 30 days;

(d) complete the evaluation of tenders within the tender validity period taking into consideration the period required for the approval of contracts;

(e) transmit the results of the examination of and a proposal for placing the contract to the Head of Delegation for his approval within the time limits set out in Article 36;

(f) clear and authorise expenditure within the limits of the funds assigned to him; and

(g) during the execution operations, make any adaptation arrangements necessary to ensure the proper execution of approved projects or programmes from the economic and technical viewpoint.

2. The National Authorising Officer shall, during the execution of operations and subject to the requirement to inform the Head of Delegation, decide on:

(a) technical adjustments and alterations in matters of detail so long as they do not affect the technical solution adopted and remain within the limits of the reserve for adjustments;

(b) alterations to estimates during execution;

(c) transfers from item to item within estimates;

(d) changes of site for multiple-unit projects or programmes 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, provided that the Head of Delegation is present at provisional acceptance, endorses the corresponding minutes and, where appropriate, is present at the final acceptance, in particular

where the extent of the reservations recorded at the provisional acceptance necessitates major additional work; and

(k) hiring of consultants and other technical assistance experts.

Article 36
Head of delegation

1. The Commission shall be represented in each ACP State or in each regional grouping, which expressly so requests, by a delegation under the authority of a Head of Delegation, with the approval of the ACP State or States concerned. Where a Head of Delegation is appointed to a group of ACP States, appropriate steps shall be taken to ensure that the Head of Delegation is represented by a deputy resident in each of the States in which the Head of Delegation is not resident. The Head of Delegation shall represent the Commission in all spheres of its competence and in all its activities.

2. To this end, and in close cooperation with the National Authorising Officer, the Head of Delegation shall:

(a) at the request of the ACP State concerned, participate and give assistance in the preparation of projects and programmes and in negotiating technical assistance contracts;

(b) participate in appraising projects and programmes, preparing tender dossiers and seeking ways to simplify project and programme appraisal and implementation procedures;

(c) prepare financing proposals;

(d) approve, before the National Authorising Officer issues them, the local open invitation to tender and the emergency assistance contract dossiers within 30 days of their submission to him by the National Authorising Officer;

(e) be present at the opening of tenders and receive copies of them and of the results of their examination;

(f) approve, within 30 days, the National Authorising Officer's proposal for the placing of local open tenders, direct agreement contracts, emergency assistance contracts, service contracts and works contracts with a value less than EUR 5 million and supply contracts with a value less than EUR 1 million;

(g) for all other contracts not covered by the above, approve within 30 days the National Authorising Officer's proposal for the placing of the contract wherever the following conditions are fulfilled:

(i) the tender selected is the lowest of those conforming to the requirements of the tender dossier;

(ii) the tender selected meets all the selection criteria stated in the tender dossier; and

(iii) the tender selected does not exceed the sum earmarked for the contract.

(h) where the conditions set out in paragraph (g) are not fulfilled, forward the proposal to the Chief Authorising Officer who shall decide thereon within 60 days of the receipt of the Head of Delegation. Where the price of the selected tender exceeds the sum earmarked for the contract, the Chief Authorising Officer shall, upon giving approval to the award, make the necessary financial commitment;

(i) endorse contracts and estimates in the case of direct labour, riders thereto as well as payment authorisations issued by the National Authorising Officer;

(j) ensure that the projects and programmes financed from the resources of the Fund managed by the Commission are properly executed from the financial and technical viewpoints;

(k) cooperate with the national authorities of the ACP State where he represents the Commission in evaluating operations regularly;

(l) communicate to the ACP State all information and relevant documents on the procedures for implementing development finance cooperation especially as regards appraisal criteria and tender evaluation criteria; and

(m) on a regular basis, inform the national authorities of Community activities which may directly concern cooperation between the Community and the ACP States.

3. The Head of Delegation shall have the necessary instructions and delegated powers to facilitate and expedite all operations under the Agreement. Any further delegation of administrative and/or financial powers to the Head of Delegation other than described in this Article shall be notified to the National Authorising Officers and the Council of Ministers.

Article 37
Payments and paying agents

1. For the purpose of effecting payments in the national currencies of the ACP States, accounts denominated in the currencies of the Member States or in Euro shall be opened in each ACP State in the name of the Commission 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 National Paying Agent.
2. The National Paying Agent shall receive no remuneration for its services and no interest shall be payable by it on deposited funds. The local accounts shall be replenished by the Commission in the currency of one of the Member States or in Euro, based on estimates of future cash requirements, which shall be made sufficiently in advance to avoid the need for pre-financing by ACP States and to prevent delayed disbursements.
3. For the purpose of effecting payments in Euro, accounts denominated in Euro shall be opened in the name of the Commission with financing institutions in the Member States. These institutions shall exercise the functions of Paying Agents in Europe.
4. Payments from the European accounts, which will be executed on the instruction of the Commission or by the Head of Delegation acting on its behalf, may be made in respect of expenditure authorised by the National Authorising Officer or by the Chief Authorising Officer with the prior authorisation of the National Authorising Officer.
5. Within the limits of the funds available in the accounts, the Paying Agents shall make disbursements authorised by the National Authorising Officer or, as appropriate, the Chief Authorising Officer, after verifying that the supporting documents provided are substantially correct and in order, and that the discharge given for payment is valid.
6. The procedures for clearance, authorisation and payment of expenditure must be completed within a period of 90 days from the date on which the payment becomes due. The National Authorising Officer shall process and deliver the payment authorisation to the Head of Delegation not later than 45 days before the due date.
7. Claims for delayed payments shall be borne by the ACP State or States concerned, and by the Commission from its own resources, for that part of the delay for which each party is responsible in accordance with the above procedures.
8. The Paying Agents, the National Authorising Officer, the Head of Delegation and the responsible Commission departments shall remain

financially liable until the Commission gives final clearance for the operations for the execution of which they are responsible.

ANNEX V

TRADE REGIME APPLICABLE DURING THE PREPARATORY PERIOD REFERRED TO IN ARTICLE 37 (1)

CHAPTER 1

GENERAL TRADE ARRANGEMENTS

Article 1

Products originating in the ACP States shall be imported into the Community free of customs duties and charges having equivalent effect.

(a) For products originating in the ACP States:

- listed in Annex I to the Treaty where they come under a common organization of the market within the meaning of Article 34 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,

the Community shall take the necessary measures to ensure more favorable treatment than that granted to third countries benefiting from the most-favored-nation clause for the same products.

(b) If, during the application of this Annex, the ACP States request that new lines of agricultural production or agricultural products which are not the subject of specific arrangements when this Annex 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-EC cooperation, 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 if possible within four months, and in any case not more than six months after the date of their submission.

Within the context of subparagraph (a), 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 subparagraph (a) shall enter into force at the same time as this Agreement and shall remain applicable for the duration of the preparatory period defined in Article 37(1) of the Agreement.

However, if during this period, 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 subparagraph (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 benefiting from the most-favored-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 2

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

2. Paragraph 1 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, conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption, or the protection of industrial and commercial property.

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

In cases where implementation of the measures referred to in paragraph 2 affects the interests of one or more ACP States, consultation shall be held at the request of the latter, in accordance with the provisions of Article 12 of this Agreement, with a view to reaching a satisfactory solution.

Article 3

1. 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.

2. 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 provisions of Article 12 of this Agreement, with a view to reaching a satisfactory solution.

Article 4

1. Where existing Community rules or regulations adopted in order to facilitate the movement of goods affect the interests 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 5

1. The ACP States shall not be required to assume, in respect of imports of products originating in the Community, obligations corresponding to the commitment entered into by the Community under this Annex in respect of imports of the products originating in the ACP States.

(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 favorable than most-favoured-nation treatment.

(b) The most-favoured-nation treatment referred to in subparagraph (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 6

Each Party shall communicate its customs tariff to the Council of Ministers within three months of the entry into force of this Annex. Each Party shall also communicate any subsequent amendments to its tariff as and when they come into force.

Article 7

1. The concept of "originating products" for the purposes of implementing this Annex, and the methods of administrative cooperation relating thereto, are defined in Protocol annexed hereto.

2. The Council of Ministers may adopt any amendment to Protocol 1.

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 8

1. Where any product is being imported into the Community in such increased quantities and under such conditions as to cause or threaten to cause serious injury to its domestic producers of like or directly competitive products or serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region, the Community may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 9.

2. The Community undertakes not to use other means for protectionism purposes or to hamper structural development. The Community will refrain from using safeguard measures having the same effect.

3. Safeguard measures shall be restricted to those which would least disturb trade between the Contracting Parties in implementing the

objectives of this Agreement 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 into account the existing level of the ACP exports concerned to the Community and their potential for development. Particular attention shall be paid to the interests of the least-developed, landlocked and island ACP States.

Article 9

1. Prior consultation 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 of a specific product have caused the effects referred to in Article 8(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 paragraphs 1 and 2 shall not prevent any immediate decisions which the Community, in accordance with Article 8(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 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 Protocol 2 annexed hereto.

Article 10

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

Article 11

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 12

In order to ensure the effective implementation of this Annex, the Parties agree to inform and consult each other.

In addition to the cases for which consultations are specifically provided for in Articles 2 to 9 of this Annex, consultations shall also take place, at the request of the Community or the ACP States, and in accordance with the conditions provided for in the procedural rules in Article 12 of this Agreement, particularly in the following cases:

- (1) where Parties intend to take any trade measures affecting the interests of one or more Parties under this Annex, they shall inform the Council of Ministers thereof. Consultations shall take place, where the Parties concerned so request, in order to take account of their respective interests;
- (2) if, during the application of this Annex, the ACP States consider that agricultural products covered by Article 1(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 Party considers that obstacles to the movement of goods arise as a result of the existing rules of another Party or the interpretation, application or administration thereof;
- (4) where the Community takes safeguard measures in accordance with the provisions of Article 8, consultations on these measures may take place within the Council of Ministers, where the Parties concerned so request, notably with a view to ensuring compliance with Article 8(3).

Such consultations must be completed within three months.

CHAPTER 2

SPECIAL UNDERTAKING ON SUGAR AND BEEF AND VEAL

Article 13

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 Annex, 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 attached to this Annex as Protocol 3.
3. Article 8 of this Annex 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 this Agreement may be used during the period of application of this Agreement.
5. Article 8(2) of the said Protocol shall apply should this Agreement 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 Protocol 3.
7. This Article and Protocol 3 shall not apply to relations between the ACP States and the French overseas departments.

Article 14

The special undertaking on beef and veal, defined in Protocol 4 annexed hereto shall apply.

CHAPTER 3

FINAL PROVISIONS

Article 15

The Protocols attached to this Annex shall form an integral part thereof.

PROTOCOL 1

CONCERNING THE DEFINITION OF THE CONCEPT OF “ORIGINATING PRODUCTS” AND METHODS OF ADMINISTRATIVE COOPERATION

TITLE I

GENERAL PROVISIONS

Article 1 *Definitions*

For the purposes of this Protocol:

- (a) "manufacture" means any kind of working or processing including assembly or specific operations;
- (b) "material" means any ingredient, raw material, component or part, etc., used in the manufacture of the product;
- (c) "product" means the product being manufactured, even if it is intended for later use in another manufacturing operation;
- (d) "goods" means both materials and products;
- (e) "customs value" means the value as determined in accordance with the 1994 Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (WTO Agreement on customs valuation);
- (f) "ex-works price" means the price paid for the product ex works to the manufacturer in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes which are, or may be, repaid when the product obtained is exported;
- (g) "value of materials" means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the territory concerned;
- (h) "value of originating materials" means the value of such materials as defined in subparagraph (g) applied mutatis mutandis;

(i) "added value" shall be taken to be the ex-works price minus the customs value of third-country materials imported into the Community, the ACP States or the Overseas Countries and Territories;

(j) "chapters" and "headings" mean the chapters and the headings (four-digit codes) used in the nomenclature which makes up the Harmonized Commodity Description and Coding System, referred to in this Protocol as "the Harmonized System" or "HS";

(k) "classified" refers to the classification of a product or material under a particular heading;

(l) "consignment" means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;

(m) "territories" includes territorial waters.

TITLE II

DEFINITION OF THE CONCEPT OF "ORIGINATING PRODUCTS"

Article 2

General requirements

1. For the purpose of implementing the trade co-operation provisions of ANNEX V, the following products shall be considered as originating in the ACP States:

(a) products wholly obtained in the ACP States within the meaning of Article 3 of this Protocol;

(b) products obtained in the ACP States incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the ACP States within the meaning of Article 4 of this Protocol.

2. For the purpose of implementing paragraph 1, the territories of the ACP States shall be considered as being one territory.

Originating products made up of materials wholly obtained or sufficiently worked or processed in two or more ACP States shall be considered as products originating in the ACP State where the last working or

processing took place, provided the working or processing carried out there goes beyond that referred to in Article 5 of this Protocol.

Article 3
Wholly obtained products

1. The following shall be considered as wholly obtained, in the ACP States or in the Community, or in the overseas countries and territories defined in Annex III, hereafter referred to as the OCT:

- (a) mineral products extracted from their soil or from their seabed;
- (b) vegetable products harvested there;
- (c) live animals born and raised there;
- (d) products from live animals raised there;
- (e) products obtained by hunting or fishing conducted there;
- (f) products of sea fishing and other products taken from the sea outside the territorial waters by their vessels;
- (g) products made aboard their factory ships exclusively from products referred to in subparagraph (f);
- (h) used articles collected there fit only for the recovery of raw materials, including used tyres fit only for retreading or for use as waste;
- (i) waste and scrap resulting from manufacturing operations conducted there;
- (j) products extracted from marine soil or subsoil outside their territorial waters provided that they have sole rights to work that soil or subsoil;
- (k) goods produced there exclusively from the products specified in subparagraphs (a) to (j).

2. The terms "their vessels" and "their factory ships" in paragraph 1(f) and (g) shall apply only to vessels and factory ships:

- (a) which are registered or recorded in an EC Member State, in an ACP State or in an OCT
- (b) which sail under the flag of an EC Member State, of an ACP State or of an OCT;

(c) which are owned to an extent of at least 50 per cent by nationals of States party to the Agreement, or of an OCT, or by a company with its head office in one of these States or OCT, of which the Chairman of the Board of Directors or the Supervisory Board, and the majority of the members of such boards are nationals of States party to the Agreement, or of an OCT, and of which, in addition, in the case of partnerships or limited companies, at least half the capital belongs to those States party to the Agreement or to public bodies or nationals of the said States, or of an OCT;

(d) of which at least 50 % of the crew, master and officers included, are nationals of States party to the Agreement, or of an OCT.

3. Notwithstanding the provisions of paragraph 2, the Community shall recognise, upon request of an ACP State, that vessels chartered or leased by the ACP State be treated as "their vessels" to undertake fisheries activities in its exclusive economic zone under the following conditions:

- that the ACP State offered the Community the opportunity to negotiate a fisheries agreement and the Community did not accept this offer;

- that at least 50 % of the crew, master and officers included are nationals of States party to the Agreement, or of an OCT;

- that the charter or lease contract has been accepted by the ACP-EC Customs Cooperation Committee as providing adequate opportunities for developing the capacity of the ACP State to fish on its own account and in particular as conferring on the ACP State the responsibility for the nautical and commercial management of the vessel placed at its disposal for a significant period of time.

Article 4

Sufficiently worked or processed products

1. For the purposes of this Protocol, products which are not wholly obtained are considered to be sufficiently worked or processed in the ACP States, or in the Community or in the OCT, when the conditions set out in the list in Annex II are fulfilled.

The conditions referred to above indicate, for all products covered by this Agreement, the working or processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials. Accordingly, it follows that if a product, which has acquired originating status by fulfilling the conditions set out in the list is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account

shall be taken of the non-originating materials which may have been used in its manufacture.

2. Notwithstanding paragraph 1, non-originating materials which, according to the conditions set out in the list, should not be used in the manufacture of a given product may nevertheless be used, provided that:

(a) their total value does not exceed 15 per cent of the ex-works price of the product;

(b) any of the percentages given in the list for the maximum value of non-originating materials are not exceeded through the application of this paragraph.

3. Paragraphs 1 and 2 shall apply except as provided in Article 5.

Article 5

Insufficient working or processing operations

1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 4 are satisfied:

(a) operations to ensure the preservation of products in good condition during transport and storage (ventilation, spreading out, drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations);

(b) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting up;

(c) (i) changes of packaging and breaking up and assembly of packages;

(ii) simple placing in bottles, flasks, bags, cases, boxes, fixing on cards or boards, etc., and all other simple packaging operations;

(d) affixing marks, labels and other like distinguishing signs on products or their packaging;

(e) simple mixing of products, whether or not of different kinds, where one or more components of the mixtures do not meet the conditions laid down in this Protocol to enable them to be considered as originating in an ACP State, in the Community or in the OCT;

- (f) simple assembly of parts to constitute a complete product;
- (g) a combination of two or more operations specified in subparagraphs (a) to (f);
- (h) slaughter of animals.

2. All the operations carried out in either the ACP States, the Community or the OCT on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.

Article 6 *Cumulation of origin*

Cumulation with the OCT and the Community

1. Materials originating in the Community or in the OCT shall be considered as materials originating in the ACP States when incorporated into a product obtained there. It shall not be necessary that such materials have undergone sufficient working or processing, provided they have undergone working or processing going beyond that referred to in Article 5.
2. Working and processing carried out in the Community or in the OCT shall be considered as having been carried out in the ACP States, when the materials undergo subsequent working or processing in the ACP States.

Cumulation with South Africa

3. Subject to the provisions of paragraphs 4, 5, 6, 7 and 8, materials originating in South Africa shall be considered as originating in the ACP States when incorporated into a product obtained there. It shall not be necessary that such materials have undergone sufficient working or processing.
4. Products which have acquired originating status by virtue of paragraph 3 shall only continue to be considered as products originating in the ACP States when the value added there exceeds the value of the materials used originating in South Africa. If this is not so, the products concerned shall be considered as originating in South Africa. In the allocation of origin, no account shall be taken of materials originating in South Africa which have undergone sufficient working or processing in the ACP States.

5. The cumulation provided for in paragraph 3 may only be applied after 3 years for the products listed in Annex XI and 6 years for the products listed in Annex XII respectively, as from the provisional application of the Agreement on Trade, Development and Co-operation between the European Community and the Republic of South Africa. The cumulation provided for in paragraph 3 shall not be applicable to the products listed in Annex XIII.

6. Notwithstanding paragraph 5, the cumulation provided for in paragraph 3 may be applied at the request of the ACP States for the products listed in Annexes XI and XII. The ACP-EC Committee of Ambassadors shall decide on the ACP requests, product per product, on the basis of a report drawn up by the ACP-EC Customs Co-operation Committee in accordance with Article 37. In the examination of requests, account shall be taken of the risk of the circumvention of the trade provisions of the Agreement on Trade, Development and Co-operation between the European Community and the Republic of South Africa.

7. The cumulation provided for in paragraph 3 shall only be applicable to the products listed in Annex XIV when the tariffs on these products in the framework of the Agreement on Trade, Development and Co-operation between the European Community and the Republic of South Africa have been eliminated. The European Commission shall publish in the Official Journal of the European Communities (C series) the date on which the conditions of this paragraph have been fulfilled.

8. The cumulation provided for in paragraph 3 may only be applied where the South African materials used have acquired the status of originating products by an application of the rules of origin identical to those set out in this Protocol. The ACP States shall provide the Community with details of agreements and their corresponding rules of origin which have been concluded with South Africa. The European Commission shall publish in the Official Journal of the European Communities (C series) the date on which the ACP States have met the obligations laid down in this paragraph.

9. Without prejudice to paragraphs 5 and 7, working and processing carried out in South Africa shall be considered as having been carried out in an other Member State of the South African Customs Union (SACU) when the materials undergo subsequent working or processing in that other Member State of SACU.

10. Without prejudice to paragraphs 5 and 7 and at the request of the ACP States, working and processing carried out in South Africa, shall be considered as having been carried out in the ACP States, when the materials undergo subsequent working or processing in an ACP State within the context of a regional economic integration agreement.

Unless there is a specific request by either party for a referral of the decision to the ACP-EC Council of Ministers, the ACP-EC Customs Cooperation Committee shall decide on the ACP requests in accordance with Article 37.

Cumulation with neighbouring developing countries

11. At the request of the ACP States, materials originating in a neighbouring developing country, other than an ACP State, belonging to a coherent geographical entity, shall be considered as materials originating in the ACP States when incorporated into a product obtained there. It shall not be necessary that such materials have undergone sufficient working or processing, provided that:

- the working or processing carried out in the ACP State exceeds the operations listed in Article 5. However, products of Chapter 50 to 63 of the Harmonised System shall in addition undergo in the ACP State at least working or processing as a result of which the product obtained is classified in a heading which is different from those in which the materials originating in the non-ACP developing country used in its manufacture, are classified. For products listed in Annex IX to this Protocol, only the specific processing referred to in column 3 shall apply, whether or not it involves a change of heading,

- the ACP States, the Community and the other countries concerned have concluded an agreement on adequate administrative procedures which will ensure correct implementation of this paragraph.

This paragraph shall not apply to tuna products classified under Harmonised System Chapters 3 or 16, rice products of HS Code 1006 or the textile products listed in Annex X to this Protocol.

For the purpose of determining whether the products originate in the non-ACP developing country, the provisions of this Protocol shall apply.

Unless there is a specific request by either party for a referral of the decision to the ACP-EC Council of Ministers, the ACP-EC Customs Cooperation Committee shall decide on the ACP requests in accordance with Article 37.

Article 7 *Unit of qualification*

1. The unit of qualification for the application of the provisions of this Protocol shall be the particular product which is considered as the basic unit when determining classification using the nomenclature of the Harmonized System.

Accordingly, it follows that:

- when a product composed of a group or assembly of articles is classified under the terms of the Harmonized System in a single heading, the whole constitutes the unit of qualification;

- when a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each product must be taken individually when applying the provisions of this Protocol.

2. Where, under General Rule 5 of the Harmonized System, packaging is included with the product for classification purposes, it shall be included for the purposes of determining origin.

Article 8

Accessories, spare parts and tools

Accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle, which are part of the normal equipment and included in the price thereof or which are not separately invoiced, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

Article 9

Sets

Sets, as defined in General Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the non-originating products does not exceed 15 per cent of the ex-works price of the set.

Article 10

Neutral elements

In order to determine whether a product originates, it shall not be necessary to determine the origin of the following which might be used in its manufacture:

(a) energy and fuel;

(b) plant and equipment;

(c) machines and tools;

(d) goods which do not enter and which are not intended to enter into the final composition of the product.

TITLE III

TERRITORIAL REQUIREMENTS

Article 11

Principle of territoriality

1. The conditions set out in Title II relative to the acquisition of originating status must be fulfilled without interruption in the ACP States, except as provided for in Article 6.

2. If originating goods exported from the ACP States, the Community or the OCT to another country are returned, except insofar as provided for in Article 6, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that:

(a) the goods returned are the same goods as those exported; and

(b) they have not undergone any operation beyond that necessary to preserve them in good condition while in that country or while being exported.

Article 12

Direct transport

1. The preferential treatment provided for under the trade co-operation provisions of Annex V applies only to products, satisfying the requirements of this Protocol, which are transported directly between the territory of the ACP States, of the Community, of the OCT or of South Africa for the purposes of Article 6 without entering any other territory. However, products constituting one single consignment may be transported through other territories with, should the occasion arise, transshipment or temporary warehousing in such territories, provided that they remain under the surveillance of the customs authorities in the country of transit or warehousing and do not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition.

Originating products may be transported by pipeline across territory other than that of an ACP State, of the Community or of an OCT.

2. Evidence that the conditions set out in paragraph 1 have been fulfilled shall be supplied to the customs authorities of the importing country by the production of:

(a) a single transport document covering the passage from the exporting country through the country of transit; or

(b) a certificate issued by the customs authorities of the country of transit:

(i) giving an exact description of the products;

(ii) stating the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used; and

(iii) certifying the conditions under which the products remained in the transit country; or

(c) failing these, any substantiating documents.

Article 13 *Exhibitions*

1. Originating products, sent from an ACP State for exhibition in a country other than those referred to in Article 6 and sold after the exhibition for importation into the Community shall benefit on importation from the provisions of Annex V provided it is shown to the satisfaction of the customs authorities that:

(a) an exporter has consigned these products from an ACP State to the country in which the exhibition is held and has exhibited them there;

(b) the products have been sold or otherwise disposed of by that exporter to a person in the Community;

(c) the products have been consigned during the exhibition or immediately thereafter in the state in which they were sent for exhibition; and

(d) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition.

2. A proof of origin must be issued or made out in accordance with the provisions of Title IV and submitted to the customs authorities of the importing country in the normal manner. The name and address of the exhibition must be indicated thereon. Where necessary, additional documentary evidence of the conditions under which they have been exhibited may be required.

3. Paragraph 1 shall apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display which is not organized for private purposes in shops or business premises with a view

to the sale of foreign products, and during which the products remain under customs control.

TITLE IV

PROOF OF ORIGIN

Article 14

General requirements

1. Products originating in the ACP States shall, on importation into the Community benefit from Annex V upon submission of either:

(a) a movement certificate EUR.1, a specimen of which appears in Annex IV; or

(b) in the cases specified in Article 19(1), a declaration, the text of which appears in Annex V to this Protocol, given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified (hereinafter referred to as the "invoice declaration").

2. Notwithstanding paragraph 1, originating products within the meaning of this Protocol shall, in the cases specified in Article 25, benefit from Annex V without it being necessary to submit any of the documents referred to above.

Article 15

Procedure for the issue of a movement certificate EUR.1

1. A movement certificate EUR.1 shall be issued by the customs authorities of the exporting country on application having been made in writing by the exporter or, under the exporter's responsibility, by his authorized representative.

2. For this purpose, the exporter or his authorized representative shall fill out both the movement certificate EUR.1 and the application form, specimens of which appear in Annex IV. These forms shall be completed in accordance with the provisions of this Protocol. If they are handwritten, they shall be completed in ink in printed characters. The description of the products must be given in the box reserved for this purpose without leaving any blank lines. Where the box is not completely filled, a horizontal line must be drawn below the last line of the description, the empty space being crossed through.

3. The exporter applying for the issue of a movement certificate EUR.1 shall be prepared to submit at any time, at the request of the customs

authorities of the exporting ACP State where the movement certificate EUR.1 is issued, all appropriate documents proving the originating status of the products concerned as well as the fulfillment of the other requirements of this Protocol.

4. A movement certificate EUR.1 shall be issued by the customs authorities of the exporting ACP State if the products concerned can be considered as products originating in the ACP States or in one of the other countries referred to in Article 6 and fulfil the other requirements of this Protocol.

5. The issuing customs authorities shall take any steps necessary to verify the originating status of the products and the fulfillment of the other requirements of this Protocol. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate. The issuing customs authorities shall also ensure that the forms referred to in paragraph 2 are duly completed. In particular, they shall check whether the space reserved for the description of the products has been completed in such a manner as to exclude all possibility of fraudulent additions.

6. The date of issue of the movement certificate EUR.1 shall be indicated in Box 11 of the certificate.

7. A movement certificate EUR.1 shall be issued by the customs authorities and made available to the exporter as soon as actual exportation has been effected or ensured.

Article 16

Movement certificates EUR.1 issued retrospectively

1. Notwithstanding Article 15(7), a movement certificate EUR.1 may exceptionally be issued after exportation of the products to which it relates if:

(a) it was not issued at the time of exportation because of errors or involuntary omissions or special circumstances; or

(b) it is demonstrated to the satisfaction of the customs authorities that a movement certificate EUR.1 was issued but was not accepted at importation for technical reasons.

2. For the implementation of paragraph 1, the exporter must indicate in his application the place and date of exportation of the products to which the movement certificate EUR.1 relates, and state the reasons for his request.

3. The customs authorities may issue a movement certificate EUR.1 retrospectively only after verifying that the information supplied in the exporter's application agrees with that in the corresponding file.

4. Movement certificates EUR.1 issued retrospectively must be endorsed with one of the following phrases:

"NACHTRÄGLICH AUSGESTELLT", "DELIVRÉ A POSTERIORI", "RILASCIATO A POSTERIORI", "AFGEGEVEN A POSTERIORI", "ISSUED RETROSPECTIVELY", "UDSTEDT EFTERFØLGENDE", "ΕΚΔΟΘΕΝ ΕΚ ΤΩΝ ΥΣΤΕΡΩΝ", "EXPEDIDO A POSTERIORI", "EMITIDO A POSTERIORI", "ANNETTU JÄLKIKÄTEEN", "UTFÄRDAT I EFTERHAND".

5. The endorsement referred to in paragraph 4 shall be inserted in the "Remarks" box of the movement certificate EUR.1.

Article 17

Issue of a duplicate movement certificate EUR.1

1. In the event of theft, loss or destruction of a movement certificate EUR.1, the exporter may apply to the customs authorities which issued it for a duplicate made out on the basis of the export documents in their possession.

2. The duplicate issued in this way must be endorsed with one of the following words:

"DUPLIKAT", "DUPLICATA", "DUPLICATO", "DUPLICAAT", "DUPLICATE", "ΑΝΤΙΓΡΑΦΟ", "DUPLICADO", "SEGUNDA VIA", "KAKSOISKAPPALE".

3. The endorsement referred to in paragraph 2 shall be inserted in the "Remarks" box of the duplicate movement certificate EUR.1.

4. The duplicate, which must bear the date of issue of the original movement certificate EUR.1, shall take effect as from that date.

Article 18

Issue of movement certificates EUR.1 on the basis of a proof of origin issued or made out previously

When originating products are placed under the control of a customs office in an ACP State or in the Community, it shall be possible to replace the original proof of origin by one or more movement certificates EUR.1 for the purpose of sending all or some of these products elsewhere within the ACP States or within the Community. The replacement movement certificate(s)

EUR.1 shall be issued by the customs office under whose control the products are placed.

Article 19

Conditions for making out an invoice declaration

1. An invoice declaration as referred to in Article 14(1)(b) may be made out:

(a) by an approved exporter within the meaning of Article 20, or

(b) by any exporter for any consignment consisting of one or more packages containing originating products whose total value does not exceed EUR 6000.

2. An invoice declaration may be made out if the products concerned can be considered as products originating in the ACP States or in one of the other countries referred to in Article 6 and fulfil the other requirements of this Protocol.

3. The exporter making out an invoice declaration shall be prepared to submit at any time, at the request of the customs authorities of the exporting country, all appropriate documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Protocol.

4. An invoice declaration shall be made out by the exporter by typing, stamping or printing on the invoice, the delivery note or another commercial document, the declaration, the text of which appears in Annex V to this Protocol, using one of the linguistic versions set out in that Annex and in accordance with the provisions of the domestic law of the exporting country. If the declaration is handwritten, it shall be written in ink in printed characters.

5. Invoice declarations shall bear the original signature of the exporter in manuscript. However, an approved exporter within the meaning of Article 20 shall not be required to sign such declarations provided that he gives the customs authorities of the exporting country a written undertaking that he accepts full responsibility for any invoice declaration which identifies him as if it had been signed in manuscript by him.

6. An invoice declaration may be made out by the exporter when the products to which it relates are exported, or after exportation on condition that it is presented in the importing country no longer than two years after the importation of the products to which it relates.

Article 20
Approved exporter

1. The customs authorities of the exporting country may authorize any exporter who makes frequent shipments of products under the trade co-operation provisions of ANNEX V to make out invoice declarations irrespective of the value of the products concerned. An exporter seeking such authorization must offer to the satisfaction of the customs authorities all guarantees necessary to verify the originating status of the products as well as the fulfilment of the other requirements of this Protocol.
2. The customs authorities may grant the status of approved exporter subject to any conditions which they consider appropriate.
3. The customs authorities shall grant to the approved exporter a customs authorization number which shall appear on the invoice declaration.
4. The customs authorities shall monitor the use of the authorization by the approved exporter.
5. The customs authorities may withdraw the authorization at any time. They shall do so where the approved exporter no longer offers the guarantees referred to in paragraph 1, does not fulfil the conditions referred to in paragraph 2 or otherwise makes an incorrect use of the authorization.

Article 21
Validity of proof of origin

1. A proof of origin shall be valid for ten months from the date of issue in the exporting country, and must be submitted within the said period to the customs authorities of the importing country.
2. Proofs of origin which are submitted to the customs authorities of the importing country after the final date for presentation specified in paragraph 1 may be accepted for the purpose of applying preferential treatment, where the failure to submit these documents by the final date set is due to exceptional circumstances.
3. In other cases of belated presentation, the customs authorities of the importing country may accept the proofs of origin where the products have been submitted before the said final date.

Article 22
Transit procedure

When the products enter an ACP State or OCT other than the country of origin, a further period of validity of 4 months shall begin on the date on which the customs authorities in the country of transit enter the following in box 7 of the certificate EUR.1:

- the word "transit",
- the name of the country of transit,
- the official stamp, a specimen of which had been made available to the Commission, in conformity with Article 31,
- date of the endorsements.

Article 23
Submission of proof of origin

Proofs of origin shall be submitted to the customs authorities of the importing country in accordance with the procedures applicable in that country. The said authorities may require a translation of a proof of origin and may also require the import declaration to be accompanied by a statement from the importer to the effect that the products meet the conditions required for the implementation of Annex V.

Article 24
Importation by instalments

Where, at the request of the importer and on the conditions laid down by the customs authorities of the importing country, dismantled or non-assembled products within the meaning of General Rule 2(a) of the Harmonized System falling within Sections XVI and XVII or heading N^os 7308 and 9406 of the Harmonized System are imported by instalments, a single proof of origin for such products shall be submitted to the customs authorities upon importation of the first instalment.

Article 25
Exemptions from proof of origin

1. Products sent as small packages from private persons to private persons or forming part of travellers' personal luggage shall be admitted as originating products without requiring the submission of a proof of origin, provided that such products are not imported by way of trade and have been declared as meeting the requirements of this Protocol and where there is no doubt as to the veracity of such a declaration. In the case

of products sent by post, this declaration can be made on the customs declaration CN22/CN23 or on a sheet of paper annexed to that document.

2. Imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is in view.

3. Furthermore, the total value of these products shall not exceed EUR 500 in the case of small packages or EUR 1200 in the case of products forming part of travellers' personal luggage.

Article 26

Information procedure for cumulation purposes

1. When Articles 2(2) and 6(1) are applied, the evidence of originating status within the meaning of this protocol of the materials coming from the other ACP States, the Community or the OCT shall be given by a movement certificate EUR 1 or by the supplier's declaration, a specimen of which appears in Annex VI A to this Protocol, given by the exporter in the State or OCT from which the materials came.

2. When Articles 2(2), 6(2) and 6(9) are applied, the evidence of the working or processing carried out in the other ACP States, the Community, the OCT or South Africa shall be given by the supplier's declaration a specimen of which appears in Annex VI B to this Protocol, given by the exporter in the State or OCT from which the materials came.

3. A separate supplier's declaration shall be given by the supplier for each consignment of material on the commercial invoice related to that shipment or in an annex to that invoice, or on a delivery note or other commercial document related to that shipment which describes the materials concerned in sufficient detail to enable them to be identified.

4. The supplier's declaration may be made out on a pre-printed form.

5. The suppliers' declarations shall be signed in manuscript. However, where the invoice and the supplier's declaration are established using electronic data-processing methods, the supplier's declaration need not be signed in manuscript provided the responsible official in the supplying company is identified to the satisfaction of the customs authorities in the State where the suppliers' declarations are established. The said customs authorities may lay down conditions for the implementation of this paragraph.

6. The supplier's declarations are submitted to the competent customs office in the exporting ACP State requested to issue the movement certificate EUR 1.

7. Suppliers' declarations made and information certificates issued before the date of entry into force of this Protocol in accordance with Article 23 of Protocol 1 to the Fourth ACP-EC Convention shall remain valid.

Article 27
Supporting documents

The documents referred to in Articles 15(3) and 19(3) used for the purpose of proving that products covered by a movement certificate EUR.1 or an invoice declaration can be considered as products originating in an ACP State or in one of the other countries referred to in Article 6 and fulfil the other requirements of this Protocol may consist *inter alia* of the following:

- (a) direct evidence of the processes carried out by the exporter or supplier to obtain the goods concerned, contained for example in his accounts or internal bookkeeping;
- (b) documents proving the originating status of materials used, issued or made out in an ACP State or in one of the other countries referred to in Article 6 where these documents are used in accordance with domestic law;
- (c) documents proving the working or processing of materials in the ACP States, in the Community or in the OCT, issued or made out in an ACP State, in the Community or in an OCT, where these documents are used in accordance with domestic law;
- (d) movement certificates EUR.1 or invoice declarations proving the originating status of materials used, issued or made out in the ACP States or in one of the other countries referred to in Article 6 and in accordance with this Protocol.

Article 28
Preservation of proof of origin and supporting documents

1. The exporter applying for the issue of a movement certificate EUR.1 shall keep for at least three years the documents referred to in Article 15(3).
2. The exporter making out an invoice declaration shall keep for at least three years a copy of this invoice declaration as well as the documents referred to in Article 19(3).
3. The customs authorities of the exporting country issuing a movement certificate EUR.1 shall keep for at least three years the application form referred to in Article 15(2).

4. The customs authorities of the importing country shall keep for at least three years the movement certificates EUR.1 and the invoice declarations submitted to them.

Article 29

Discrepancies and formal errors

1. The discovery of slight discrepancies between the statements made in the proof of origin and those made in the documents submitted to the customs office for the purpose of carrying out the formalities for importing the products shall not ipso facto render the proof of origin null and void if it is duly established that this document does correspond to the products submitted.

2. Obvious formal errors such as typing errors on a proof of origin should not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

Article 30

Amounts expressed in euro

1. The amounts to be used in any given national currency of a Member State shall be the equivalent in that national currency of the amounts expressed in euro as at the first working day in October 1999.

2. The amounts expressed in euro and their equivalents in the national currencies of some EC Member States may be reviewed by the Community if necessary and shall be notified by the Community to the Customs Cooperation Committee not later than one month before they shall come into force. When carrying out this review, the Community shall ensure that there will be no decrease in the amounts to be used in any national currency and shall furthermore consider the desirability of preserving the effects of the limits concerned in real terms. For this purpose, it may decide to modify the amounts expressed in euro.

3. When the products are invoiced in the currency of another EC Member State, the importing country shall recognize the amount notified by the Member State concerned.

TITLE V

ARRANGEMENTS FOR ADMINISTRATIVE COOPERATION

Article 31

Mutual assistance

1. The ACP States shall send to the Commission specimens of the stamps used together with the addresses of the customs authorities competent to issue movement certificates EUR.1 and carry out the subsequent verification of movement certificates EUR.1 and invoice declarations.

Movement certificates EUR.1 and invoice declarations shall be accepted for the purpose of applying preferential treatment from the date the information is received by the Commission.

The Commission shall send this information to the customs authorities of the Member States.

2. In order to ensure the proper application of this Protocol, the Community, the OCT, the ACP States shall assist each other, through the competent customs administrations, in checking the authenticity of the movement certificates EUR.1, the invoice declarations or supplier's declarations and the correctness of the information given in these documents.

The authorities consulted shall furnish the relevant information concerning the conditions under which the product has been made, indicating especially the conditions in which the rules of origin have been respected in the various ACP States, Member States, OCT concerned.

Article 32

Verification of proofs of origin

1. Subsequent verifications of proofs of origin shall be carried out at random or whenever the customs authorities of the importing country have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this Protocol.

2. For the purposes of implementing the provisions of paragraph 1, the customs authorities of the importing country shall return the movement certificate EUR.1 and the invoice, if it has been submitted, the invoice declaration, or a copy of these documents, to the customs authorities of the exporting country giving, where appropriate, the reasons for the enquiry. Any documents and information obtained suggesting that the information

given on the proof or origin is incorrect shall be forwarded in support of the request for verification.

3. The verification shall be carried out by the customs authorities of the exporting country. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate.

4. If the customs authorities of the importing country decide to suspend the granting of preferential treatment to the products concerned while awaiting the results of the verification, release of the products shall be offered to the importer subject to any precautionary measures judged necessary.

5. The customs authorities requesting the verification shall be informed of the results of this verification as soon as possible. These results must indicate clearly whether the documents are authentic and whether the products concerned can be considered as products originating in the ACP States or in one of the countries referred to in Article 6 and fulfil the other requirements of this Protocol.

6. If in cases of reasonable doubt there is no reply within ten months of the date of the verification request or if the reply does not contain sufficient information to determine the authenticity of the document in question or the real origin of the products, the requesting customs authorities shall, except in exceptional circumstances, refuse entitlement to the preferences.

7. Where the verification procedure or any other available information appears to indicate that the provisions of this Protocol are being contravened, the ACP State on its own initiative or at the request of the Community shall carry out appropriate enquires or arrange for such enquiries to be carried out with due urgency to identify and prevent such contraventions and for this purpose the ACP State concerned may invite the participation of the Community in these enquiries.

Article 33

Verification of suppliers' declarations

1. Verification of suppliers' declaration may be carried out at random or whenever the customs authorities of the importing State have reasonable doubts as to the authenticity of the document or the accuracy or completeness of the information concerning the true origin of the materials in question.

2. The customs authorities to which a supplier's declaration is submitted may request the customs authorities of the State where the declaration was made to issue an information certificate, a specimen of

which appears in Annex VII to this Protocol. Alternatively, the customs authorities to which a supplier's declaration is submitted may request the exporter to produce an information certificate issued by the customs authorities of the State where the declaration was made.

A copy of the information certificate shall be preserved by the office which has issued it for at least three years.

3. The requesting customs authorities shall be informed of the results of the verification as soon as possible. The results must be such as to indicate positively whether the declaration concerning the status of the materials is correct.

4. For the purpose of verification, suppliers shall keep for not less than three years a copy of the document containing the declaration together with all necessary evidence showing the true status of the materials.

5. The customs authorities in the State where the supplier's declaration is established shall have the right to call for any evidence or to carry out any check which they consider appropriate in order to verify the correctness of any supplier's declaration.

6. Any movement certificate EUR.1 or invoice declaration issued or made out on the basis of an incorrect supplier's declaration shall be considered null and void.

Article 34 *Dispute settlement*

Where disputes arise in relation to the verification procedures of Articles 32 and 33 which cannot be settled between the customs authorities requesting a verification and the customs authorities responsible for carrying out this verification or where they raise a question as to the interpretation of this Protocol, they shall be submitted to the Customs Cooperation Committee.

In all cases the settlement of disputes between the importer and the customs authorities of the importing country shall be under the legislation of the said country.

Article 35 *Penalties*

Penalties shall be imposed on any person who draws up, or causes to be drawn up, a document which contains incorrect information for the purpose of obtaining a preferential treatment for products.

Article 36
Free zones

1. The ACP States shall take all necessary steps to ensure that products traded under cover of a proof of origin or a supplier's declaration and which in the course of transport use a free zone situated in their territory, are not substituted by other goods and do not undergo handling other than normal operations designed to prevent their deterioration.
2. By means of an exemption to the provisions contained in paragraph 1, when originating products are imported into a free zone under cover of a proof of origin and undergo treatment or processing, the authorities concerned shall issue a new EUR.1 certificate at the exporter's request, if the treatment or processing undergone is in conformity with the provisions of this Protocol.

Article 37
Customs Cooperation Committee

1. A Customs Cooperation Committee, hereinafter referred to as "the Committee", shall be set up and charged with carrying out administrative cooperation with a view to the correct and uniform application of this Protocol and with carrying out any other task in the customs field which may be entrusted to it.
2. The Committee shall examine regularly the effect on the ACP States and in particular on the least developed ACP States of application of the rules of origin and shall recommend to the Council of Ministers appropriate measures.
3. The Committee shall take decisions on cumulation under the conditions laid down in Article 6.
4. The Committee shall take decisions on derogations from this Protocol, under the conditions laid down in Article 38.
5. The Committee shall meet regularly, in particular to prepare the decisions of the Council of Ministers pursuant to Article 40.
6. The Committee shall be composed on the one hand of experts from the Member States and of Commission officials responsible for customs questions, and on the other hand of experts representing the ACP States and of officials of regional groupings of the ACP States who are responsible for customs questions. The Committee may call upon appropriate expertise where necessary.

Article 38 *Derogations*

1. Derogations from this Protocol may be adopted by the Committee where the development of existing industries or the creation of new industries justifies them.

The ACP State or States concerned shall, either before or when the ACP States submit the matter to the Committee, notify the Community of its request for a derogation together with the reasons for the request in accordance with paragraph 2.

The Community shall respond positively to all the ACP requests which are duly justified in conformity with this Article and which cannot cause serious injury to an established Community industry.

2. In order to facilitate the examination by the Committee of requests for derogation, the ACP State making the request shall, by means of the form given in Annex VIII to this Protocol, furnish in support of its request the fullest possible information covering in particular the points listed below:

- description of the finished product,
- nature and quantity of materials originating in a third country,
- nature and quantity of materials originating in ACP States, the Community or the OCT, or which have been processed there,
- manufacturing processes,
- value added,
- number of employees in the enterprise concerned,
- anticipated volume of exports to the Community,
- other possible sources of supply for raw materials
- reasons for the duration requested in the light of efforts made to find new sources of supply,
- other observations.

The same rules shall apply to any requests for extension.

The Committee may modify the form.

3. The examination of requests shall in particular take into account:

(a) the level of development or the geographical situation of the ACP State or States concerned;

(b) cases where the application of the existing rules of origin would significantly affect the ability of an existing industry in an ACP State to continue its exports to the Community, with particular reference to cases where this could lead to cessation of its activities;

(c) specific cases where it can be clearly demonstrated that significant investment in an industry could be deterred by the rules of origin and where a derogation favouring the realisation of the investment programme would enable these rules to be satisfied by stages.

4. In every case an examination shall be made to ascertain whether the rules relating to cumulation of origin do not provide a solution to the problem.

5. In addition when a request for derogation concerns a least-developed or an island ACP State, its examination shall be carried out with a favourable bias having particular regard to:

(a) the economic and social impact of the decision to be taken especially in respect of employment;

(b) the need to apply the derogation for a period taking into account the particular situation of the ACP State concerned and its difficulties.

6. In the examination of requests, special account shall be taken, case by case, of the possibility of conferring originating status on products which include in their composition materials originating in neighbouring developing countries, least-developed countries or developing countries with which one or more ACP States have special relations, provided that satisfactory administrative co-operation can be established.

7. Without prejudice to paragraphs 1 to 6, the derogation shall be granted where the value added to the non-originating products used in the ACP State or States concerned is at least 45 % of the value of the finished product, provided that the derogation is not such as to cause serious injury to an economic sector of the Community or of one or more Member States.

8. Notwithstanding paragraphs 1 to 7, derogations concerning canned tuna and tuna loins shall only be granted within an annual quota of 8000 tonnes for canned tuna and within an annual quota of 2000 tonnes for tuna loins.

Applications for such derogations shall be submitted by the ACP States in accordance with the abovementioned quota to the Committee, which shall grant them automatically and put them into force by means of a decision.

9. The Committee shall take steps necessary to ensure that a decision is reached as quickly as possible and in any case not later than seventy-five working days after the request is received by the EC Co-chairman of the Committee. If the Community does not inform the ACP States of its

position on the request within this period, the request shall be deemed to have been accepted. In the event of a decision not being taken by the Committee, the Committee of Ambassadors shall be called upon to decide within one month of the date on which the matter is referred to it.

10. (a) The derogation shall be valid for a period, generally of five years, to be determined by the Committee.

(b) The derogation decision may provide for renewals without a new decision of the Committee being necessary, provided that the ACP State or States concerned submit, three months before the end of each period, proof that they are still unable to meet the conditions of this Protocol which have been derogated from.

If any objection is made to the extension, the Committee shall examine it as soon as possible and decide whether to prolong the derogation. The Committee shall proceed as provided for in paragraph 9. All necessary measures shall be taken to avoid interruptions in the application of the derogation.

(c) In the periods referred to in subparagraphs (a) and (b), the Committee may review the terms for implementing the derogation should a significant change be found to have taken place in the substantive factors governing the decision to grant the derogation. On conclusion of its review the Committee may decide to amend the terms of its decision as regards the scope of derogation or any other condition previously laid down.

TITLE VI

CEUTA AND MELILLA

Article 39

Special conditions

1. The term "Community" used in this Protocol shall not cover Ceuta and Melilla. The term "products originating in the Community" shall not cover products originating in Ceuta and Melilla.

2. The provisions of this Protocol shall apply mutatis mutandis in determining whether products may be deemed as originating in the ACP States when imported into Ceuta and Melilla.

3. Where products wholly obtained in Ceuta, Melilla, the OCT or the Community undergo working and processing in the ACP States, they shall be considered as having been wholly obtained in the ACP States.

4. Working or processing carried out in Ceuta, Melilla, the OCT or the Community shall be considered as having been carried out in the ACP States, when materials undergo further working or processing in the ACP States.

5. For the purpose of implementing paragraphs 3 and 4, the insufficient operations listed in Article 5 shall not be considered as working or processing.

6. Ceuta and Melilla shall be considered as a single territory.

TITLE VII

FINAL PROVISIONS

Article 40

Revision of rules of origin

In accordance with Article 7 of Annex V, the Council of Ministers shall examine annually, or whenever the ACP States or the Community so request, the application of the provisions of this Protocol and their economic effects with a view to making any necessary amendments or adaptations.

The Council of Ministers shall take into account among other elements the effects on the rules of origin of technological developments.

The decisions taken shall be implemented as soon as possible.

Article 41

Annexes

The Annexes to this Protocol shall form an integral part thereof.

Article 42

Implementation of the Protocol

The Community and the ACP States shall each take the steps necessary to implement this Protocol.

Annexes I to XV to Protocol 1
not reproduced here
(*cf.* Official Journal of the European Communities L 317
of 15 December 2000)

PROTOCOL 2

ON THE IMPLEMENTATION OF ARTICLE 9

1. The Parties agree that every endeavour should be made to avoid recourse being had to the safeguard measures provided for under Article 8.

2. Both Parties are guided by the conviction that the implementation of Article 9 (4) and (5) would enable them to recognize, at an early stage, problems which could arise and, taking account of all relevant factors, avoid as far as possible recourse to measures which the Community would prefer not to adopt vis-à-vis its preferential trading partners.

3. Both Parties acknowledge the need for implementation of the mechanism of advance information provided for under Article 9 (4), the objective of which is to limit, in the case of sensitive products, the risks of sudden or unforeseen recourse to safeguard measures. These arrangements will permit the maintenance of a regular flow of trade information and the simultaneous implementation of regular consultation procedures. Thus the two Parties will be in a position to follow closely the trends in the sensitive sectors and detect problems which could arise.

4. The following two procedures result from this:

(a) The statistical surveillance mechanism

Without prejudice to internal arrangements that the Community may apply to control its imports, Article 9 (4) provides for the institution of a mechanism intended to ensure statistical surveillance of certain ACP exports to the Community and thus facilitate the examination of occurrences such as to cause market disturbances.

This mechanism, the sole objective of which is to facilitate the exchange of information between the parties, should apply only to products, which the Community considers, insofar as it is concerned, as sensitive.

The implementation of this mechanism will be the subject of a joint agreement on the basis of data to be furnished by the Community and with the help of statistical information to be communicated by the ACP States to the Commission at the latter's request.

For the effective implementation of this mechanism it is necessary that the ACP States concerned provide the Commission, as far as possible on a monthly basis, with statistics relating to their exports

to the Community and to each of its Member States of products considered by the Community to be sensitive.

(b) A procedure for regular consultation

The statistical surveillance mechanism mentioned above will enable the two Parties better to follow the trends in trade likely to cause concern. On the basis of this information and in accordance with Article 9(5), the Community and the ACP States will have the possibility of holding periodic consultations in order to ensure that the objectives of that Article are fulfilled. These consultations will take place at the request of either Party.

5. If the conditions of application of safeguard measures as provided for in Article 8 are fulfilled, it would be the responsibility of the Community, in accordance with Article 9(1) relating to prior consultations concerning the application of safeguard measures, to enter immediately into consultations with the ACP States concerned by providing them with all the information necessary for those consultations, especially the necessary data from which to determine to what extent imports of a specific product from an ACP State or States have caused or threatened to cause serious injury to the Community's domestic producers of like or directly competitive products or serious disturbances in a sector of the economy of the Community or difficulties which could bring about serious deterioration in the economic situation of a region of the Community.

6. If no other arrangement has been concluded in the meanwhile with the ACP State or States concerned, the competent authorities of the Community may, at the end of the twenty-one day period provided for in respect of those consultations, take the appropriate measures for the implementation of Article 8. These measures shall be communicated immediately to the ACP States and become immediately applicable.

7. This procedure would apply without prejudice to measures, which could be taken in the event of special factors within the meaning of Article 9(3). In this case all relevant information will be supplied promptly to the ACP States.

8. In this case, the interests of the least developed, landlocked and island ACP States will receive particular attention, in accordance with Article 2 of the Agreement.

PROTOCOL 3

CONTAINING THE TEXT OF PROTOCOL 3 ON ACP SUGAR
(appearing in the ACP-EEC Convention of Lomé signed on 28 February 1975 and the corresponding declarations annexed to that Convention)

PROTOCOL 3

ON ACP SUGAR

Article 1

1. The Community undertakes for an indefinite period to purchase and import, at guaranteed prices, specific quantities of cane sugar, raw or white, which originate in the ACP States and which these States undertake to deliver to it.
2. The safeguard clause in Article 10 of the Convention shall not apply. The implementation of this Protocol is carried out within the framework of the management of the common organization of the sugar market which, however, shall in no way prejudice the commitment of the Community under paragraph 1.

Article 2

1. Without prejudice to Article 7, no change in this Protocol may enter into force until a period of five years has elapsed from the date on which the Convention enters into force. Thereafter, such changes as may be agreed upon will come into force at a time to be agreed.
2. The conditions for implementing the guarantee referred to in Article 1 shall be re-examined before the end of the seventh year of their application.

Article 3

1. Quantities of cane sugar referred to in Article 1, expressed in metric tons of white sugar, hereinafter referred to as 'agreed quantities', for delivery in each 12-month period referred to in Article 4 (1), shall be as follows:

Barbados	49 300
People's Republic of Congo	10 000
Fiji	163 600
Guyana	157 700
Jamaica	118 300
Kenya	5 000

Madagascar	10 000
Malawi	20 000
Mauritius	487 200
Swaziland	116 400
Tanzania	10 000
Trinidad and Tobago	69 000
Uganda	5 000

2. Subject to Article 7, these quantities may not be reduced without the consent of the individual States concerned.

3. Nevertheless, in respect of the period up to 30 June 1975, the agreed quantities, expressed in metric tons of white sugar, shall be as follows:

Barbados	29 600
Fiji	25 600
Guyana	29 600
Jamaica	83 800
Madagascar	2 000
Mauritius	65 300
Swaziland	19 700
Trinidad and Tobago	54 200

Article 4

1. In each 12-month period from 1 July to 30 June inclusive, hereinafter referred to as the "delivery period", the sugar-exporting ACP States undertake to deliver the quantities referred to in Article 3 (1), subject to any adjustments resulting from the application of Article 7. A similar undertaking shall apply equally to the quantities referred to in Article 3 (3) in respect of the period up to 30 June 1975, which shall also be regarded as a delivery period.

2. The quantities to be delivered up to 30 June 1975, referred to in Article 3 (3), shall include supply en route from port of shipment or, in the case of landlocked States, across frontiers.

3. Deliveries of ACP cane sugar in the period up to 30 June 1975 shall benefit from the guaranteed prices applicable in the delivery period beginning 1 July 1975. Identical arrangements may be made for subsequent delivery periods.

Article 5

1. White or raw sugar shall be marketed on the Community market at prices freely negotiated between buyers and sellers.

2. The Community shall not intervene if and when a Member State allows selling prices within its borders to exceed the Community's threshold price.

3. The Community undertakes to purchase, at the guaranteed price, quantities of white or raw sugar, within agreed quantities, which cannot be marketed in the Community at a price equivalent to or in excess of the guaranteed price.

4. The guaranteed price, expressed in units of account, shall refer to unpacked sugar, cif European ports of the Community, and shall be fixed in respect of standard quality sugar. It shall be negotiated annually, within the price range obtaining in the Community, taking into account all relevant economic factors, and shall be decided at the latest by 1 May immediately preceding the delivery period to which it will apply.

Article 6

Purchase at the guaranteed price, referred to in Article 5 (3), shall be assured through the medium of the intervention agencies or of other agents appointed by the Community.

Article 7

1. If, during any delivery period, a sugar-exporting ACP State fails to deliver its agreed quantity in full for reasons of force majeure the Commission shall, at the request of the State concerned, allow the necessary additional period for delivery.

2. If a sugar-exporting ACP State informs the Commission during the course of a delivery period that it will be unable to deliver its agreed quantity in full and that it does not wish to have the additional period referred to in paragraph 1, the shortfall shall be reallocated by the Commission for delivery during the delivery period in question. Such reallocation shall be made by the Commission after consultation with the States concerned.

3. If, during any delivery period, a sugar-exporting ACP State fails to deliver its agreed quantity in full for reasons other than force majeure, that quantity shall be reduced in respect of each subsequent delivery period by the undelivered quantity.

4. It may be decided by the Commission that, in respect of subsequent delivery periods, the undelivered quantity shall be reallocated between the other States, which are referred to in Article 3. Such reallocation shall be made in consultation with the States concerned.

Article 8

1. At the request of one or more of the States supplying sugar under the terms of this Protocol, or of the Community, consultations relating to all measures necessary for the application of this Protocol shall take place within an appropriate institutional framework to be adopted by the Contracting Parties. For this purpose the institutions established by the Convention may be used during the period of application of the Convention.
2. In the event of the Convention ceasing to be operative, the sugar-supplying States referred to in paragraph 1 and the Community shall adopt the appropriate institutional provisions to ensure the continued application of the provisions of this Protocol.
3. The periodical reviews provided for under this Protocol shall take place within the agreed institutional framework.

Article 9

Special types of sugar traditionally delivered to Member States by certain sugar-exporting ACP States shall be included in, and treated on the same basis as, the quantities referred to in Article 3.

Article 10

The provisions of this Protocol shall remain in force after the date specified in Article 91 of the Convention. After that date the Protocol may be denounced by the Community with respect to each ACP State and by each ACP State with respect to the Community, subject to two years' notice.

Annex to Protocol 3

DECLARATIONS ON PROTOCOL 3

1. Joint declaration concerning possible requests for participation in the provisions of Protocol 3

Any request from an ACP State Contracting Party to the Convention not specifically referred to in Protocol 3 to participate in the provisions of that Protocol shall be examined*.

2. Declaration by the Community concerning sugar originating in Belize, St-Kitts-Nevis-Anguilla and Suriname

a) The Community undertakes to adopt the necessary measures to ensure the same treatment as provided for in Protocol 3, for the following quantities of cane sugar, raw or white, originating in:

Belize	39 400 tons
St-Kitts-Nevis-Anguilla	14 800 tons
Suriname	4 000 tons

b) Nevertheless, in respect of the period up to 30 June 1975, the quantities shall be as follows:

Belize	14 800 tons
St-Kitts-Nevis-Anguilla	7 900 tons [†] .

3. Declaration by the Community on Article 10 of Protocol 3

The Community declares that Article 10 of Protocol 3 providing for the possibility of denunciation in that Protocol, under the conditions set out in that Article, is for the purposes of juridical security and does not represent for the Community any qualification or limitation of the principles enunciated in Article 1 of that Protocol[‡].

* Annex XIII to the Final Act of the ACP - EEC Convention.

[†] Annex XXII to the Final Act of the ACP - EEC Convention.

[‡] Annex XXIII to the Final Act of the ACP - EEC Convention.

Annex to Protocol 3

EXCHANGE OF LETTERS BETWEEN THE DOMINICAN REPUBLIC
AND THE COMMUNITY CONCERNING THE PROTOCOL ON ACP
SUGAR

Letter N° 1, from the Government of the Dominican Republic

Sir,

I have the honour to confirm that the Dominican Republic wishes neither now nor in the future, to accede to the Protocol on ACP sugar annexed to the ACP-EEC Convention. The Dominican Republic accordingly undertakes not to apply to accede to the said Protocol. It will write a letter to this effect to the ACP Group of States. I should be obliged if you would acknowledge receipt of this letter. Please accept, Sir, the assurance of my highest consideration.

Letter N° 2, from the President of the
Council of the European Communities

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

“I have the honour to confirm that the Dominican Republic wishes neither now nor in the future, to accede to the Protocol on ACP sugar annexed to the ACP-EEC Convention. The Dominican Republic accordingly undertakes not to apply to accede to the said Protocol. It will write a letter to this effect to the ACP Group of States.”.

The Community confirms its agreement on the content of that letter.

Please accept, Sir, the assurance of my highest consideration.

Annex to Protocol 3

AGREEMENT

In the form of an exchange of letters between the European Economic Community and Barbados, Belize, the People's Republic of the Congo, Fiji, the Cooperative Republic of Guyana, Jamaica, the Republic of Kenya, the Democratic Republic of Madagascar, the Republic of Malawi, Mauritius, the Republic of Surinam, the Kingdom of Swaziland, the United Republic of Tanzania, Trinidad and Tobago, the Republic of Uganda, the Republic of Zimbabwe and Saint Christopher and Nevis on the accession of the last-mentioned country to Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention.

Letter No 1

Sir,

The representatives of the ACP States referred to in Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention and of the Commission on behalf of the European Economic Community, have agreed on the following:

- Saint Christopher and Nevis is hereby included in Article 3 (1) of the said Protocol with an agreed quantity of 14800 tonnes with effect from the day on which it accedes to the Second ACP-EEC Convention.

Up to this date, the provisions of Annex IV to Council Decision 80/1186/EEC of 16 December 1980 on the association of the overseas countries and territories with the European Economic Community shall remain applicable.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between the Governments of the above-mentioned ACP States and the Community.

Please accept, Sir, the assurance of my highest consideration.

For the Council
of the European Communities

Letter No 2

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

“The representatives of the ACP States referred to in Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention and of the Commission on behalf of the European Economic community, have agreed on the following:

- Saint Christopher and Nevis is hereby included in Article 3 (1) of the said Protocol with an agreed quantity of 14800 tonnes with effect from the day on which it accedes to the Second ACP-EEC Convention.

Up to this date, the provisions of Annex IV to Council Decision 80/1186/EEC of 16 December 1980 on the association of the overseas countries and territories with the European Economic Community shall remain applicable.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between the Governments of the abovementioned ACP States and the Community.”

I have the honour to confirm that the Governments of the ACP States referred to in your letter are in agreement with the contents thereof.

Please accept, Sir, the assurance of my highest consideration.

For the Governments

Annex to Protocol 3

AGREEMENT

In the form of an exchange of letters between the European Economic Community and Barbados, the People's Republic of the Congo, Fiji, the Cooperative Republic of Guyana, Jamaica, the Republic of Kenya, the Democratic Republic of Madagascar, the Republic of Malawi, Mauritius, the Republic of Surinam, the Kingdom of Swaziland, the United Republic of Tanzania, Trinidad and Tobago, the Republic of Uganda and the Republic of Zimbabwe on the Accession of the latter country to Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention.

Letter No 1

Sir,

The representatives of the ACP States referred to in Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention, of the Republic of Zimbabwe and of the Commission, on behalf of the European Economic Community, have agreed on the following.

The Republic of Zimbabwe is hereby included in Article 3 (1) of the said Protocol with an agreed quantity of 25000tonnes with effect from 1 July 1982, and in respect of the period up to 30 June 1982 with an agreed quantity of 6000 tonnes.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between the Government of the abovementioned ACP States and the Community.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the Council
of the European Communities

Letter No 2

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

“The representatives of the ACP States referred to in Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention of the Republic of

Zimbabwe and of the Commission, on behalf of the European Economic Community, have agreed on the following.

The Republic of Zimbabwe is hereby included in Article 3 (1) of the said Protocol with an agreed quantity of 25000 tonnes with effect from 1 July 1982, and in respect of the period up to 30 June 1982 with an agreed quantity of 6000 tonnes.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between the Governments of the abovementioned ACP States and the Community.”

I have the honour to confirm the agreement of the Governments of the ACP States referred to in this letter with the foregoing.

Please accept, Sir, the assurance of my highest consideration.

For the Governments

Annex to Protocol 3

AGREEMENT

In the form of an exchange of letters between the European Economic Community and Barbados, Belize, the People's Republic of the Congo, Fiji, the Cooperative Republic of Guyana, Jamaica, the Republic of Kenya, the Democratic Republic of Madagascar, the Republic of Malawi, Mauritius, the Republic of Surinam, the Kingdom of Swaziland, the United Republic of Tanzania, Trinidad and Tobago, the Republic of Uganda, the Republic of Zimbabwe and the Republic of the Ivory Coast on the Accession of the last-mentioned country to Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention.

Letter No 1

Sir,

The African, Caribbean and Pacific Group of States referred to in Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention, the Republic of the Ivory Coast and the European Economic Community have agreed on the following.

The Republic of the Ivory Coast is hereby included in Article 3 (1) of the said Protocol with effect from 1 July 1983 with an immediate agreed quantity of 2000 tonnes (white value).

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between the Governments of the abovementioned ACP States and the Community.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the Council
of the European Communities

Letter No 2

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

“The African, Caribbean and Pacific Group of States referred to in Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention, the

Republic of the Ivory Coast and the European Economic Community have agreed on the following.

The Republic of the Ivory Coast is hereby included in Article 3 (1) of the said Protocol with effect from 1 July 1983 with an immediate agreed quantity of 2000 tonnes (white value).

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between the Governments of the abovementioned ACP States and the Community.”

I have the honour to confirm the agreement of the Governments of the ACP States referred to in your letter with the contents thereof.

Please accept, Sir, the assurance of my highest consideration.

For the Governments

Annex to Protocol 3

AGREEMENT

In the form of an Exchange of Letters between the European Community and Barbados, Belize, the Republic of the Congo, Fiji, the Cooperative Republic of Guyana, the Republic of Côte d'Ivoire, Jamaica, the Republic of Kenya, the Republic of Madagascar, the Republic of Malawi, the Republic of Mauritius, the Republic of Suriname, Saint Christopher and Nevis, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Trinidad and Tobago, the Republic of Uganda, the Republic of Zambia and the Republic of Zimbabwe on the accession of the Republic of Zambia to Protocol No 8 on ACP Sugar annexed to the Fourth ACP-EEC Convention.

A. Letter No 1

Sir

The African, Caribbean and Pacific (ACP) States referred to in Protocol No 8 on ACP Sugar annexed to the Fourth ACP-EEC Convention, the Republic of Zambia and the European Community have agreed on the following.

The Republic of Zambia is hereby included in Article 3 (1) of the said Protocol with effect from 1 January 1995 with an agreed quantity of 0 tonnes.

I should be obliged if you would acknowledge receipt of this letter confirm that this letter and your reply constitute an Agreement between the Governments of the abovementioned ACP States and the European Community.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the Council
of the European Union

B. Letter No 2

Sir,

I have the honour to acknowledge receipt of your letter of today which reads as follows:

“The African, Caribbean and Pacific (ACP) States referred to in Protocol No 8 on ACP Sugar annexed to the Fourth ACP-EEC Convention, the

Republic of Zambia and the European Community have agreed on the following.

The Republic of Zambia is hereby included in Article 3 (1) of the said Protocol with effect from 1 January 1995 with an agreed quantity of 0 tonnes.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute and Agreement between the Governments of the abovementioned ACP States and the European Community.”

I have the honour to confirm the agreement of the Governments of the ACP States referred to in your letter with the contents thereof.

Please accept, Sir, the assurance of my highest consideration.

For the Governments of the ACP States
referred to in Protocol No 8
and of the Republic of Zambia

PROTOCOL 4

ON BEEF AND VEAL

The Community and the ACP States agree to take the special measures set out below to enable ACP States which are traditional exporters of beef and veal to maintain their position on the Community market, thus guaranteeing a certain level of income for their producers.

Article 1

Within the limits referred to in Article 2, customs duties other than *ad valorem* duties applicable to beef and veal originating in the ACP States shall be reduced by 92 %.

Article 2

Without prejudice to Article 4, the reduction in customs duties provided for in Article 1 shall apply to the following quantities expressed in boneless meat per calendar year and per country:

Botswana	18 916 tons
Kenya	142 tons
Madagascar	7 579 tons
Swaziland	3 363 tons
Zimbabwe	9 100 tons
Namibia	13 000 tons

Article 3

In the event of an actual or foreseeable recession in these exports due to disasters such as drought, cyclones or animal diseases, the Community is willing to consider appropriate measures to ensure that quantities affected for these reasons in any year can be delivered in the following year.

Article 4

If, in the course of a given year, one of the ACP States referred to in Article 2 is not in a position to supply the total quantity fixed and does not wish to benefit from the measures referred to in Article 3, the Commission may share out the amount to be made up among the other ACP States concerned. In such a case, the ACP States concerned shall put forward a proposal to the Commission, not later than 1 September of that year, naming the ACP State or States which will be in a position to supply the new additional quantity, at the same time indicating to it the ACP State which is not in a position to supply the full amount allocated to it, on the

understanding that this new temporary allocation will not affect the initial quantities.

The Commission shall ensure that a decision is taken by 15 November at the latest.

Article 5

This Protocol shall be implemented in accordance with the common market organization in the beef and veal sector, which, however, shall not affect the obligations entered into by the Community under this Protocol.

Article 6

Should the safeguard clause in Article 8(1) of the Annex be applied in the beef and veal sector, the Community will take the necessary measures to maintain the volume of exports from the ACP States to the Community at a level compatible with its obligations under this Protocol.

PROTOCOL 5

THE SECOND BANANA PROTOCOL

Article 1

The Parties recognise the overwhelming economic importance to the ACP banana suppliers of their exports to the Community market. The Community agrees to examine and where necessary take measures aimed at ensuring the continued viability of their banana export industries and the continuing outlet for their bananas on the Community market.

Article 2

Each of the ACP States concerned and the Community shall confer in order to determine the measures to be implemented so as to improve the conditions for the production and marketing of bananas. This aim shall be pursued through all the means available under the arrangements of the Convention for financial, technical, agricultural, industrial and regional co-operation. The measures in question shall be designed to enable the ACP States, particularly Somalia, account being taken of their individual circumstance, to become more competitive. Measures will be implemented at all stages from production to consumption and will cover the following fields in particular:

- Improvement of conditions of production and enhancement of quality through action in the areas of research, harvesting, packaging and handling,
- Transport and storage,
- Marketing and trade promotion.

Article 3

For the purposes of attaining these objectives, the two Parties hereby agree to confer in a permanent joint group, assisted by a group of experts, whose task shall be to keep under continuous review any specific problems brought to its attention.

Article 4

Should the banana-producing ACP States decide to set up a joint organisation for the purpose of attaining the objectives, the Community shall support such an organisation and shall give consideration to any requests it may receive for support for the organisation's activities which

fall within the scope of regional schemes under the heading of development finance co-operation.

ANNEX VI

LIST OF LDLICS

The following lists comprise ACP least-developed, landlocked and Island States:

LEAST-DEVELOPED ACP STATES

Article 1

Under this Agreement, the following countries shall be considered least-developed ACP States:

Angola	Malawi
Benin	Mali
Burkina Faso	Mauritania
Burundi	Madagascar
Republic of Cape Verde	Mozambique
Central African Republic	Niger
Chad	Rwanda
Comoro Islands	Samoa
Democratic Republic of Congo	SãoTome and Principe
Djibouti	Sierra Leone
Ethiopia	Solomon Islands
Eritrea	Somalia
Gambia	Sudan
Guinea	Tanzania
Guinea (Bissau)	Tuvalu
Guinea (Equatorial)	Togo
Haïti	Uganda
Kiribati	Vanuatu
Lesotho	Zambia
Liberia	Malawi

LANDLOCKED ACP STATES

Article 2

Specific measures and provisions have been made to support landlocked ACP States in their efforts to overcome the geographical difficulties and the other obstacles hampering their development so as to enable them to speed up their respective rates of growth.

Article 3

The landlocked ACP States are:

Botswana	Mali
Burkina Faso	Niger
Burundi	Rwanda
Central African Republic	Swaziland
Chad	Uganda
Ethiopia	Zambia
Lesotho	Zimbabwe
Malawi	

ISLAND ACP STATES

Article 4

Specific measures and provisions have been made to support island ACP States in their efforts to overcome the natural and geographical difficulties and the other obstacles hampering their development so as to enable them to speed up their respective rates of growth.

Article 5

List of island ACP States:

Antigua and Barbuda	Mauritius
Bahamas	Papua New Guinea
Barbados	Saint Kitts and Nevis
Cape Verde	Saint Lucia
Comoros	Saint Vincent and the Grenadines
Dominica	Samoa
Dominican Republic	São Tomé and Príncipe
Fiji	Seychelles
Grenada	Solomon Islands
Haiti	Tonga
Jamaica	Trinidad and Tobago
Kiribati	Tuvalu
Madagascar	Vanuatu

PROTOCOLS

PROTOCOL 1

On the operating expenditure of the Joint Institutions

1. The Member States and the Community, on the one hand, and the ACP States, on the other, shall be responsible for such expenditure as they shall incur by reason of their participation in the meetings of the Council of Ministers and its dependent bodies, both with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenses.

Expenditure in connection with interpreting at meetings, translation and reproduction of documents, and the practical arrangements for meetings (such as premises, equipment and messengers) of the joint institutions of the present Agreement shall be borne by the Community or by one of the ACP States, according to whether the meetings take place in the territory of a Member State or in that of an ACP State.

2. The arbitrators appointed in accordance with Article 98 of the Agreement shall be entitled to a refund of their travel and subsistence expenditure. The latter shall be determined by the Council of Ministers.

One half of travel and subsistence expenditure incurred by the arbitrators shall be borne by the Community and the other half by the ACP States. Expenditure relating to any registry set up by the arbitrators, to preparatory inquiries into disputes, and to the organisation of hearings (such as premises, personnel and interpreting) shall be borne by the Community. Expenditure relating to special inquiries shall be settled together with the other costs and the Parties shall deposit advances as determined by an order of the arbitrators.

3. The ACP States shall set up a Fund, which will be managed by their General Secretariat, for the purpose of contributing to the financing of the expenses incurred by ACP participants at meetings of the Joint Parliamentary Assembly and the Council of Ministers.

The ACP States shall contribute to this Fund. With the aim of encouraging the active participation of all ACP States in the dialogue conducted within the ACP-EC institutions, the Community shall make a contribution to this Fund as provided for in the Financial Protocol (EUR 4 million according to the First Financial Protocol).

To be eligible for the Fund expenses must comply with the following conditions as well as those laid down in paragraph 1:

- They must be incurred by parliamentarians or, in their absence, other such ACP representatives travelling from the country they represent in order to take part in sessions of the Joint

Parliamentary Assembly, meetings of working parties or missions under their aegis, or as a result of the participation of these same representatives and representatives of ACP civil society and economic and social operators in consultation meetings held under Articles 15 and 17 of the Agreement.

- Decisions on the nature, organisation, frequency and location of meetings, missions and working groups must be taken in accordance with the rules of procedure of the Council of Ministers and the Joint Parliamentary Assembly.

4. Consultation meetings and meetings of ACP-EU economic and social operators shall be organised by the Economic and Social Committee of the European Union. In this specific instance, the Community's contribution to cover the participation of ACP economic and social operators shall be paid directly to the Economic and Social Committee.

The ACP Secretariat, the Council of Ministers and the Joint Parliamentary Assembly may, in agreement with the Commission, delegate the organisation of consultation meetings of ACP civil society to representative organisations approved by the Parties.

PROTOCOL 2

On privileges and immunities

The Parties

Desiring, by the conclusion of a Protocol on privileges and immunities, to facilitate the smooth functioning of the Agreement, the preparation of its work and implementation of the measures adopted for its application;

Whereas it is therefore necessary to specify the privileges and immunities which may be claimed by persons participating in work relating to the application of the Agreement and to the arrangements applicable to official communications connected with such work, without prejudice to the provisions of the Protocol on the privileges and immunities of the European Communities, signed in Brussels on 8 April 1965;

Whereas it is also necessary to lay down the treatment to be accorded to the property, funds and assets of the Council of ACP Ministers, and its staff;

Whereas the Georgetown Agreement of 6 June 1975 constituted the ACP Group of States and instituted a Council of ACP Ministers, and a Committee of Ambassadors; whereas the organs of the ACP Group of States are to be serviced by the Secretariat of the ACP States;

HAVE AGREED upon the following provisions, which shall be annexed to the Agreement:

CHAPTER 1

PERSONS TAKING PART IN THE WORK OF THE AGREEMENT

Article 1

The representatives of the Governments of the Member States and of the ACP States and the Representatives of the Institutions of the European Communities, and also their advisers and experts and the members of the staff of the Secretariat of the ACP States taking part, in the territory of the Member States or of the ACP States, in the work either of the institutions of the Agreement or of the coordinating bodies, or in work connected with the application of the Agreement, shall enjoy the customary privileges, immunities and facilities while carrying out their duties and while travelling to or from the place at which they are required to carry out such duties.

The preceding paragraph shall also apply to members of the Joint Parliamentary Assembly of the Agreement, to the arbitrators who may be appointed under the Agreement, to members of the consultative bodies of the economic and social sectors which may be set up, to the officials and employees of these institutions, and also to the members of the agencies of the European Investment Bank and its staff, and to the staff of the Centre for the Development of Enterprise and the Centre for the Development of Agriculture.

CHAPTER 2

PROPERTY, FUNDS AND ASSETS OF THE COUNCIL OF ACP MINISTERS

Article 2

The premises and buildings occupied by the Council of ACP Ministers for official purposes shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation.

Except when required for the purposes of investigating an accident caused by a motor vehicle belonging to the said Council or being used on its account, or in the event of an infringement of road traffic regulations or of an accident caused by such a vehicle, the property and assets of the Council of ACP Ministers shall not be the subject of any administrative or legal measures of constraints without the authorisation of the Council of Ministers set up under the Agreement.

Article 3

The archives of the Council of ACP Ministers shall be inviolable.

Article 4

The Council of ACP Ministers, its assets, income and other property shall be exempt from all direct taxes.

The host State shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Council of ACP Ministers makes, strictly for its official use, substantial purchases, the price of which includes taxes of this kind.

No exemption shall be granted in respect of taxes, charges, duties or fees which represent charges for services rendered.

Article 5

The Council of ACP Ministers shall be exempt from all customs duties, prohibitions and restrictions on imports in respect of articles intended for its official use; articles so imported may not be sold or otherwise disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the Government or that country.

CHAPTER 3

OFFICIAL COMMUNICATIONS

Article 6

For their official communications and the transmission of all their documents, the European Community, the institutions of the Agreement and the coordinating bodies shall enjoy in the territory of the States party to the Agreement the treatment accorded to international organisations.

Official correspondence and other official communications of the European Community, the joint institutions of the Agreement and the coordinating bodies shall not be subject to censorship.

CHAPTER 4

STAFF OF THE SECRETARIAT OF THE ACP STATES

Article 7

1. The Secretary or Secretaries and Deputy Secretary or Deputy Secretaries of the Council of ACP Ministers and the other permanent members of the staff of senior rank as designated by the ACP States, of the Council of ACP Ministers shall enjoy, in the State in which the Council of ACP Ministers is established, under the responsibility of the Chairman-in-Office of the Committee of ACP Ambassadors, the advantages accorded to the diplomatic staff of diplomatic missions. Their spouses and their children under age living in their household shall be entitled, under the same conditions, to the advantages accorded to the spouses and children under age of such diplomatic staff.

2. Permanent ACP staff members not referred to in paragraph 1 shall be exempted by their host country from any taxes on salaries, emoluments or allowances paid to them by the ACP States from the day on which such income becomes subject to tax levied for the benefit of the ACP States.

The above provision shall not apply either to pensions paid the ACP Secretariat to its former staff members or their dependants, or to salaries, emoluments or allowances paid to its local staff.

Article 8

The State in which the Council of ACP Ministers is established shall grant immunity from legal proceedings to permanent members of the staff of the Secretariat of the ACP States, apart from those referred to in paragraph 1 of Article 7, only in respect of acts done by them in the performance of their official duties. Such immunity shall not, however, apply to infringements of road traffic regulations by a permanent member of the staff of the Secretariat of the ACP States or to damage caused by a motor vehicle belonging to, or driven by, him or her.

Article 9

The names, positions and addresses of the Chairman-in-Office of the Committee of ACP Ambassadors, the Secretary or Secretaries and Deputy Secretary or Deputy Secretaries of the Council of ACP Ministers and of the permanent members of the staff of the Secretariat of the ACP States shall be communicated periodically by the President of the Council of ACP Ministers to the Government of the State in whose territory the Council of ACP Ministers is established.

CHAPTER 5

COMMISSION DELEGATIONS IN THE ACP STATES

Article 10

1. The Commission Head of Delegation and staff appointed to the Delegation, the Delegations, to the exception of locally recruited staff, shall be exempted from any direct taxes in the ACP State where they are in post.
2. Article 31(2)(g) of Annex IV, chapter 4 shall also apply to the staff referred to in paragraph 1.

CHAPTER 6

GENERAL PROVISIONS

Article 11

The privileges, immunities and facilities provided for in this Protocol shall be accorded to those concerned solely in the interests of the proper execution of their official duties.

Each institution or body referred to in this Protocol shall be required to waive immunity wherever its consider that the waiver of such immunity is not contrary to its own interests.

Article 12

Article 98 of the Agreement shall apply to disputes relating to this Protocol.

The Council of ACP Ministers and the European Investment Bank may be party to proceedings during an arbitration procedure.

PROTOCOL 3

On South Africa

Article 1

Qualified Status

1. The participation of South Africa in this Agreement is subject to the qualifications set out in this Protocol.
2. The provisions of the bilateral Agreement on Trade, Development and Cooperation between the European Community, its Member States and South Africa signed in Pretoria on 11 October 1999, hereinafter referred as the "TDCA", shall take precedence over the provisions of this Agreement.

Article 2

General Provisions, Political Dialogue and Joint Institutions

1. The general, institutional and final provisions of this Agreement shall apply to South Africa.
2. South Africa shall be fully associated in the overall political dialogue and participate in the joint institutions and bodies set out under this Agreement. However, in respect of decisions to be taken in relation to provisions that do not apply to South Africa under this Protocol, South Africa shall not take part in the decision-making process.

Article 3

Cooperation Strategies

The provisions on cooperation strategies of this Agreement shall apply to cooperation between the Community and South Africa.

Article 4

Financial Resources

1. The provisions of this Agreement on development finance cooperation shall not apply to South Africa.
2. However, in derogation from this principle, South Africa shall have the right to participate in the areas of ACP-EC development finance cooperation listed in Article 8 below, on the understanding that South Africa's participation will be fully financed from the resources provided for under Title VII of the TDCA. Where resources from the TDCA are deployed for participation in operations in the framework of ACP- EC

financial cooperation, South Africa will enjoy the right to participate fully in the decision-making procedures governing implementation of such aid.

3. South African natural or legal persons shall be eligible for award of contracts financed from the financial resources provided for under this Agreement. In this respect, South African natural or legal persons shall, however, not enjoy the preferences accorded to natural and legal persons from ACP States.

Article 5
Trade Cooperation

1. The provisions of this Agreement on economic and trade cooperation shall not apply to South Africa.

2. Nonetheless, South Africa shall be associated as an observer in the dialogue between the Parties pursuant to Articles 34 to 40 of this Agreement.

Article 6
Applicability of Protocols and Declarations

The protocols and declarations annexed to this Agreement that relate to parts of the Agreement that are not applicable to South Africa, shall not apply to South Africa. All other declarations and protocols shall apply.

Article 7
Revision Clause

This Protocol may be revised by decision of the Council of Ministers.

Article 8
Applicability

Without prejudice to the previous Articles, the table hereunder sets out those Articles of the Agreement and its Annexes which shall apply to South Africa and those which shall not apply.

<i>Applicable</i>	<i>Remarks</i>	<i>Not Applicable</i>
Preamble		
Part I, Title I, Chapter 1: 'Objectives, principles and actors' (Articles 1 to 7)		
Part I, Title II, 'The political dimension'; Articles 8 to 13		

Part 2, 'Institutional provisions'; Articles 14 to 17	In accordance with Article 1 of this protocol, South Africa shall not have voting rights in any of the joint institutions or bodies in areas of the Agreement which are not applicable to South Africa.	
Part 3, Title I, 'Development strategies'.		
	In accordance with Article 5 above, South Africa shall be associated as an observer in the dialogue between the Parties pursuant to Articles 34 to 40.	Part 3, Title II, Economic and Trade Cooperation.
Article 75(i) (Investment promotion, support for the ACP-EU private sector dialogue on regional level), Article 78 (Investment protection)	In accordance with Article 4 above, South Africa shall have the right to participate in certain areas of development finance cooperation on the understanding that such participation will be fully financed from the resources provided for under Title VII of the TDCA. In accordance with Article 2 above, South Africa may participate in the ACP-EC Development Finance Cooperation Committee provided for in Article 83, without enjoying voting rights in relation to provisions that do not apply to South Africa.	Part 4, Development Finance Cooperation
Part 5, General Provisions for the Least Developed,		

Landlocked and Island ACP States, Articles 84 to 90		
Part 6, Final Provisions, Articles 91 to 100		
		Annex I (Financial Protocol)
Annex II, Terms and conditions of Financing, Chapter 5 (link to Article 78/ investment protection)	In accordance with Article 4 above, South Africa shall have the right to participate in certain areas of development finance cooperation on the understanding that South Africa's participation will be fully financed from the resources provided for under Title VII of the TDCA.	Annex II, Terms and conditions of Financing, Chapters 1, 2, 3 and 4
Annex III, Institutional Support (CDE and CTA)	In accordance with Article 4 above, South Africa shall have the right to participate in certain areas of development finance cooperation on the understanding that South Africa's participation will be fully financed from the resources provided for under Title VII of the TDCA.	
Annex IV, Implementation and Management Procedures: Articles 6 to 14 (Regional cooperation) Articles 20 to 32 (Competition and preference)	In accordance with Article 4 above, where resources from the TDCA are deployed for participation activities in the framework of ACP-EC financial cooperation, South Africa will enjoy the right to fully participate in the decision-making procedures governing	Annex IV, Articles 1 to 5 (national programming); 15 to 19 (provisions relating to the project cycle), 27 (preference to ACP contractors) and 34 to 38 (Executing agents)

	<p>implementation of such aid. South African natural and legal persons will moreover be eligible for participation in tenders for contracts financed from the financial resources of the Agreement. In this context, South African tenderers will not enjoy the preferences provided for tenderers from the ACP States.</p>	
		Annex V / trade regime during the preparatory period.
Annex VI; List of Least Developed, island and landlocked ACP States.		

FINAL ACT

The plenipotentiaries of:

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,

His Majesty the King of Spain,

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,

The Federal President of the Republic of Austria,

The President of the Portuguese Republic

The President of the Republic of Finland,

The Government of the Kingdom of Sweden,

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

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

and of the Council of the European Union and the Commission of the European Communities,

on the one part, and

The plenipotentiaries of:

The President of the Republic of Angola,

Her Majesty the Queen of Antigua and Barbuda,

The Head of State of the Commonwealth of the Bahamas,

The Head of State of Barbados,

Her Majesty the Queen of Belize,

The President of the Republic of Benin,

The President of the Republic of Botswana,

The President of Burkina Faso,

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 Republic of Chad,

The President of the Islamic Federal Republic of the Comoros,

The President of the Democratic Republic of Congo,

The President of the Republic of Congo,

The Government of the Cook Islands

The President of the Republic of Côte d'Ivoire,

The President of the Republic of Djibouti,

The Government of the Commonwealth of Dominica,

The President of the Dominican Republic,

The President of the State of Eritrea,

The President of the Republic of Equatorial Guinea,

The President of the Federal Democratic Republic of Ethiopia,
The President of the Sovereign Democratic Republic of Fiji,
The President of the Gabonese Republic,
The President and Head of State of the Republic of The Gambia,
The President of the Republic of Ghana,
Her Majesty the Queen of Grenada,
The President of the Republic of Guinea,
The President of the Republic of Guinea-Bissau,
The President of the Republic of Guyana,
The President of the Republic of Haiti,
The Head of 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 Republic of Madagascar,
The President of the Republic of Malawi,
The President of the Republic of Mali,
The Government of the Republic of the Marshall Islands,
The President of the Islamic Republic of Mauritania,
The President of the Republic of Mauritius,
The Government of the Federated States of Micronesia,
The President of the Republic of Mozambique,
The President of the Republic of Namibia,

The Government of the Republic of Nauru,
The President of the Republic of Niger,
The President of the Federal Republic of Nigeria,
The Government of Niue,
The Government of the Republic of Palau,
Her Majesty the Queen of the Independent State of Papua New Guinea,
The President of the Rwandese Republic,
Her Majesty the Queen of Saint Kitts and Nevis,
Her Majesty the Queen of Saint Lucia,
Her Majesty the Queen of Saint Vincent and the Grenadines,
The Head of State of the Independent State of Samoa,
The President of the Democratic Republic of São Tomé and Príncipe,
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 Republic of South Africa,
The President of the Republic of Sudan,
The President of the Republic of Suriname,
His Majesty the King of the Kingdom of Swaziland,
The President of the United Republic of Tanzania,
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 President of the Republic of Uganda,
The Government of the Republic of Vanuatu,
The President of the Republic of Zambia,
The Government of the Republic of Zimbabwe,
whose States are hereinafter referred to as "ACP States",

of the other part,

meeting at Cotonou on June 23 in the year two thousand for the signature of the ACP-EC Partnership Agreement have adopted the following texts:

The ACP-EC Partnership Agreement, and the following Annexes and Protocols:

Annex I	Financial Protocol
Annex II	Terms and Conditions of Financing
Annex III	Institutional Support – CDE and CTA
Annex IV	Implementation and management procedures
Annex V	Trade regime applicable during the preparatory period referred to in Article 37(1)
Annex VI	List of LDLICs
Protocol 1	on operating expenditure of the joint institutions
Protocol 2	on privileges and immunities
Protocol 3	on South Africa

The plenipotentiaries of the Member States and of the Community and the plenipotentiaries of the ACP States have adopted the texts of the declarations listed below annexed to this Final Act:

Declaration I	Joint Declaration on the actors of the Partnership (Article 6)
Declaration II	Declaration of the Commission and the Council of the European Union on the clause concerning the return and readmission of illegal immigrants (Article 13(5))
Declaration III	Joint Declaration on participation in the Joint Parliamentary Assembly (Article 17(1))

Declaration IV	Community Declaration on the financing of the ACP Secretariat
Declaration V	Community Declaration on the financing of the joint institutions
Declaration VI	Community Declaration relating to the Protocol on privileges and immunities
Declaration VII	Declaration by the Member States relating to the Protocol on privileges and immunities
Declaration VIII	Joint Declaration relating to the Protocol on privileges and immunities
Declaration IX	Joint Declaration on Article 49(2) on trade and environment
Declaration X	ACP Declaration on trade and environment
Declaration XI	Joint Declaration on the ACP cultural heritage
Declaration XII	Declaration by the ACP States on return or restitution of cultural property
Declaration XIII	Joint Declaration on copyright
Declaration XIV	Joint Declaration on regional cooperation and the outermost regions (Article 28)
Declaration XV	Joint Declaration on accession
Declaration XVI	Joint Declaration on accession of the overseas countries and territories referred to in Part Four of the EC Treaty
Declaration XVII	Joint Declaration on Article 66 (debt relief) of the Agreement
Declaration XVIII	EU Declaration on the Financial Protocol
Declaration XIX	Declaration by the Council and the Commission on the Programming Process
Declaration XX	Joint Declaration on the impact of Export Revenue Fluctuations on Vulnerable Small, Island and Landlocked ACP States
Declaration XXI	Community Declaration on Article 3 of Annex IV
Declaration XXII	Joint Declaration concerning agricultural products referred to in Article 1(2)(a) of Annex V
Declaration XXIII	Joint Declaration on market access in the EC-ACP Partnership
Declaration XXIV	Joint Declaration on rice
Declaration XXV	Joint Declaration on rum
Declaration XXVI	Joint Declaration on beef and veal
Declaration XXVII	Joint Declaration on the arrangements governing access to the markets of the French overseas departments for products originating in the ACP States referred to in Article 1(2) of Annex V
Declaration XXVIII	Joint Declaration on cooperation between ACP States and the neighbouring overseas countries and territories and French overseas departments

Declaration XXIX	Joint Declaration on products covered by the common agricultural policy
Declaration XXX	ACP Declaration on Article 1 of Annex V
Declaration XXXI	Community Declaration on Article 5(2)(a) of Annex V
Decl. XXXII	Joint Declaration on non-discrimination
Decl. XXXIII	Community Declaration on Article 8(3) of Annex V
Decl. XXXIV	Joint Declaration on Article 12 of Annex V
Declaration XXXV	Joint Declaration relating to Protocol 1 on Article 7 of Annex V
Decl. XXXVI	Joint Declaration relating to Protocol 1 of Annex V
Decl. XXXVII	Joint Declaration relating to Protocol 1 of Annex V on the origin of fishery products
Decl. XXXVIII	Community Declaration relating to Protocol 1 of Annex V on the extent of territorial waters
Decl. XXXIX	ACP Declaration relating to Protocol 1 of Annex V on the origin of fishery products
Declaration XL	Joint Declaration on the application of the value tolerance rule in the tuna sector
Declaration XLI	Joint Declaration on Article 6(11) of Protocol 1 of Annex V
Declaration XLII	Joint Declaration on rules of origin: cumulation with South Africa
Declaration XLIII	Joint Declaration on Annex 2 to Protocol 1 of Annex V

DECLARATION I

Joint Declaration on the actors of the partnership (Article 6)

The Parties agree that the definition of civil society may differ significantly according to the socio-economic and cultural conditions of each ACP country. However, they believe that this definition may include *inter alia* the following organisations: human rights groups and agencies, grassroots organisations, women's associations, youth organisations, child-protection organisations, environmental movements, farmers' organisations, consumers' associations, religious organisations, development support structures (NGOs, teaching and research establishments), cultural associations and the media.

DECLARATION II

Declaration of the Commission and the Council of the European Union on
the clause concerning the return and readmission of illegal immigrants
[Article 13(5)]

Article 13(5) shall be without prejudice to the internal division of powers
between the Community and its Member States for the conclusion of
readmission agreements.

DECLARATION III

Joint Declaration on participation in the Joint Parliamentary Assembly [Article 17(1)]

The Parties reaffirm the role of the Joint Parliamentary Assembly in promoting and defending democratic processes through dialogue between members of parliament, and agree that the participation of representatives who are not members of a parliament, as set out in Article 17, shall be allowed only in exceptional circumstances. Such participation shall be subject to the approval of the Joint Parliamentary Assembly before each session.

DECLARATION IV

Community Declaration on the financing of the ACP Secretariat

The Community shall contribute to the cost of running the ACP Secretariat from intra-ACP cooperation resources.

DECLARATION V

Community Declaration on the financing of the joint institutions

The Community, being aware that expenditure in connection with interpreting at meetings and the translation of documents is expenditure incurred essentially for its own requirements, is prepared to continue past practice and meet this expenditure both for meetings of the institutions of the Agreement which take place in the territory of a Member State and those which take place in the territory of an ACP State.

DECLARATION VI

Community Declaration relating to the Protocol on privileges and immunities

The Protocol on privileges and immunities is a multilateral act from the point of view of international law. However, any specific problems that may arise in the host State regarding the application of this Protocol should be settled by bilateral agreement with that State.

The Community has noted the ACP States' requests that certain provisions of Protocol 2 be modified, notably as regards the status of the staff of the ACP Secretariat, the Centre for the Development of Enterprise (CDE) and the Centre for the Development of Agriculture (CTA).

The Community is willing to seek jointly appropriate solutions in respect of the ACP States' requests with a view to establishing a separate legal instrument as referred to above.

In this context, the host country will, without derogating from the present benefits enjoyed by the ACP Secretariat, the CDE, the CTA and their staff:

- (1) Show understanding as regards the interpretation of the expression "staff of senior rank", such an interpretation to be arrived at by mutual agreement;
- (2) Recognise the powers delegated by the President of the Council of ACP Ministers to the Chairman of the ACP-EC Committee of Ambassadors, in order to simplify implementation of Article 9 of the Protocol;
- (3) Agree to grant certain facilities to the staff of the ACP Secretariat, the CDE and the CTA to facilitate initial installation in the host country;
- (4) Examine in an appropriate way tax-related questions concerning the ACP Secretariat, the CDE and the CTA and their staff.

DECLARATION VII

Declaration by the Member States relating to the Protocol on privileges and immunities

The Member States shall strive, in the context of their respective regulations, to facilitate throughout their respective territories, the movement in pursuit of their official duties of ACP diplomats accredited to the Community, members of the ACP Secretariat referred to in Article 7 of Protocol 2, whose names and positions shall be communicated in accordance with Article 9 of that Protocol, and the ACP executives of the CDE and the CTA.

DECLARATION VIII

Joint Declaration relating to the Protocol on privileges and immunities

Within the context of their respective regulations, the ACP States shall grant Commission delegations privileges and immunities similar to those granted to diplomatic missions so that they are able to carry out the functions incumbent on them under the Agreement in a satisfactory and effective manner.

DECLARATION IX

Joint Declaration on Article 49(2) on trade and environment

Keenly aware of the specific risks attaching to radioactive waste, the Parties will refrain from any practice of discharging such waste which would encroach upon the sovereignty of States or threaten the environment or public health in other countries. They attach the greatest importance to developing international cooperation to protect the environment and public health against such risks. They accordingly affirm their determination to play an active part in the work being done in the IAEA to produce an internationally approved code of good practice.

Council Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community defines the term "radioactive waste" as any material, which contains or is contaminated by radio-nuclides and for which no use is foreseen. The Directive is applicable to shipments of radioactive waste between Member States and into and out of the Community whenever the quantities and concentration exceed the levels laid down in Article 3(2)(a) and (b) of the Council Directive 96/29/Euratom of 13 May 1996. The defined levels ensure basic safety standards for the protection of health of workers and the general public against the dangers arising from ionising radiation.

Shipments of radioactive waste are subject to a system of prior authorisation as defined in Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community. Article 11(1)b of the Directive stipulates that the competent authorities of Member States shall not authorise shipments of radioactive waste to a State party to the Fourth ACP-EEC Convention which is not a member of the Community, taking account, however, of Article 14. The Community ensures that Article 11 of Directive 92/3/Euratom will be revised to cover all Parties of this Agreement which are not members of the Community. Until then, the Community will act, as if the abovementioned parties would already be covered.

The Parties shall make every effort to sign and ratify as quickly as possible the Basle Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, as well as the 1995 amendment to the Convention, as laid down in Decision III/1.

DECLARATION X

ACP Declaration on trade and environment

The ACP States are seriously concerned about environmental problems in general and the transboundary movement of hazardous, nuclear and other radioactive wastes in particular.

In interpreting and implementing the provisions of Article 32(1)(d) of the Agreement, the ACP States have expressed their determination to be guided by the principles and the provisions of the OAU Resolution on the Control of Transboundary Movements of Hazardous Wastes and their Disposal in Africa as contained in AHG 182 (XXV).

DECLARATION XI

Joint Declaration on the ACP cultural heritage

1. The Parties express their common will to promote the preservation and enhancement of the cultural heritage of each ACP country, at the international, bilateral and private level and in the context of this Agreement.
2. The Parties acknowledge the need to facilitate the access of ACP historians and researchers to archives with a view to promoting the development of exchange of information on the cultural heritage of ACP States.
3. They acknowledge the usefulness of providing assistance for the appropriate activities conducted especially in the area of training, for the preservation, protection and exhibition of cultural properties, monuments and objects, including the promulgation and implementation of appropriate legislation.
4. They underpin the importance of undertaking common cultural activities, facilitating the mobility of ACP and European artists, as well as the exchanges of cultural objects which are symbolic of their cultures and civilisations with a view to enhancing mutual understanding and solidarity between their respective populations.

DECLARATION XII

Declaration by the ACP States on return or restitution of cultural property

The ACP States urge the Community and its Member States, insofar as they acknowledge the legitimate right of the ACP States to cultural identity, to promote the return or restitution of cultural property taken from ACP States and now to be found in Member States.

DECLARATION XIII

Joint Declaration on copyright

The Parties acknowledge that promotion of copyright protection is an integral part of cultural cooperation, the aim of which is to enhance all forms of human expression. Furthermore, such protection is a prerequisite for nurturing and developing production, dissemination and publishing activities.

Consequently, the two Parties shall, in the context of ACP-EC cultural cooperation, seek to promote and foster respect for copyright and related rights.

In this context, and in accordance with the rules and procedures laid down by the Agreement, the Community may offer financial and technical support for disseminating copyright information, training economic operators in the protection of such rights and drafting national legislation for their better protection.

DECLARATION XIV

Joint Declaration on regional cooperation and the outermost regions (Article 28)

The reference to the outermost regions concerns the Spanish autonomous community of the Canary Islands, the four French overseas departments, namely Guadeloupe, Guyana, Martinique and Réunion, and the Portuguese autonomous regions of the Azores and Madeira.

DECLARATION XV

Joint Declaration on accession

Any accession of a third State to this Agreement shall be made in compliance with the provisions of Article 1 and the objectives of Article 2 laid down by the ACP Group in the Georgetown Agreement as amended in November 1992.

DECLARATION XVI

Joint Declaration on accession of the overseas countries and territories referred to in Part Four of the EC Treaty

The Community and the ACP States are prepared to allow the overseas countries and territories referred to in Part Four of the Treaty which have become independent to accede to this Agreement, if they wish to continue their relations with the Community in this form.

DECLARATION XVII

Joint Declaration on Article 66 (debt relief) of the Agreement

The Parties agree on the following principles:

(a) In the longer-term, the Parties will seek an improvement of the Heavily Indebted Poor Countries initiative and promote a deepening, broadening and speeding up debt relief to ACP Countries;

(b) The Parties will also seek the mobilisation and establishment of support mechanisms for debt reduction in favour of ACP countries who are not yet eligible for the HIPC initiative.

DECLARATION XVIII

EU Declaration on the Financial Protocol

Within the overall amount of EUR 13500 million of the 9th EDF, EUR 12500 million shall be made available immediately upon the entry into force of the Financial Protocol. The remaining EUR 1000 million shall be released on the basis of the performance review referred to in paragraph 7 of the Financial Protocol that shall be undertaken in 2004.

In evaluating the need for new resources, full account shall be taken of this performance review as well as of a date beyond which the funds of the 9th EDF will not be committed.

DECLARATION XIX

Declaration by the Council and the Commission on the Programming Process

The Community and its Member States reaffirm their attachment to the agreement on a reform of the programming process for implementation of assistance financed from the 9th EDF.

In this context, the Community and its Member States regard a properly implemented review mechanism as the most important tool for successful programming. The review process that has been agreed for governing the implementation of the 9th EDF will ensure continuity in the programming process while allowing for regular adjustments of the Country Support Strategy to reflect developments in needs and performance of the ACP State concerned.

In order to reap the full benefits of the reform and ensure the efficiency of the programming process, the Community and its Member States reaffirm the political commitment to the following principles:

The reviews must as far as possible be carried out in the ACP State concerned. Localising the reviews shall not imply that the Member States or the Commission Headquarters shall be prevented from following and being involved in the programming process as appropriate.

The time frames that have been set for completion of the reviews shall be respected.

The reviews must not be an isolated event in the programming process. The reviews shall be regarded as management tools, which synthesise the results of the regular (monthly) dialogue between the National Authorising Officer and the Commission's Head of Delegation.

The reviews must not increase the administrative burden of either of the Parties concerned. The procedures and reporting requirements surrounding the programming process must therefore be managed in a disciplined manner. To this end, the respective roles of the Member States and the Commission in the decision making process will be reviewed and adapted.

DECLARATION XX

Joint Declaration on the Impact of Export Revenue Fluctuations on Vulnerable Small, Island and Landlocked ACP States

The Parties note the concern of ACP States that the modalities of the mechanism for additional support to countries suffering from fluctuation of export revenues may not provide sufficient support to vulnerable small, island and landlocked States subject to volatile export revenues.

From the second year of operation of the mechanism, and on request of one or more ACP States who have met with difficulties, the Parties agree to re-examine the modalities of the mechanism on the basis of a proposal from the Commission, with a view, where necessary, to remedy the effects of such fluctuations.

DECLARATION XXI

Community Declaration on Article 3 of Annex IV

The notification of the indicative amount referred to in Article 3 of Annex IV, will not apply to the ACP States with whom the Community has suspended its cooperation.

DECLARATION XXII

Joint declaration concerning agricultural products referred to in article 1(2)(a) of annex V

The Parties have taken note that the Community intends to take the measures mentioned in the Annex, and which are laid down at the date of signing of the Agreement, with a view to granting ACP States the preferential treatment provided for in Article 1(2)(a), for certain agricultural and processed products.

They have taken note that the Community declares that it will take all the measures required to ensure that the corresponding agricultural regulations are adopted in good time and that, wherever possible, they come into force at the same time as the interim arrangements which will be introduced after the signing of the successor Agreement to the Fourth ACP-EC Convention signed in Lomé on 15 December 1989.

Preferential treatment applicable to agricultural products and foodstuffs originating in the ACP States

Table not reproduced here

DECLARATION XXIII

Joint Declaration on market access in the ACP-EC Partnership

The Parties accept the fact that both sides expect to take part in the negotiations and implementation of agreements leading to further multilateral and bilateral trade liberalisation.

The Parties note the Community's commitment to provide least developed countries with free market access for essentially all products by 2005.

At the same time they recognise, with respect to ACP preferential access to the Community market, that this wider process of liberalisation could lead to a deterioration in the relative competitive position of the ACP States which would threaten their development efforts, which the Community is concerned to support.

The Parties therefore agree to examine all necessary measures in order to maintain the competitive position of the ACP States on the Community market during the preparatory period. This examination may include, *inter alia*, calendar requirements, rules of origin, sanitary and phytosanitary measures and implementation of specific measures addressing supply side constraints in the ACP countries. The objective will be to offer ACP countries possibilities to exploit their existing and potential comparative advantage on the Community market. Bearing in mind their commitment to cooperation in the WTO, the Parties agree that this examination will also take into account any extension within the WTO of the trade advantages which may be offered by member countries to developing countries. To this end, the Joint Ministerial Trade Committee should make recommendations on the basis of an initial review to be prepared by the Commission and the ACP Secretariat. The EC Council will examine these recommendations on the basis of a proposal from the Commission, with a view to preserving the benefits of the ACP-EC trade arrangement.

The Council of the European Union, for its part, underlines its obligation to take into account the effect of any agreement or other measures to be taken by the EC on ACP-EC trade. It requests the Commission to carry out the necessary impact assessments on a systematic basis.

The measures will relate to the preparatory period and will take due account of the Community's common agricultural policy.

The Joint Ministerial Trade Committee shall monitor the implementation of this Declaration and make appropriate reports to the Council of Ministers.

DECLARATION XXIV

Joint Declaration on rice

1. The Parties recognise the importance of rice for the economic development of a number of ACP countries in terms of employment, foreign exchange and social and political stability.
2. They further recognise the importance of the Community market for rice. The Community reaffirms its commitment to enhance the competitiveness and efficiency of the ACP rice sector in order to maintain a viable and sustainable industry and thereby contribute to the smooth integration of ACP countries into the world economy.
3. The Community is prepared to provide sufficient funds to finance during the preparatory period, in consultation with the ACP sector concerned, an integrated sector-specific programme for the development of ACP exporters of rice which could in particular include the following measures:
 - improvement of conditions of production and enhancement of quality through action in the areas of research, harvesting and handling;
 - transport and storage;
 - enhancing the competitiveness of existing exporters of rice;
 - assisting ACP rice producers to meet environmental and waste management standards and other norms in the international markets, including the Community;
 - marketing and trade promotion;
 - programmes designed to develop value added by-products.

This package of measures will be financed in ACP rice exporting nations on a national basis, by agreement of both Parties, through specific sectoral programmes in accordance with programming rules and methods and in the short term through unallocated EDF resources after a decision of the Council of Ministers.

4. The Parties reiterate their commitment to cooperate closely in order to ensure that the ACP States can benefit fully from the Community trade preferences for rice. They agree on the importance of effective and transparent implementation of all rice exports to the Community of ACP origin.

5. The Community will examine after the entry into force of the agreement the position of the ACP rice sector in the light of future changes occurring on the Community's rice market. To this end, the Parties agree to create with the ACP and representatives of the sector concerned, a joint working party, which shall meet annually. The Community further undertakes to consult the ACP States on any bilateral or multilateral decisions which may have an impact on the competitive position of the ACP rice industry in the Community market.

DECLARATION XXV

Joint Declaration on rum

The Parties recognise the importance of the rum sector for the economic and social development of several ACP countries and regions and its major contribution in providing employment, export earnings and Government revenues. They acknowledge that rum is a value added agro-industrial ACP product capable, if appropriate efforts are undertaken, of competing in a global economy. They therefore acknowledge the need to take all measures that might be necessary to overcome the competitive disadvantage, which ACP producers are presently facing. In this context they also note the undertaking contained in the Council and Commission Declaration of 24 March 1997 to fully take into account in any future negotiations and arrangements related to the rum sector, the impact of the EC-US agreement to eliminate the duty on certain spirituous beverages of the same date. They also recognise the urgent need for ACP producers to become less dependent on the commodity rum market.

The Parties therefore agree on the need for the rapid development of the ACP rum industry so as to allow exporters of ACP rum to compete on the Community and the international spirits markets. To this end, they agree to implement the following measures:

(1) Rum, arak and tafia originating in the ACP countries or regions falling under HS Code 22 08 40 shall be imported under this Agreement and any successor agreement to this Agreement, duty free and without quantitative limitations.

(2) The Community undertakes to ensure fair competition in the Community market and that ACP rum is not disadvantaged or discriminated against in the EU market, in relation to third country rum producers.

(3) The Community will, when considering any request for derogation to the provisions of Article 1.4(1) and (2) of Council Regulation (EC) No 1576/1989 of 29 March 1989 consult with and take account of the particular interests of ACP countries.

(4) The Community is prepared to provide sufficient funds to finance during the preparatory period, in consultation with the ACP sector concerned, an integrated sector-specific programme for the development of ACP exporters of rum, which could in particular include the following measures:

- enhancing the competitiveness of existing exporters of rum;

- assist in creation of rum marques or brands by ACP region or country;
- enabling marketing campaigns to be designed and implemented;
- assist ACP rum producers to meet environmental and waste management standards and other norms in the international markets including the Community market;
- assist the ACP rum industry to move out of bulk commodity production into higher value branded rum products.

This package of measures will be financed on a national and regional basis, by agreement of both parties, through specific sectoral programmes in accordance with programming rules and methods and, in the short term, through unallocated EDF resources after a decision of the Council of Ministers.

(5) The Community commits itself to examine the impact on the ACP industry of the indexation of the price point incorporated in the Memorandum of Understanding on rum in the agreement on white spirits of March 1997 at which duties on non-ACP rum are applied. In this light it will take, where necessary, appropriate measures.

(6) The Community undertakes to conduct appropriate consultations with the ACP through a joint working party, which shall meet regularly, on specific issues arising from these undertakings. The Community further undertakes to consult the ACP States on any bilateral or multilateral decisions, including tariff reductions and the enlargement of the Community, which may impact on the competitive position of the ACP rum industry in the Community market.

DECLARATION XXVI

Joint Declaration on beef and veal

1. The Community undertakes to ensure that the ACP States, beneficiaries of the Protocol on beef and veal, derive full benefits therefrom. To this end, it commits itself to give effect to the provisions of this protocol by enacting in a timely fashion appropriate rules and procedures.
2. The Community further undertakes to implement the protocol so that ACP States can market their beef and veal throughout the year without undue restrictions. In addition, the EC will assist the ACP beef and veal exporters to improve their competitiveness through, *inter alia*, addressing supply-side constraints, in accordance with the development strategies set out in this Agreement and within the context of National and Regional Indicative Programmes.
3. The Community will examine the requests of ACP Least-Developed-Countries to export their beef and veal under preferential conditions in the context of the actions it intends to take under the WTO's Integrated Framework for Least-Developed-Countries.

DECLARATION XXVII

Joint Declaration on the arrangements governing access to the markets of the French overseas departments for products originating in the ACP States referred to in Article 1(2) of Annex V

The Parties reaffirm that the provisions of Annex V apply to the relations between the French overseas departments and the ACP States.

The Community shall have the right during the life of the Agreement to amend, in the light of the economic development requirements of the French overseas departments, the arrangements governing access to the latter's markets for products originating in the ACP States referred to in Article 1(2) of Annex V.

When examining the possible application of this right, the Community will take into consideration the direct trade between the ACP States and the French overseas departments. Information and consultation procedures shall apply between the parties concerned in accordance with Article 12 of Annex V.

DECLARATION XXVIII

Joint Declaration on cooperation between ACP States and the neighbouring overseas countries and territories and French overseas departments

The Parties shall encourage greater regional cooperation in the Caribbean, the Pacific and the Indian Ocean involving ACP States and the neighbouring overseas countries and territories and French overseas departments.

The Parties call upon interested Parties to consult each other on the procedure for promoting such cooperation and, in this context, to take measures, in line with their respective policies and their specific situation in the region, which will permit initiatives in the economic field, including the development of trade, as well as in the social and cultural fields.

Where there are trade agreements involving French overseas departments, such agreements may provide for specific measures in favour of products from those departments.

Issues relating to cooperation in these different areas shall be brought to the attention of the Council of Ministers, so that it can be duly informed of the progress achieved.

DECLARATION XXIX

Joint Declaration on products covered by the common agricultural policy

The Parties recognise that products covered by the common agricultural policy follow specific rules and regulations, in particular with regard to safeguard measures. The provisions of the Agreement concerning the safeguard clause may be applied to these products only insofar as they are consistent with the specific nature of these rules and regulations.

DECLARATION XXX

ACP Declaration on Article 1 of Annex V

Conscious of the imbalance and the discriminatory effect resulting from the most-favoured-nation treatment applicable to products originating in the ACP States on the Community market under Article 1(2)(a) of Annex V, the ACP States reaffirm their understanding that the consultations provided for under this Article shall ensure that the ACP States' main exportable products benefit from treatment at least as favourable as that granted by the Community to countries enjoying the most-favoured-third-state treatment.

In addition similar consultations shall take place in cases where:

- (a) one or more ACP States show potentialities for one or more specific products for which preferential third states enjoy more favourable treatment;
- (b) one or more ACP States envisage exporting to the Community one or more specific products for which preferential third states enjoy more favourable treatment.

DECLARATION XXXI

Community Declaration on Article 5(2)(a) of Annex V

While agreeing to the reproduction of the text of Article 9(2)(a) of the Second ACP-EEC Convention in Article 5(2)(a) of Annex V, the Community reaffirms the interpretation of that text, namely that the ACP States shall grant to the Community treatment no less favourable than that which they grant to developed States under trade agreements where those States do not grant the ACP States greater preferences than those granted by the Community.

DECLARATION XXXII

Joint Declaration on non-discrimination

The Parties agree that notwithstanding specific provisions of Annex V to this Agreement, the Community shall not discriminate between ACP States in the trade regime provided for in the framework of that Annex, taking account however of the provisions of this Agreement and of specific autonomous initiatives in the multilateral context, such as that in favour of the least developed countries pursued by the Community.

DECLARATION XXXIII

Community Declaration on Article 8(3) of Annex V

Were the Community to adopt the strictly necessary measures referred to in this Article, it would endeavour to seek those which, by reason of their geographical scope or the types of products concerned, would least disturb the exports of the ACP States.

DECLARATION XXXIV

Joint Declaration on Article 12 of Annex V

The Parties agree that the consultations referred to in Article 12 of Annex V should take place in accordance with the following procedures:

- (i) the two Parties will provide all necessary and relevant information on the specific issue(s) in good time to enable an early initiation of the discussions, and in any event not later than one month after the request for consultation is received,
- (ii) the three-month consultation period will start from the date of receipt of this information. Within these three months, technical examination of such information shall be completed within one month, and joint consultations at the level of the Committee of Ambassadors shall be completed within two further months,
- (iii) if the conclusion arrived at is not mutually acceptable, the matter shall be referred to the Council of Ministers,
- (iv) in the event that no mutually acceptable solution is adopted by the Council of Ministers, the Council will decide what other steps should be taken in order to resolve the differences identified in the consultations.

DECLARATION XXXV

Joint Declaration relating to Protocol 1 of Annex V

If special tariff treatment were to be applied by the ACP States to imports of products originating in the Community, including Ceuta and Melilla, the provisions of Protocol 1 would apply mutatis mutandis. In all other cases where the treatment applied to imports by the ACP States necessitates the provision of proof of origin, those States shall accept certificates of origin drawn up in accordance with the relevant international agreements.

DECLARATION XXXVI

Joint Declaration relating to Protocol 1 of Annex V

1. For the purposes of applying Article 12(2)(c) of the Protocol, the shipping certificate, issued in the first port of embarkation for the Community, shall be equivalent to the through bill of lading for products covered by movement certificates issued in landlocked ACP States.
2. Products exported from landlocked ACP States which are warehoused elsewhere than in the ACP States or the countries and territories referred to in Annex III to the Protocol may be the subject of movement certificates issued under the circumstances referred to in Article 16 thereof.
3. For the purposes of Article 15(4) of the Protocol, certificates EUR.1 issued by a competent authority and endorsed by the customs authorities will be accepted.
4. In order to help ACP enterprises in their efforts to find new sources of supply with a view to benefiting to the maximum extent from the provisions of the Protocol as regards cumulation of origin, steps will be taken to ensure that the Centre for the Development of Enterprise provides assistance to ACP operators in the establishment of appropriate contacts with suppliers in the ACP States, the Community and the countries and territories, as well as to promote relations in the field of industrial cooperation among the operators concerned.

DECLARATION XXXVII

Joint Declaration relating to Protocol 1 of Annex V on the origin of fishery products

The Community acknowledges the right of the coastal ACP States to the development and rational exploitation of the fishery resources in all waters within their jurisdiction.

The Parties agree that the existing rules of origin have to be examined in order to determine what possible changes may have to be made in the light of the first paragraph.

Conscious of their respective concerns and interests, the ACP States and the Community agree to continue examining the problem posed by the entry, onto Community markets, of fishery products from catches made in zones within the national jurisdiction of the ACP States, with a view to arriving at a solution satisfactory to both sides. This examination will take place in the Customs Cooperation Committee, assisted, when necessary, by the appropriate experts, after entry into force of the Agreement. The results of this examination shall be submitted, within the first year of application of the Agreement, to the Committee of Ambassadors and, at the latest during the second year, to the Council of Ministers for their consideration with a view to arriving at a solution satisfactory to both sides.

For the time being, as regards the processing of fishery products in the ACP States, the Community declares that it is willing to examine with an open mind requests for derogations from the rules of origin for processed products in this production sector based on the existence of compulsory landing requirements provided for in fishery agreements with third countries. The examination the Community is to make will take into account in particular the fact that the third countries concerned should ensure the normal market for such productions, following processing, insofar as the latter are not intended for national or regional consumption.

DECLARATION XXXVIII

Community Declaration relating to Protocol 1 of Annex V on the extent of territorial waters

The Community, recalling that the relevant acknowledged principles of international law restrict the maximum extent of territorial waters to 12 nautical miles, declares that it will take account of this limit in applying the provisions of the Protocol wherever the latter refers to this concept.

DECLARATION XXXIX

ACP Declaration relating to Protocol 1 of Annex V on the origin of fishery products

The ACP States reaffirm the point of view they expressed throughout the negotiations on the rules of origin in respect of fishery products and consequently maintain that following the exercise of their sovereign rights over fishery resources in the waters within their national jurisdiction, including the exclusive economic zone, as defined in the United Nations Convention on the Law of the Sea, all catches effected in those waters and obligatorily landed in ports of the ACP States for processing should enjoy originating status.

DECLARATION XL

Joint Declaration on the application of the value tolerance rule in the tuna sector

The European Community undertakes to implement adequate provisions to give full effect to the application in the tuna sector of the value tolerance rule, provided for in Article 4(2) of Protocol 1 of Annex V. To this end, the Community will submit by the date of signature of this Agreement the conditions under which the 15 % non-originating tuna may be used pursuant to this Article.

The Community proposal will specify how the method of calculation shall be based on the EUR. 1 movement certificate.

The two Parties agree, if difficulties arise in achieving the flexibility aimed at by the application of this method, to undertake a revision of the method after two years of its application.

DECLARATION XLI

Joint Declaration on Article 6(11) of Protocol 1 of Annex V

The Community agrees to consider, in the light of Article 40 of Protocol 1, and on a case-by-case basis, any substantiated requests presented after the signing of the Agreement regarding textile products excluded from cumulation with neighbouring developing countries (Article 6(11) of Protocol 1).

DECLARATION XLII

Joint Declaration on rules of origin: cumulation with South Africa

The ACP-EC Customs Cooperation Committee is prepared to examine as soon as possible any requests for cumulation of working and processing under Article 6(10) of Protocol 1 of Annex V coming from regional bodies representing a high level of regional economic integration.

DECLARATION XLIII

Joint Declaration on Annex 2 to Protocol 1 of Annex V

If in the application of the rules contained in Annex II, ACP States' exports are adversely affected, the Community will examine and, where necessary, adopt appropriate corrective measures to remedy the situation with a view to re-establishing the ex-ante situation (Decision 2/97 of the Council of Ministers).

The Community has noted the requests made by ACP States on rules of origin in the context of the negotiations. The Community agrees to consider any substantiated requests for improvement of the rules of origin contained in Annex II in the light of Article 40 of Protocol 1 and on a case-by-case basis.