



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Proclamation

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by the

**PRESIDENT OF THE REPUBLIC OF NAMIBIA**

No. 7

1997

#### ANNOUNCEMENT OF THE SIGNING OF THE FOURTH ACP-EU CONVENTION OF LOMÉ BY THE REPUBLIC OF NAMIBIA

Under Article 32(8) of the Namibian Constitution I hereby announce that the Agreement Amending the Fourth African, Caribbean and Pacific and the European Communities (ACP-EU) Convention of Lomé set out in the Schedule was signed by the Republic of Namibia in Mauritius on 4 November 1995, and ratified by the National Assembly under Article 63(2)(e) of the Constitution on 15 October 1996.

Given under my Hand and the Seal of the Republic of Namibia at Windhoek, this 24th day of June, One Thousand Nine Hundred and Ninety-Seven.

**SAM NUJOMA**

**President**

**BY ORDER OF THE PRESIDENT-IN-CABINET**

# SCHEDULE

## ANNEX I

### MAIN INNOVATIONS IN THE AGREEMENT AMENDING THE LOMÉ IV CONVENTION

1. The review and the consequential agreement for the amendment of the Convention are classified under four main headings: **Commercial, Financial, Institutional and Political** and **Sectoral**.
2. **Commercial Issues**
  - 2.1 **Trade:** The review of trade extended beyond issues of preferential access to broader issues underpinning commercial success and its sustainability. The results of such an approach is manifested in the amendments to Articles 50, 51, 136, 220 as well as in two new articles - 6a and 15a. The amendments in effect place emphases on developing trade with a view to accelerating growth in the ACP States. The means available under the Convention, including trade cooperation and financial and technical cooperation, shall be aimed at developing, diversifying and increasing the ACP States' trade and improving their competitiveness in their domestic as well as international markets. In addition, it is agreed that Community agricultural export subsidies must not jeopardise production and trade flows in ACP regions. Furthermore, the implementation of food aid programmes must be sensitive to the need to avoid any disruption to intra regional trade development.
  - 2.2 **Beef/veal:** Particular attention is given to beef/veal which is the subject of a special protocol (Protocol 7) of the Lomé IV Convention. Due to the late arrival of Namibia as a member of the ACP, a special provision for a preferential access quota for Namibian beef was made. This provision expired at the end of 1995. The Agreement to amend the Convention provides for an extension of that quota for the remaining duration of the Convention. In addition, the 90% rebate of import duties applicable to beef originating in the ACP States will be increased to 92%. Thus, Namibia has access of 13 000 tonne annual quota of boneless beef exports to the EU enjoying a 92% rebate of normal import duties.
  - 2.3 **Forestry:** A new Protocol 10 is included in the amended Lomé Convention on Forestry. It contains a provision that special priority shall be given to action which support sustainable management of forestry resources including the fight against desertification. This provision will be assessed for its possible application to conditions prevailing in Namibia.

### 3. Financial Issues

- 3.1 The volume of resources made available for the second five year period of the Convention is increased by 22 per cent (from ECU 12 billion ECU to ECU 14.6 billion). Expressed in US\$ this represents an increase of some 49 per cent. In the context of programmable resources, which constitutes the bulk of the resources, Namibia's allocation is increased from ECU 50 million for the first 5 years of the Convention to ECU ----- for the second five years.

**Note:** The figure for Namibia's share of the overall ACP financial package has not yet been conveyed to Government by the Community. It is expected to do so within the next couple of weeks at which time the figure will be inserted into the submission at page 1 of Annex 1.

- 3.2 Programming is a key element of combining the development strategy of each ACP country and the Community's cooperation strategy. In the latter context, Article 281 of the Agreement amending the Convention provides that, in the draft indicative programme drawn up by each ACP State, the focal sector or sectors on which support should be concentrated with emphasis on poverty alleviation and sustainable development, and the resources to be deployed for that purpose.
- 3.3 The scope of financing under development finance co-operation as provided for in Article 24 of the Convention is extended to cover budgetary support intended to alleviate directly domestic financial constraints for the ACP States whose currencies are convertible and freely transferable.
- 3.4 **Debt:** In a new Annex (Annex LXXXIV) to the Convention the Community reaffirms its willingness to contribute constructively and actively to the alleviation of the debt burden of ACP states. In this context it agrees to transform into grants all the special loans of the previous Convention which have not yet been committed. These loans amount to some ECU 135 million.
- 3.5 **European Investment Bank:** The principal changes involving the EIB relates to improvements of programming procedures (Article 281), the allocation of venture capital (Article 284.2) and greater flexibility when setting the financial conditions of reimbursable aid (Articles 234, 235, 236). In respect of venture capital, 50 per cent of available resources will be made available to least developed ACP States and the remainder to ACP States which actively endorse and implement measures to support investment in the private sector.

### 4. Sectoral issues

- 4.1 **Industrial Cooperation:** Amendments to Articles 87 to 89 result in a redefinition of the role of the Industrial Cooperation Committee and a reorientation of the objectives of the Centre for the Development of Industry (CDI). The latter is called on to concentrate its efforts on those ACP States which have targeted support for industrial development in their indicative programmes.

- 4.2 **Decentralised Cooperation:** New provisions relating to decentralised cooperation are to be found in Articles 251a to 251e of the Agreement. Agents of decentralised cooperation are listed as: decentralised public authorities; rural and village groups; cooperatives; trade unions; teaching and research institutions; non-governmental development organisations; other associations, groups and agents which are able and wish to contribute to the development of ACP States on their own initiatives provided the agents and/or the operations are non-profit-making.

- 4.2.1 The said Articles *inter alia* contains provisions for:

- ACP-EC cooperation to support development operations within the framework of decentralised cooperation, in particular where they combine the efforts and resources of organisations from the ACP States and their counterparts from the Community;
- the possibility of supporting decentralised cooperation on the basis of resources from the indicative programmes or from counterpart funds; and
- the contribution of the EDF to these operations may be as much as ECU 300 000 per project or programme.

- 4.3 **Maritime Resources:** With a view to contributing to the development of the ACP maritime trade the Amendment provides that in the framework of the implementation of development finance cooperation special attention may be given, within the context of existing provisions, to projects and programmes aimed at improving the competitiveness of their maritime services. In this context, the Community may also provide assistance in the form of risk-capital and/or loans by the bank to finance projects and programmes in the sectors set out in the Article.

## 5. **Institutional and Political Issues**

- 5.1 An essential element of the Agreement is respect of human rights, democratic principles and the rule of law which underpins relations between the ACP States and the Community and all provisions of the Convention. Financial resources may be mobilised in accordance with the rules governing development finance cooperation to promote human rights in the ACP States. In addition, ECU 80 million is specifically reserved under the regional fund heading in the new financial protocol, to enable the Community to support institutional and administrative reform measures within the context of democratisation and the rule of law.

# ANNEX 2

## OVERVIEW OF THE OUTCOME OF THE MID-TERM REVIEW

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## **INTRODUCTION**

1. The official launching of the mid-term review of the Fourth Lomé Convention took place in Mbabane, Swaziland, on 19 May 1994. The Co-Presidents of the Council of Ministers elaborated the ACP and Community proposals which were exchanged at the end of February 1994 in accordance with Article 362.2 of the Fourth Lomé Convention.
2. An ACP-EEC ministerial negotiating session for the mid-term review was held at the Centre Borchette, Brussels, from 30 November to 1 December 1994.
3. A subsequent ministerial session was convened on 16 February 1995 but had to be abandoned shortly after the start when the European Union announced that it had been unable to reach agreement on the amount of the financial resources for the Eighth European Development Fund (EDF8). The negotiations were finally concluded on 30 June 1995 by the joint ministerial Troika, assisted by the ministerial spokesman.
4. The attached comments highlight the main features of the agreements signed as a result of the negotiations. The Group has indicated that whilst it was disappointed with individual elements of the package the overall protocol is a welcome improvement over the Protocol I of Lomé IV.
5. The financial envelope, for example whilst far below expectation reflected a genuine effort on the part of most EU members to address the concerns raised by the ACP. Given the global view of aid in the EU the outcome could have been quite disadvantageous.
6. On the trade side considerable concessions were obtained including improved access for agricultural and other products to the EU market. The same applies to the improved quotas for certain ACP products.
7. Although the Development Finance Cooperation negotiators were not able to persuade the EU negotiators to write off ACP debts, there are a number of innovative provisions such as the allocation of part of the risk capital to support private sector development.
8. Overall therefore the Ministerial session of 30 June was satisfied with the outcome of the negotiations and the agreement which captured the decisions.

The sections that follow provide a general commentary on the agreement.

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Overview of the outcome of the Mid-Term Review, Annex II,

## **CENTRAL NEGOTIATING GROUP**

### **OUTCOME OF THE ACTIVITIES**

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## **CENTRAL NEGOTIATING GROUP**

### **I. INTRODUCTION**

9. The Central Negotiating Group dwelt on issues relating to :

- the objectives and principles of cooperation particularly those of Human rights, democracy and the rule of law (Article 5)
- institutions : composition of the Joint Assembly (Article 32 and political dialogue (Article 30) and
- the final clauses : Accession of South Africa (Article 364 new), Somalia (Article 364 bis) and the suspension clause (Article 366 bis).

Given below is the outcome of its activities.

### **II. HUMAN RIGHTS, DEMOCRACY AND RULE OF LAW (ARTICLE 5)**

10. The parties noted that during the successive negotiations of the Lomé Convention, the principle for the respect of human rights had been affirmed more clearly.
11. They therefore considered it expedient to include in the Convention an "essential elements" clause exclusively relating to the principles for the respect of human rights, democracy and the rule of law.

Violation of such principles would lead to suspension.

12. The parties also considered that these principles had been affirmed not only by establishing the relevant legal framework, but also by adopting the appropriate measures to help the countries which, through sometimes extremely difficult processes, seek to build democratic structures and set up organizations suited to their past and their culture.

### **III. SUSPENSION CLAUSES (ARTICLE 366 BIS)**

13. In the past, in cases of "human rights violation", the Community, on the basis of an altogether unilateral interpretation, suspended its aid to the country in question.
14. For their part, the ACP have always denounced this attitude which they consider to be in flagrant contradiction with the letter and spirit of the Convention based on equal partnership.

## Overview of the outcome of the Mid-Term Review, Annex II,

15. Henceforth, the Convention will contain a specific suspension clause which establishes a relatively well-elaborated procedure to govern the situation; in particular, it provides for consultation procedures which constitute a major guarantee for the transparency in which all decisions should be adopted.
16. A joint declaration will also be included in the Convention specifying the concept of "special urgency" used in the clause.

#### IV. INSTITUTIONAL MATTERS

##### A. Composition of the Joint Assembly (Article 32)

17. Although they have acknowledge that, overall, the Joint Assembly has been functioning satisfactorily, the parties have deemed it expedient that this institution be turned into a real forum within which the peoples' elect can undertake appropriate debate.
18. They considered that the principle of separation of powers between the Executive and the Legislative should be respected as much as possible.
19. It was therefore decided that the state representatives of the Joint Assembly should henceforth be appointed by their respective parliaments; any other representation will be submitted before approval of the Joint Assembly.

##### B. Dialogue (Article 30)

20. The parties agreed to reinforce the bonds uniting them by widening their dialogue.
21. This enlarged dialogue could be held either within the Council of Ministers or outside it, depending on the context.

#### V. FINAL CLAUSES

- a) In anticipation of South Africa's and Somalia's accession, Article 364 (on Namibia's accession) should be readjusted to facilitate these accessions at the opportune moment.
- b) They finally felt it no longer necessary to exclude from the Annex 68 fund for covering the expenses incurred by ACP parliamentarians (under certain conditions), the expenses borne by the parliamentarians during the general sessions of the Assembly.

**Negotiating Group No 2**  
**Outcome of the Activities**

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**Trade and Related Matters**

## **NEGOTIATING GROUP NO 2 - TRADE AND RELATED MATTERS**

### **I. INTRODUCTION**

22. Negotiating Group No 2 was assigned the responsibility for negotiations in the following broad areas:
- a. Trade Cooperation
  - b. Trade Development
  - c. Commodity Protocols
  - d. Rules of Origin
  - e. Trade in Service
  - f. Commodities
  - g. Stabex
23. In its negotiating mandate, the EU did not make any specific submission or propose any amendment in the field of Trade Cooperation and related issues, but it stated that it was prepared to examine with the ACP States ways in which they could benefit more fully from the trade advantages already available to them under the Convention. The only area under the remit of Negotiating Group No 2 in which the EU proposed that changes be made was Stabex.

### **II. TRADE COOPERATION**

#### **A. Objectives and Guidelines**

24. During the negotiations, the ACP argued that trade should be put at the top of the agenda of ACP-EU Cooperation. They proposed new provisions to reflect the importance that should be attached to trade as the most effective means of energising the development process and suggested that all the instruments of the Convention including those on financial and technical cooperation, should be used to develop and promote ACP's trade and export expansion.

The agreement on the Mid-term Review (MTR) fully takes into account these concerns.

#### **B. Market Access**

25. In the MTR, the ACP requested for free access (removal of customs duties, quota restrictions, levies and other import restrictions) for all agricultural products imported into the EU. The MTR provisions, while not acceding fully to the ACP demands, provide that, as a general rule, all products originating in ACP States shall benefit from preferential treatment, i.e. suppression of customs duties, levies, quotas, marketing timetable and other measures having an equivalent effect. In this regard, the MTR provides the following additional benefits for ACP products:

## Overview of the outcome of the Mid-Term Review, Annex II,

- i. a reduction of customs duties and levies by 16% with the exception of olives and olive products, wine and lemons, four products on which ACP States do not benefit from any preference;
- ii. A 50% reduction of import charges for cereals and pork meat within a quota of 15000 tonnes for the former and 500 tonnes for the latter;
- iii. A transformation of tariff quotas on fresh figs, sorghum and millet into ceilings;
- iv. a doubling of the tariff quotas and a 15% reduction of import charges for poultry meat, sheep meat, milk products and meat preparations;
- v. an increase in the quota on strawberries by 100 tonnes;
- vi. a 15% reduction of import charges on rice;
- vii. the abolition of reference quantities, except for oranges and mandarins;
- viii. a 15% reduction of customs duties outside the marketing calendar except products on which there is already a preference and strawberries, tomatoes, cherries and pears.

### **III. TRADE DEVELOPMENT**

26. In the MTR, ACP proposals on Trade Development were designed to improve the ACP's export capacity and competitiveness domestically, in regional markets, in EU markets and in international markets. The provisions of Article 136 and the Joint Declaration agreed to in the MTR fully takes into account ACP concerns particularly the recognition of the importance of trade development for the revitalisation of the ACP economies.

### **IV. COMMODITY PROTOCOLS**

27. Some of the most important commitments by the EU are the Commodity Protocols and/or arrangements which give special and differential treatment for trade in specific commodities exported by certain ACP States. These Protocols reflect the historical links between ACP States and the EU and represent the recognition by the Union that export earnings from the products concerned are crucial for the economic development of the ACP States concerned.
28. Except for Protocol No 8 on Sugar, all the other Protocols (Protocol No 7 on Beef & Veal, Protocol No 6 on Rum and Protocol No 5 on Bananas) will expire on 29 February 2000. The Sugar Protocol has an indefinite life of its own and fell outside the scope of the Mid-term Review.

**A. Beef & Veal**

29. The basic ACP concerns in the Mid-term Review were to ensure that Namibia was added to the list of countries stipulated in Article 2 of Protocol No 7 on Beef & Veal with its quota of 13000 tonnes and to amend the deadline for submitting requests for quota re-allocation from 1 October to 1 September. In addition, the ACP were concerned that the EU offer on Beef & Veal under the Uruguay Round could lead to the payment, by ACP beef exporters, of levies higher than they currently pay.

The outcome of the Mid-term Review takes these concerns fully into consideration.

**B. Rum**

30. The basic principle of access under the Lomé Convention is that all industrial products exported by the ACP States, enter the EU market free of customs duties, quantitative restrictions and measures having equivalent effect. Notwithstanding this principle, rum was singled out as the only industrial product to be subjected to import restrictions in the form of quotas.
31. At the very outset of the negotiations, the ACP decided that discussions on the Protocol should be conducted outside the framework of the Mid-term Review. In this regard, agreement has been reached on the increase of the annual quota for the first half of 1995/96 marketing period by 75,000 hlpa to satisfy the demand of EU consumers. Further agreement has been reached on the abolition of the quota for "light" rums with effect from 31 December 1995 as provided for in Article 2 of Protocol No 6. With regard to "traditional" rum, the ACP has accepted in principle the revised proposal for an ACP quota of 58,000 hlpa with an annual increase of 3,000 hlpa for the transitory period, i.e. until the year 2000.

**C. Bananas**

32. In the MTR, the ACP maintained that there was no need to renegotiate Protocol No 5 on Bananas. However, proposals were made to create a link between the regulation on the Common Organisation of the market for bananas [Reg. (EEC)404/93] and the Banana Protocol and to provide for a special provision to ensure that ACP non-traditional suppliers of bananas are treated fairly in relation to third country suppliers.
33. In addition, given that the present system of financial assistance which aims at enabling traditional suppliers of bananas to remain competitive in the EU market and to receive an economic return from their banana exports is due to expire on 28 February 1996, the ACP requested that additional resources be set aside to cover the period up to the end of the Lomé IV Convention.

## Overview of the outcome of the Mid-Term Review, Annex II,

34. The ACP concerns were not retained but a joint declaration and an exchange of letters on the volume of resources to ACP banana suppliers to the EU constitutes part of the Mid-term Review agreement.

**D. Tropical timber**

35. The ACP countries, bearing in mind the need of establishing a system of aid and trade measures which promote the trade in timber and sustainable timber production, and realising that financial resources provided at the international level had proved to be highly inadequate and because of the importance of environmental considerations, proposed the establishment of a Protocol on Tropical Timber with a specific additional financial allocation.
36. Protocol No 10 and Annex LXXXIX of the Mid-term Review sets out the agreement reached by both parties on this matter. These provisions reflect, to a large extent, the basic concerns of the ACP States.

**V. RULES OF ORIGIN**

37. Discussions on rules of origin focussed on the following:
- a. Rules of Origin for fishery products
    - definition of the term "their vessels";
    - chartering or leasing third country vessels;
    - Exclusive Economic Zone.
  - b. Increase in the value tolerance
  - c. Cumulation
  - d. Automatic derogation for canned tuna.

**A. Rules of origin for fishery products**

i) Definition of the term "their vessels"

38. Article 2 of Protocol No 1 on the Rules of Origin of the Fourth Lomé Convention defines, for the purposes of granting preferential access to ACP products imported into the EC market, the concept of "wholly obtained products". For this purpose, "products of sea fishing and other products taken from the sea by their vessels" are considered to be wholly obtained. The term "their vessels" however is restricted to vessels which satisfy a number of conditions namely on registration, the flag, ownership and the crew.
39. In the context of the Mid-term Review, the ACP pointed out that these criteria, when applied simultaneously as they currently are, have a restricting effect on investment into this sector. They accordingly requested a relaxation of some of these conditions in particular by deleting the requirement on the manager, the crew and other conditions

## Overview of the outcome of the Mid-Term Review, Annex II,

ii) Chartering or leasing of third country vessels

40. Article 2 Para.3 of Protocol No 1 on the Rules of Origin, authorizes an ACP State to charter or lease third country vessels to undertake fisheries activities in its exclusive economic zone provided that:
- the ACP State offers the Community the opportunity to negotiate a fisheries agreement and the Community does not accept this offer;
  - at least 50% of the crew, master and officers are nationals of States party to the Convention.
  - the charter or lease has been accepted by the European Commission.
41. The ACP argued that these conditions are extremely restrictive. They requested that countries be allowed to charter or lease third country vessels in cases where there is a fisheries agreement but the Community does not honour its commitment to land fish in an ACP State to meet its domestic processing needs.

iii) The Exclusive Economic Zone (EEZ)

42. The ACP States requested that ACP enterprises be authorized to purchase fish from third country vessels operating in their EEZ to fulfil the needs of locally established processing capacities.
43. The EU categorically rejected the extension of originating status to fish caught in the EEZ by third country vessels, arguing that ACP countries are already allowed to charter or lease third country vessels when the Community cannot meet its obligation to supply fish for local processing in an ACP State.
44. In the Mid-term Review, ACP concerns on the above three points were not addressed but in Annex LXXXVII the Contracting Parties agree that the Customs Cooperation Committee shall, at the earliest opportunity, examine in a positive manner difficulties which arise from the application of these provisions.

**B. Increase in the value tolerance**

45. The ACP requested for an increase in the value tolerance to take account of the fact that "component parts" are being used more extensively in the manufacturing process. At present, the Lomé Convention provides for non-originating inputs to be used in the manufacture of a given product provided that its total value does not exceed 10% of the ex-works price of the final product.
46. In the Mid-term Review, this threshold was increased to 15% which adequately reflects ACP's concerns.



## Overview of the outcome of the Mid-Term Review, Annex II,

**C. Cumulation**

47. The current provisions of the Convention only allow for cumulation of inputs sourced from ACP States, the Community or the Overseas Territories and Countries. Sourcing from these supplies may not allow for the necessary flexibility and may not enhance the competitiveness of ACP production. In the negotiations, the ACP sought to have the concept of originating products to be extended to inputs from developing countries which currently benefit from preferential arrangements with the EU. The ACP Group assured the EU, however, that significant working or processing must be undertaken in an ACP State.
48. The provisions on Cumulation agreed to under the Mid-term Review, stipulate that, "at the request of the ACP states, products originating in a neighbouring developing country other than an ACP State, belonging to a coherent geographical entity shall be considered as originating in the ACP State where they undergo further working or processing provided that:
- the working or processing carried out in the ACP State exceeds the operations listed in Article 3(3);
  - the ACP States, the Community and other countries concerned have concluded an agreement on adequate administrative procedures which will ensure the correct implementation of these provisions.

It should be noted that this is one area in which substantive progress was made.

**D. Automatic Derogation for Canned Tuna**

49. Derogations provide a temporary solution to problems encountered by ACP States in satisfying the conditions under the Rules of Origin. Automatic derogation was introduced under the Lomé IV Convention to meet ACP concerns that the derogation mechanism was too uncertain, took too long to be agreed upon and did not provide either the volume or the time horizon necessary for developing ACP production and trade.
50. In the Mid-term Review, the ACP proposed an increase in the quota from 2 500 tonnes to 8,000 tonnes and an improvement in its administration and utilisation. ACP exports of canned tuna amount to over 82,000 tonnes per year so that the automatic derogation accounts for about 3%. The ACP proposal was to increase this figure by at least 10% in order to provide greater flexibility in the allocation and administration of the derogations.
51. Under the Mid-term Review, derogations shall be automatically granted to requests concerning canned tuna within an annual quota of 4,000 tonnes, or tuna loins within an annual quota of 500 tonnes.



**B. Transfer basis for LDLICs**

57. With regard to the Least Developed, Landlocked and Island (LDLICs) ACP States, ACP concerns of ensuring that the transfer basis for the least developed and landlocked countries on the one hand, and island countries on the other, which fall below 2 Mecus and 1 Mecus respectively are not subjected to reduction, are fully taken into account in the Mid-term Review.

**C. FMO**

58. In the negotiations, the ACP had argued that the implementation of the FMO had been extremely slow and had jeopardised the smooth functioning of the Stabex system as a quick disbursing mechanism. These concerns regarding the Framework of Mutual Obligations were addressed in the MTR in the form of a declaration set out in Annex XLVII.
59. To this end, information seminars in the various ACP regions are under way and the revision of the Stabex Handbook has nearly been completed.

**D. Linkage between Stabex and Structural Adjustment**

60. The EU proposed to harmonise the use of Stabex transfers with the resources used for structural adjustment. The ACP resisted this direct linkage and advocated for the option to use Stabex transfers in support of under-going structural adjustment programmes. The provisions of the new Article 209(4) under the MTR fully reflects the ACP view on this matter.

**E. Other issues**

61. The percentage for triggering consultations for the purpose of reducing transfers was raised from 15% to 20% in accordance with ACP demands. On the joint bank accounts, it was agreed that these be opened with banks in the capitals of the EU Member States.

## **Negotiating Group No 3**

### **Outcome of the Activities**

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### **Development Finance Cooperation and Related Matters**

### **NEGOTIATING GROUP NO 3 - DEVELOPMENT FINANCE COOPERATION AND RELATED MATTERS**

#### **I. INTRODUCTION**

62. The Ministers examined all the issues assigned to Negotiating Group 3 on development finance cooperation and related matters, and took note of the progress made in these areas.
63. This report outlines the outcome of the negotiations on Development Finance Cooperation and Related Matters.

#### **II. OBJECTIVES OF COOPERATION & PROGRAMMING**

##### **A. Objectives and principles of Cooperation**

64. The amendment to **Article 4** provides that, in the programming exercise, due account shall be taken of both the objectives and priorities of the Community's cooperation policy and of the ACP States' development policies and priorities. Annexed to the draft articles is a Community Declaration on Article 4, setting out the main objectives and priorities of its cooperation policy.
65. New provisions were introduced in Articles 5 and 224m on institutional support and administrative reform measures which ACP States may wish to undertake in promoting democratization and the rule of law. The amendment necessitated a special incentive allocation in **Article 1** of the Financial Protocol.

##### **B. Programming**

66. In the negotiations on programming, the ACP Group adopted the modified and flexible approach recommended by the ACP Ministerial Bureau on the sensitive issue of tranching of the indicative resources. Articles 281 to 284 which deal with programming provide that:
  - a. the Community will announce 100% of the indicative financial allocation to each ACP State from the grant component of the EDF to enable it to prepare its draft indicative programme (**Art. 281.1**);
  - b. a firm commitment should be made in the indicative programme for 70% of the total indicative amount (**Art. 282.2**);
  - c. in cases where the indicative allocations are relatively small or where the programme is concentrated on a single project, the indicative programme will be drawn up for the total allocations. (**Art. 282.2**);

## Overview of the outcome of the Mid-Term Review, Annex II,

- d. in order to access the remainder of the allocation, the indicative programme may be reviewed at any time when a high level of commitment has been achieved and, in any case, within three years of implementation of the programme. The criteria for determining the amount of the second tranche are incorporated into **Article 282.4** of the Convention. They are:
  - i. the size of the total allocation;
  - ii. the progress made in implementing the first phase;
  - iii. the state of preparation for the second phase; and
  - iv. the specific situation of the ACP State concerned;
- e. with a view to making more effective the implementation of indicative programmes and the above modifications to the programming procedures, the following accompanying measures will be introduced into the Convention:
  - i. an ACP State may provide within its indicative programme, resources for appropriate support measures for managing the programme (**Art. 281.2e**);
  - ii. the programming exercise is expected to be concluded within 12 months of the signing of the Financial Protocol (**Art. 283**);
  - iii. the monitoring of the indicative programme by the National Authorizing Officer and the Delegate will be subject to a joint report destined for the ACP-EEC Council of Ministers, so as to allow the latter to propose corrective measures in good time (**Art. 284.3**);
- f. after the review of the indicative programmes, any unallocated resources will be used to finance operations falling under development finance cooperation, notably those relating to programmable assistance. However, the Council of Ministers is given the option to allocate the resources for other purposes, if it deems such action as necessary (**Art. 282.5**);
- g. as regards the special circumstances of ACP States which, as a result of civil strife or for political reasons, are unable to sign their indicative programmes or to implement them, part of their indicative allocations may be used to finance emergency assistance of an exceptional nature (**Art 254.3**). In the case of ACP States which are under suspension in accordance with the provisions of the Convention (**Art 366, para 2**), the announcement of the indicative allocations referred to in sub-paragraph (a) above will as a consequence be suspended.
- h. the draft indicative programmes will make specific proposals for private

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sector development for which risk capital or other resources of the Convention may be used (**Art. 281.2c**);

- i. each ACP State will receive a global indication of the allocations from risk capital resources and the own resources of the Bank; these allocations will not be programmable (**Art 281.1c**). However, at least 50 percent of the total risk capital resources will be used for private sector development and 50 percent of the resources will be allocated to the least developed countries (**Art 284.2**).

### **III. DECENTRALIZED OPERATIONS**

67. The new provisions governing decentralized operations are as follows:

- a. introducing a fourth paragraph to **Article 12** in the chapter on "Objectives and principles of cooperation" which states the objectives of decentralized cooperation;
- b. the new provisions on decentralized cooperation, which replace Articles 20 to 22, are to be found in a new Section 4 in Title III Chapter 2 of the Convention. They state, inter alia:
  - i. the need to broaden the definition of decentralized agents to include all agents that can make a contribution to development in the context of decentralized cooperation (**Art. 251A.2**);
  - ii. that all agents of decentralized cooperation should be subject to the priorities, guidelines and development methods determined by the ACP States (**Art. 251A.1**);
  - iii. that an ACP State may specify, in its indicative programme, an indicative amount for decentralized operations and the objectives of such programmes (**Art. 251C.1**);
  - iv. the procedures for managing decentralized operations (**Art. 251D**).
- c. introducing a **Joint Declaration** on a guideline for the consultation by ACP States in their dealings with agents of decentralized cooperation.

### **IV. AREAS OF COOPERATION**

#### **A. Industrial Cooperation**

68. The new provisions on industrial cooperation spell out:

- a. the responsibilities of the Committee of Ambassadors in the field of industrial cooperation, in particular, concerning supervision of the work

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of the Committee on Industrial Cooperation (CIC) (**Art 87.1**);

- b. the responsibilities of the CIC, in particular, those relating to the work of the Centre for the Development of Industry (CDI) (**Art 87.2**);
- c. the role of the Governing Board of the CDI (**Art 92**);
- d. the focus of CDI operations in the ACP States which have identified support in their indicative programmes for industrial development or for the private sector, or have obtained other contributions from Community sources for the development of these sectors (**Art 89.2**);
- e. the procedures for appointment of CDI's Director and Deputy Director (**Art 91 and Annex XIV**);

69. **a Joint Declaration** on the statutes and procedures concerning the administration of the CDI.

**B. Maritime Transport**

70. The agreement reached on Article 129 provides for facilitation and encouragement of access by ACP maritime operators to risk capital resources and the own resources of the Bank in order to enhance the competitiveness of their services. Furthermore, an understanding exists that maritime transport will be one of the elements of the future negotiations under the provision of Article 185.

**C. Cultural Cooperation**

71. Agreement was reached on the Community's proposal for amending **Article 141 and Annex XXII** of the Convention. Under the new provisions, specialized institutions as well as the ACP-EEC Cultural Foundation may now benefit from the resources of the Convention. The extent to which institutions may benefit has also been redefined.

**D. Intra-ACP Regional Cooperation**

72. There was agreement on the ACP proposal to ensure that the resources earmarked for intra-ACP cooperation should be announced to the ACP Council at the beginning of the Financial Protocol. This agreement is reflected in **Article 164**.

**V. PRIVATE SECTOR DEVELOPMENT**

73. Agreement was reached on redefining the terms and conditions for the resources managed by the Bank. With regard to risk capital resources, it was agreed that at least 50 percent of the resources will be used to support private sector development in the ACP States (**Art 284.2**). Also, in future, the interest



rate subsidy which is normally granted on loans from the Bank's own resources will no longer be made available in case of direct financing to non ACP borrowers or ACP companies with majority non ACP share-holding undertaking strictly commercial projects (**Art 235b**).

## **VI. DEBT AND STRUCTURAL ADJUSTMENT**

### **A. Debt**

74. The ACP Group requested, inter alia, a waiver of past debt owed to the European Union and its Member States as well as better terms and conditions for risk capital resources. The Union maintained that it cannot deal with the issue of debt unilaterally but in the context of international action through the World Bank or the Paris Club. Consequently, the Union issued a three-point Declaration:
- a. reaffirming its willingness to contribute to the alleviation of the debt burden of the ACP States;
  - b. transforming into grants all the special loans of the previous Conventions which have not yet been committed; and
  - c. confirming its determination to pursue the discussion of the issues of ACP indebtedness in the appropriate fora, taking into account the specific difficulties of the ACP States.

### **B. Structural Adjustment**

75. The agreements reached on the structural adjustment provisions are reflected in **Articles 224, 243, 246, 247 and 248**. These concern:
- regional dimension of structural adjustment and the associated compensation for cross-border losses;
  - adaptation of the procurement procedures for structural adjustment to conform private sector requirement and ACP administrative practices; and
  - direct budgetary support to ACP States whose currencies are convertible and freely transferable.

## **VII. PROCEDURES**

76. The Parties were unable to agree on any of the proposals on Procedures. However, they did agree on a Joint Declaration authorizing the ACP-EC Council of Ministers, on the recommendation of the Development Finance Cooperation

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Committee (DFCC), to examine the implementation procedures in particular those relating to project appraisal and study contracts and, where necessary, adapt such procedures during the period of the Financial Protocol in light with experience gained in implementation, with a view to accelerating implementation of projects and programmes and to promote the involvement and participation of ACP human resources in EDF contracts. Council should also make available appropriate financial resources for putting into effect its decisions.

## **VIII. FINANCIAL RESOURCES**

77. The financial resources for the first Financial Protocol of the Fourth Convention was 12,000 million ECUs, comprising 10,800 million ECUs from the European Development Fund (EDF) and 1,200 million ECUs from the own resources of the European Investment Bank (EIB).
78. In its submission to the European Community, the ACP Group requested an overall increase of 42 percent in the financial resources to 17,000 million ECUs, comprising 15,800 million from the EDF and 1,200 million from the EIB. The ACP decided to maintain the level of the EIB resources which are commercial loans and are unlikely to be fully utilized. The ACP request was based on three factors as follows:
  - a. the loss in purchasing power of the ECUs over the five-year period since the first Financial Protocol;
  - b. the enlargement of the Community by the accession of Austria, Finland and Sweden; and
  - c. the requirements for the new instruments, (such as the promotion of human rights and democracy), introduced as a result of the mid-term review.
79. The final offer of the European Community was 14,625 million ECUs, comprising 12,967 million ECUs from the EDF and 1,658 million ECUs from the EIB, an overall increase of nearly 22 percent. The breakdown of the financial resources of all the Lomé Conventions is given in Annexes IA and IB to this report.

## **IX. SUMMARY AND CONCLUSIONS**

80. The ACP proposals for the mid-term review called for amendments of the provisions on:
  - a. decentralized cooperation;
  - b. structural adjustment;

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- c. easing of the debt burden on the ACP States;
  - d. encouraging the private sector;
  - e. encouraging the use of ACP human resources;
  - f. decentralization of decision-making powers;
  - g. assistance to project/programme management;
  - h. Intra-ACP regional cooperation; and
  - i. Maritime transport.
81. At the end of the negotiations, the results show that the ACP proposals have been largely adopted on most of the areas referred to above as well as on positive support for the promotion of democracy and human rights. **The areas of agreement include:**
- a) **Objectives of cooperation**
    - Introduction into Article 4 of the Community development cooperation policy alongside the policies and objectives of the ACP States.
    - Providing incentive in the form of "special allocation" in the financial protocol for ACP States which are desirous to promote democratization and the rule of law in accordance with Articles 5 and 224m.
  - b) **Programming**
    - Tranching of the indicative resources and setting the first tranche at 70% of national allocation.
    - Setting timeframes for the programming exercise.
    - Ensuring inclusion in the indicative programme of specific support for multi-annual programmes.
    - Resources for managing the indicative programmes.
    - Enhancing the reporting functions of the NAO and the Delegate on the causes of implementation delays and bottlenecks.
    - Extending multi-annual programmes to include decentralized cooperation, women in development, trade development, management support.

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- Delegating the responsibility for project execution to decentralized agents and other eligible beneficiaries within the framework of multi-annual programmes, while the NAO and the Delegate maintain financial responsibility for such operations.
- Using the indicative resources for emergency assistance in the special cases of ACP States which are unable to sign or to implement their indicative programmes.
- Specific inclusion in indicative programmes for private sector development.
- Programming of risk capital resources and the own resources of the Bank for all ACP States.

c) **Structural adjustment**

- Introducing provisions on the regional dimension of structural adjustment and compensation for cross-border losses resulting therefrom.
- Adapting the procurement procedures to bring them in line with private sector requirements in the ACP States.
- Programming of the risk capital resources and EIB own resources.

d) **Decentralized cooperation**

- Redefinition of agents of decentralized cooperation.
- Clarification of the objectives of decentralized cooperation.
- Procedures for implementing projects and programmes under decentralized cooperation.
- Guidelines for ACP States' consultation with agents of decentralized cooperation.

e) **Cultural cooperation**

- Provide for access to financial resources by ACP-EEC Cultural Foundation and other specialized institutions.
- Define extent of EDF support for Foundation and other specialized institutions.

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f) **Intra-ACP regional cooperation**

- Amending the Convention to guarantee the provision of an appropriation, fixed at the outset of the programming exercise for financing Intra-ACP cooperation schemes.

g) **Industrial cooperation**

- The responsibilities of the Committee of Ambassadors in the field of industrial cooperation, in particular, concerning supervision of the work of the Committee on Industrial Cooperation (CIC)
- The responsibilities of the CIC, in particular, those relating to the work of the Centre for the Development of Industry (CDI)
- The role of the Governing Board of the CDI
- The focus of CDI operations in the ACP States
- The procedures for appointment of CDI's Director and Deputy Director
- **A Joint Declaration** on the statutes and procedures concerning the administration of the CDI.

h) **Private sector development**

- Provision for the use of financial benefit accruing from direct transactions with the final beneficiary.
- Expansion of the scope for quasi-capital assistance.
- The use of risk capital resources for pre-investment studies.
- The manner in which remuneration from quasi-capital assistance should be shared.
- Emphasis on the use of risk capital resources for the private sector.
- Interest rate subsidy for loans from the own resources of the Bank.

i) **Maritime transport**

- **Article 129** will be amended to permit access to risk capital resources and/or the own resources of the Bank by ACP maritime operators to assist them improve their competitiveness.

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**j) Access of OCT States to EDF contracts**

- Access for OCT enterprises to EDF contracts in the ACP States. (EU)

**k) Procedures**

- Joint Declaration authorizing the ACP-EC Council of Ministers to introduce necessary changes during the period of the Financial Protocol.

82. The position of the European Union on ACP debt was known even before the commencement of negotiations. Nevertheless, the ACP Group pursued its proposal on the issue. Regrettably, only token action was taken by the European Union by transforming the uncommitted Special Loans into grants. On ACP human resources and decentralization of decision-making powers, these concern the implementation procedures, a topic that remains open for examination by the ACP-EC Council of Ministers in accordance with a Joint Declaration.

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## ANNEX IA

VOLUME OF FINANCIAL RESOURCES: LOMÉ I TO LOMÉ IV

	Lomé I		Lomé II		Lomé III		Lomé IV(1)		Lomé IV(2)	
	Amount (MECU)	%	Amount (MECU)	%	Amount (MECU)	%	Amount (MECU)	%	Amount (MECU)	%
Grants	2,150	62.1	2,999	55.4	4,860	57.2	6,845	57.0	8,192	56.0
Special Loans	446	12.9	525	9.7	600	7.1	-	-	-	-
STABEX	377	10.9	634	11.7	925	10.9	1,500	12.5	1,800	12.3
SYSMIN	-	-	282	5.2	415	4.9	480	4.0	575	3.9
Risk Capital	99	2.9	284	5.3	600	7.1	825	6.9	1,000	6.8
Struct. Adjust.	-	-	-	-	-	-	1,150	9.6	1,400	9.6
<b>TOTAL EDF</b>	<b>3,072</b>	<b>88.7</b>	<b>4,724</b>	<b>87.3</b>	<b>7,400</b>	<b>88.7</b>	<b>10,800</b>	<b>90.0</b>	<b>12,967</b>	<b>88.7</b>
EIB Resources	390	11.3	685	12.7	1,100	12.9	1,200	10.0	1,658	11.3
<b>TOTAL RESOURCES</b>	<b>3,462</b>	<b>100</b>	<b>5,409</b>	<b>100</b>	<b>8,500</b>	<b>100</b>	<b>12,000</b>	<b>100</b>	<b>14,625</b>	<b>100</b>

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## ANNEX IB

FINANCIAL RESOURCES PER CAPITA: LOMÉ I TO LOMÉ IV

	Lomé I	Lomé II	Lomé III	Lomé IV(1)	Lomé IV(2)
Total Financial Resources (MECU)	3,462	5,409	8,500	12,000	14,625
Increase from previous convention (MECU)	-	1,947	3,091	3,500	2,625
Increase %	-	56.2	57.1	41.2	21.9
No of ACP States	46	58	66	69	70
Total Population (millions) at start of Convention	250	345	413	477	555*
ECU per capita (Nominal)	13.85	15.68	20.58	25.18	26.35
Discount rate (%)	-	10.5	32.0	25.0	25.6
ECU per capita (Real)	13.85	14.19	14.11	13.81	11.69

\* 1994 estimate of population