

SUMMARY OF THE CONTENT OF
THE DRAFT OF THE NEW ACP-EEC CONVENTION

1. Article 91 of the ACP-EEC Convention of Lomé signed on 28 February 1975 stipulates that eighteen months before that Convention expires (1 March 1980) the Contracting Parties will enter into negotiations in order to examine what provisions are subsequently to govern relations between the Community and the Member States and the ACP States.

The negotiations for a new Convention were opened on 24 July 1978 through a Conference held at ministerial level; they were concluded, likewise at ministerial level, on 27 June 1979.

Between these two dates the negotiations were conducted at ministerial level (Conference on 21 December 1978, 22/24 March and 24/26 May 1979) and at the level of representatives of the Community and of the ACP States, namely the ACP Ambassadors and the Commission, with observers from the Member States in attendance.

2. The negotiations proved to be particularly arduous, notably because of the nature of the problems discussed and the initial divergence of the parties' positions. The Community began the negotiations with the idea of consolidating what had been achieved under the Lomé Convention, but agreed, in the course of the discussions, to make whatever improvements - in many cases considerable - were possible.

Final agreement was reached, on the Community side, by virtue of considerable efforts, the Community and the Member States having, in the final stage of the negotiations, made major concessions without which the negotiations would doubtless not have yielded the results obtained, which the Community deems satisfactory.

Following the Ministerial Conference from 25 to 27 June 1979, however, the ACP States reserved the right to examine in greater detail the outcome of the negotiations, stating that they would announce their final position at a later date, for which purpose a meeting of the Council of ACP Ministers had been arranged. At the end of that meeting, which was held from 12 to 14 September 1979, there were only very few points on which the ACP States still wanted clarification.

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The above-mentioned ACP States' position does not, however, prejudge the principal features of the negotiated text as a whole. Although the main characteristics of that text are based on the Lomé Convention, it nevertheless contains significant innovations vis-à-vis the latter and a number of improvements both to the substance of certain provisions and the functioning of the Convention, in the light of experience obtained in the past.

3. Trade arrangements

- (a) Free access to the Community market is still guaranteed for the bulk of ACP exports - more than 99.5%. For the remainder - chiefly products covered by the common agricultural policy - treatment more favourable than the arrangements which the Community grants to third countries covered by the most-favoured-nation clause continues to apply and certain products will benefit from new concessions.

Thus, the import arrangements for beef and veal now incorporate an annual quota of 30,000 tonnes instead of the 27,532 tonnes previously provided for on the basis of a unilateral concession by the Community.

Furthermore, the ACP States will enjoy tariff quotas for tomatoes, onions, carrots and asparagus.

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As stipulated in the present Lomé Convention, the special provisions concerning sugar extend beyond the period of validity of that Convention and these provisions are repeated in appropriate form in a Protocol annexed to the new Convention. The Protocol on bananas has been reorganized in the light of the exporting ACP States' desire to increase their competitiveness. As regards rum, the rate of increase of exports to the United Kingdom has been maintained at 40%, but increased to 18% for exports to the other Community markets (as against 13% under Lomé), within the framework of the same tariff quota. Provision is made for consultations and trade promotion measures.

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(b) The following aspects warrant particular mention as regards other sectors (in the field of trade) covered up to the very end of the negotiations.

The possibilities of derogations from the rules of origin have been made more flexible, notably in favour of the least-developed ACP States, while avoiding the risks of trade deflection; special provisions are laid down for fishery products caught in the waters of the ACP States.

In the realm of trade promotion, the range of the various measures has been appreciably enlarged and it has also been specified that a sum of 40 MEUA will be allocated to this objective, within the framework of regional co-operation.

Provisions have been maintained to enable the Community to apply safeguard measures. However, the Community has stated its readiness to consult the ACP States, at the same time indicating that it is prepared not to use such measures for the purposes of protectionism or to impede structural development.

As under the Lomé Convention, the new provisions do not lay down, in respect of ACP imports from the Community, any obligation of reciprocity.

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It has, however, been agreed that the ACP States will not discriminate between the Community Member States and will apply to them treatment not less favourable than the most-favoured-nation treatment, save in the event of agreements between ACP States and between ACP States and other developing countries.

A balance has been found between the legitimate interests of the ACP States and those of the French Overseas Departments, as regards both the safeguard mechanisms and agricultural trade, while the sugar, rum and banana protocols have for the most part been repeated.

4. Agricultural co-operation

The incorporation of a new Chapter on this subject reflects the special importance of food problems, and therefore of rural development, in many ACP States. Such an inclusion can only confirm the importance which the Community has always attached to this issue as, under the present Convention, 40% of EDF funds have been allocated to rural development.

In addition to the specific measures laid down in this new Chapter, it also provides, at ACP-EEC institutional level, for the setting up of a Technical Centre for Agricultural and Rural Co-operation, the principal task of which is to ensure the improved dissemination of scientific and technical information. Furthermore, it has been agreed that a Subcommittee on Agricultural and Rural Co-operation will be set up to assist the ACP-EEC Committee of Ambassadors.

Stabilization of export earnings

This Chapter does not at first sight contain any major innovations. The improvements to the present STABEX system are nevertheless substantial, relating in particular to the following spheres:

- (a) Widening of the scope to the following products: rubber, cashew nuts, pepper, shrimps and squid, cottonseed, certain leguminous vegetables and oilcake.

The Community has also undertaken to examine, in the context of administering the new Convention, the possibility of including tobacco, sisal products and citrus fruits; in view of the sensitivity of these products, however, there will have to be detailed studies in the matter before any such inclusion is effected.

Lastly, iron ore, which is the only mineral covered under the present system, will continue, for the first five financial years of the new Convention, to benefit from this system for mines currently in production. Thereafter it will be covered entirely by the new Chapter on mineral products, as will be the case for mines put into operation in the future.

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- (b) The dependence and fluctuation thresholds have been substantially decreased at the ACP States' request: from 7.5 to 6.5% and from 2.5 to 2% respectively for the least-developed, landlocked or island ACP States.
- (c) The use to which transfers are put will have to comply with the objectives set out in the Convention; furthermore, in the course of the appraisal of requests for transfers the ACP States will in future indicate the use to which they intend to put the transfers received.
- (d) ACP States which receive transfers and which are bound to contribute to the replenishment of resources (i.e. all ACP States save the least developed) will in future be able to phase their repayments over a 7-year period and to enjoy a 2-year grace period.
- (e) The amount earmarked for the new STABEX system has been increased from 375 MEUA to 550 MEUA under the new Convention.
- (f) Other changes to the system intended either to facilitate its administration or to make it more flexible in operation, concern the use of statistics, calculations relating to the transfer bases and the destination of exports.

Lastly, it is provided that, in the event of a world system for the stabilization of export earnings being established during the period of application of the new Convention, the Contracting Parties will hold consultations.

6. Minerals

The new Chapter on mineral products, which is intended to assist countries which produce and export certain of these products to cope with specific difficulties peculiar to those products, is one of the innovations in the new Convention.

This mechanism, for which an appropriation of 280 MEUA is earmarked - divided into equal annual instalments - will cover the following mineral products: copper and cobalt, phosphates, manganese, bauxite and alumina and tin and iron ore, including pellets (provided that new production is involved; products from sites already in production will continue to be covered by the STABEX system for a period of five financial years, as stated above).

This new Chapter is divided into two parts, the first being devoted to the financing of projects and programmes and the second to the development of the mining and energy potential of the ACP States.

(a) Project and programme aid

ACP States which, during a four-year reference period, have, as a general rule, derived at least 15% of their export earnings from one of the above-mentioned products, will be eligible for cover under this new system. This dependence threshold will be 10% for the least-developed, landlocked and island ACP States.

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Community aid is intended to help the ACP States in their efforts to remedy the harmful effects on their economies of serious disruptions affecting their mining sectors.

The amount of the aforementioned aid, which will take the form of the financing of projects or programmes, will be determined by the Commission in the light of the funds available, the nature of the projects or programmes proposed and the possibilities for co-financing. However, a single ACP State may not be eligible for more than 50% of the funds available under an annual instalment.

Aid for the projects and programmes covered by the provisions in question are to be reimbursed on the same terms and conditions as special loans.

The procedures applicable to requests for aid in the mining area are generally those laid down in the Chapter on financial and technical co-operation.

Furthermore, certain implementing procedures are similar to the STABEX mechanism. This is the case, for example, for the carry-over of the balance remaining at the end of any year of application, the reduction of the annual instalments if resources are insufficient and the allocation of any balances remaining on expiry of the Convention.

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However, special provisions are laid down for granting advances to permit the implementation of precautionary measures to halt deterioration of production plant during the appraisal or implementation of projects and programmes.

These advances will be granted as a means of prefinancing the said projects and programmes. They will take the form of supplies, the provision of services, or cash payments.

(b) Development of the mining and energy potential of the ACP States

In the field of exploration and prospecting it is laid down that the Community will provide technical assistance and will give assistance in the form of risk capital.

Furthermore, the EIB may, in accordance with its Statute, commit its own resources on a case-by-case basis beyond the amount fixed for financial and technical co-operation in mining investment projects and energy investment projects recognized by the ACP States concerned and by the Community as being of mutual interest.

Also, in order to encourage European investments in these fields, a joint declaration provides for the possibility for the Community and the Member States, on the one hand and the ACP States on the other to conclude agreements relating to individual projects where the Community and possibly European undertakings contribute towards their financing.

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7. Investments

In the field of investments, the Lomé Convention (Article 38) provided for as clear an indication as possible from the ACP States of their priority areas for industrial co-operation and for such steps as were necessary to promote effective co-operation, in compliance with the development programmes and priorities of the host ACP State, and for the Community and its Member States to set up measures to attract and encourage firms and nationals.

The new texts add two provisions to strengthen and appreciably intensify investments in the ACP States, viz.:

- the Contracting Parties recognize the importance of investment by each other in the promotion of their development co-operation and acknowledge in this respect the need to take such steps as would promote such investment in areas considered mutually desirable;
- where an ACP State has entered, or enters, into an intergovernmental agreement relating to the treatment of investments with any Member State, it will accord the same treatment to investments from any other Member State.

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8. Industrial co-operation

(a) Objectives

The objectives in the field of industrial co-operation have been more clearly defined and extended. The following new objectives are worthy of note:

- the promotion of new relations of dynamic complementarity in the industrial field between the Community and the ACP States,
- the establishment of integral industries capable of creating links between various industrial sectors in the ACP States,
- the effort to achieve complementarity between industry and other sectors, in particular agriculture,
- the overall industrial development of the ACP States, in particular their production of manufactured goods, by taking due account of their specific needs in the formulation of policies designed to adjust the industrial structures of the Community to changes occurring at the world level,
- encouragement of the establishment of joint ACP-EEC industrial ventures,
- the strengthening of the existing financial institutions and the bringing about of conditions favourable to capital borrowing.

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(b) Means of action

Greater emphasis is laid on industrial training schemes, the establishment and development of small and medium-sized industries (inter alia through joint ventures) and the domestic processing of ACP raw materials. Technological co-operation will comprise a very wide range of new or more apposite means (covering scientific and technical infrastructures and research and development programmes, the identification, evaluation and acquisition of technology and co-operation between ACP States and other developing countries).

Community financing of industrial undertakings will take the form, as a matter of priority, of loans from the EIB and risk capital, programmes, projects or schemes in the field of industrial co-operation which involve Community financing being implemented, as in the past, in accordance with the provisions on financial and technical co-operation.

(c) Co-operation in the field of energy

Co-operation in the energy sector will henceforth be covered by specific provisions. It is laid down that the Community will assist inter alia in the preparation of inventories on resources and demand, the implementation of alternative energy strategies, the prospection and development of energy sources, strengthening of the management and control of the ACP States of their energy resources, rural energy, appropriate technology and training, the production of equipment, impact on the environment and the conservation of (new and conventional) energy resources.

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Particularly in relation to research, exploration and development projects of mutual interest, financial and technical co-operation resources could even be supplemented by other Community resources or public or private capital resources.

(d) Industrial information and promotion

While by and large reproducing the provisions of Article 33 of the Lomé Convention, the negotiators have also agreed that access to and utilization of documentary and other data sources available in the Community will be facilitated. Furthermore, all of this Chapter of the Convention reaffirms the emphasis placed on the usefulness of contacts which involve all parties concerned in industrial development.

(e) Industrial co-operation bodies

The Committee on Industrial Co-operation set up under the Lomé Convention (Article 35) will, under the supervision of the ACP-EEC Committee of Ambassadors, continue its work, notably to guide, supervise and control the Centre for Industrial Development, but this work will henceforth be extended to include:

- in particular a review of the progress in the implementation of the overall programme of industrial co-operation,
- an examination of policy issues in the field of industrial co-operation submitted by the Community or by the ACP States and the organization of a review of trends in industrial policies of the ACP States and the EEC as well as developments in the world industrial situation.

Provision will also be made for strengthening the level of participation in the Community.

The role of the Centre for Industrial Development is now clearly defined: the operational provisions implemented in the context of the guidelines agreed upon in the Committee on Industrial Co-operation for the application of the Lomé Convention have accordingly been transposed to the future Convention (strengthening of industrial undertakings in the ACP States, promotion of viable industrial projects in close co-operation with the ACP States, the Member States, the Commission and the EIB, the placing of special emphasis on joint ventures and subcontracting, small and medium-sized industries and regional projects).

The functions of the Centre will henceforth encompass the identification and evaluation of industrial technologies and, where appropriate, the identification and provision of information on possible sources of finance.

The new Article on the structure and financing of the CID embodies in the texts the practical provisions adopted in applying the Lomé Convention. It also stipulates that the Community will contribute to the financing of the Centre's budget by means of a separate allocation which could reach 25 MEUA taken from the resources earmarked for regional co-operation projects.

A new provision lays down that, within the framework of the implementation of the provisions of the Title on industrial co-operation, the Community will meet the special needs and problems of the least-developed, landlocked and island ACP States in a large number of specific areas.

(f) Declaration on complementary financing of industrial co-operation

During the negotiations the ACP States and the Member States recognized the need to tap additional financial resources that would make available substantial capital resources for industrial development. The Community declared its intention of studying in depth in conjunction with ACP States the ways and means of tapping such resources. As detailed study with the assistance of experts was necessary, the Community and the ACP States agreed to carry out a detailed joint analysis of the problem and the means of obtaining additional resources, to be completed in the shortest possible time, which should not exceed a period of nine months after the signing of the Convention. The report of the study so made will be submitted immediately to the Council of Ministers through the Committee of Ambassadors for consideration and appropriate action.

All the provisions on industrial co-operation in the future Convention should enable that Convention to intensify the co-operation established under the Lomé Convention and to lend a new dimension to that co-operation with a view to meeting fully the concern reaffirmed by the ACP States that the effective industrialization of their States be promoted.

9. Financial and technical co-operation

Although the principal features of financial and technical co-operation already laid down in the Lomé Convention are reproduced in the new Convention, the latter contains some noteworthy innovations. The essence of these provisions is nevertheless set out below.

Firstly, the new Convention defines, in a series of preliminary Articles, the objectives and principles of financial and technical co-operation, its substance and the question of eligibility.

The financial resources made available to the ACP States have been appreciably increased. These funds may, for the purposes of applying the new Convention, reach 5,607 MEUA. It can be specified that 4,542 MEUA will be made available to the 5th EDF. A major portion will be granted in the form of grants (2,928 MEUA). Special loans will total 504 MEUA, while risk capital will reach 280 MEUA. Furthermore, as the Community has agreed that the cost of the Commission delegations in the ACP States should be covered by the Community, a sum of 180 MEUA has been incorporated in the above total. In addition, the EIB will grant loans with interest rate subsidies up to 685 MEUA from its own resources. Lastly, it may commit its own resources on a case-by-case basis for mining and energy investment projects of mutual interest: the intention of the Contracting Parties is that such additional financing should reach 200 MEUA.

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Furthermore, the EIB may grant loans from its own resources up to 685 MEUA. It should be noted that 550 MEUA have been earmarked for the export earnings stabilization system and 280 MEUA for the special financing facility set up in favour of certain mineral products.

The provisions on methods of financing, notably the division of responsibilities between the Commission and the EIB for the financing of projects, have been more or less repeated.

The new Convention contains important innovations as regards the sharing of responsibilities between the ACP States and the Community for aid administration. Starting from the principle of equality between the partners, the new Convention provides for wider ACP participation in the administration of aid than was the case under Lomé I.

Thus, with a view to ensuring the harmonious functioning of financial and technical co-operation and in particular to eliminating any bottlenecks or difficulties of implementation, the Convention provides for the setting up of an ACP-EEC Committee to study suitable measures to improve the implementation of financial and technical co-operation. This Committee, composed, on a basis of parity, of representatives of the ACP States and of the Community, will meet regularly, and once a year at ministerial level. The Committee will annually have to submit a report to the ACP-EEC Council of Ministers on the outcome of its proceedings. It will be able, if necessary, to set up working parties of experts.

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The role of this Committee dovetails with the powers which the ACP-EEC Council of Ministers retains as regards definition of the policy and guidelines for financial and technical co-operation.

In the field of programming financial and technical co-operation the new Convention, while reproducing the principal provisions of the Lomé Convention, will contain an essential innovation in that the indicative programmes - which will be adopted by mutual agreement between the Community and each ACP State - will mainly comprise the ACP State's objectives and priorities for which the Community's financial backing is seen as particularly appropriate and into which the specific projects and programmes will subsequently have to be written.

These indicative programmes will be able, as in the past, to be amended during the period of validity of the Convention. At the same time as the national indicative programmes are drawn up, the representatives of each ACP State and of the Community will hold an exchange of views on priorities and objectives at regional level. Project and programme appraisal will be undertaken in close collaboration between the Community and the ACP States or any other beneficiaries. The Convention will stipulate the aspects which this appraisal should cover and the criteria which may be applied. Throughout the procedure, from programming to the financing decision, there will be close co-operation between the ACP States and the Community.

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The new Convention repeats the provisions for hearing the ACP States at the stage immediately preceding the financing decision, while adding certain procedural details.

Like the present Convention, the new Convention will contain provisions on the evaluation of projects and programmes financed by the Community.

The principle structures relating to implementation have been retained. However, the respective powers of the Chief Authorizing Officer of the EDF and the National Authorizing Officer representing the authorities of the beneficiary ACP State, as well as those of the Commission Delegate resident in each ACP State, have been amended for the sake of greater decentralization and the transfer of powers to the ACP States' national authorities and the Commission Delegate. The tasks of the EDF paying agent have been confirmed.

The new Convention will also reproduce the main features of the Lomé Convention relating to competition. However, the measures to promote the widest possible participation by national firms of the ACP States in the performance of works and supply contracts have been strengthened by granting greater advantages to ACP undertakings. The Convention will stipulate that the general conditions and the arbitration rules must be adopted by the ACP-EEC Council of Ministers at its first meeting.

The new Convention will lay particular emphasis on regional co-operation projects. To this end, the financial resources earmarked for the financing of regional and interregional projects have been appreciably increased to 600 MEUA.

The Convention will define in detail the objectives and scope of regional and interregional co-operation.

The new Convention will renew the possibility of emergency aid for ACP States faced with serious economic and social difficulties of an exceptional nature. The total of the appropriations which may be used for this purpose has been increased to 200 MEUA.

In order to preserve the emergency nature of such aid it will, in future, have to be implemented within six months.

In addition to the provisions on technical co-operation - whether linked with projects or programmes or of a general nature - the Convention will repeat the principal provisions on the financing of technical assistance for small and medium-sized undertakings. It will also provide, in order to meet the development needs of local communities, for participation in the financing of micro-projects. As this last system proved its worth under Lomé I, no overall appropriation has been provided for; however, the ceiling for each programme has been increased from 75,000 to 150,000 EUA and the field of action has been widened (e.g. small-scale rural electrification projects).

The importance placed in the new Convention on co-financing with other sources of aid must also be emphasized.

Provisions have also been laid down on the financing of support costs during start-up periods and running costs intended to ensure that full use is made of capital projects implemented previously.

The provisions relating to payments and capital movements have been repeated in their entirety.

One of the Protocols to the Convention will contain the provisions relating to the taxation and customs arrangements applicable in the ACP States to contracts financed by the Community.

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10. Institutional questions

It should first be mentioned that the period of validity of the Convention has been fixed at 5 years, i.e. expiry on 1 March 1985, this period applying to all Chapters of the Convention.

As regards the Institutions, the system laid down in the Lomé Convention has generally been renewed. Thus, the ACP-EEC Council of Ministers, the ACP-EEC Committee of Ambassadors, the ACP-EEC Consultative Assembly and its Joint Committee will continue their functions relating to the joint administration of the new Convention.

Certain new provisions concern in particular the settlement of disputes and the possibility of associating economic and social sectors to a greater extent with the day-to-day impact of the Convention. It should be noted that the new Convention indicates more clearly the parliamentary nature of the ACP States' representation on the Consultative Assembly and the Joint Committee.

11. Other issues

(a) Least-developed, landlocked and island ACP States

The least-developed countries were already given very preferential treatment under the Lomé Convention. This attitude is confirmed and strengthened in the new Convention, which incorporates a specific Chapter dealing with the special arrangements enjoyed by the least-developed, landlocked and island countries. Special provisions are laid down to that effect as regards not only financial co-operation (determination of the volume and terms of aid - reduction from 1% to 0.75% of the interest rate on special loans), but also Stabex and the rules of origin.

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(b) Establishment, services, payments and capital movements

The provisions of the Lomé Convention have, in the main, been repeated.

(c) Sea fishing

In this connection the Lomé Convention incorporates a declaration in which the Community declares that it is willing to encourage the development of fishery and related activities and the ACP States declare their willingness to negotiate with the Member States non-discriminatory bilateral agreements.

In view of the subsequent developments, notably with regard to the transfer to the Community of the Member States' jurisdiction on sea fishing, the new provisions, which are also contained in a declaration, have been extended. This declaration deals in particular with:

- recognition of the importance of the development of fishery resources in waters within the jurisdiction of coastal ACP States;
- the ACP States' willingness to negotiate with the Community non-discriminatory fishery agreements containing compensation for fishing activities in ACP waters;
- co-operation between the Contracting Parties on a regional basis or through international organizations with a view to ensuring the conservation of fishery resources.

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(d) Sea transport

A joint declaration on sea transport relates in particular to:

- recognition of the importance of the harmonious development of shipping services between the ACP States and the Community;
- the importance of greater participation by the ACP States in bulk cargo shipping;
- the Community's willingness to contribute, through financial and technical co-operation, to the development of the shipping services of the ACP States concerned (for example, as regards improvement of shipping services, the extension of shipping companies of the ACP States, the encouragement of ACP-EEC joint ventures, the provision of technical assistance, etc.).

(e) Workers who are nationals of one of the Contracting Parties and are residing legally in the territory of a Member State or an ACP State

A joint declaration chiefly provides for freedom from any discrimination based on nationality as regards working conditions and pay and social security benefits linked to employment for ACP workers in the Member States and for nationals of Member States who are workers in the ACP States. Bilateral negotiations are provided for, if necessary, with a view to concluding appropriate agreements.
