

FREE TRADE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND OCT
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2001/822/EC: Council Decision of 27 November 2001 on the association of the overseas countries and territories with the European Community ("Overseas Association Decision")
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Council Decision
of 27 November 2001

on the association of the overseas countries and territories with the European Community
("Overseas Association Decision")
(2001/822/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, hereinafter referred to as the Treaty, and in particular Article 187 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community(1), was applicable until 1 December 2001. Article 240(4) thereof states that the Council, acting unanimously on a proposal from the Commission, shall establish the provisions to be laid down for the subsequent application of the principles set out in Articles 182 to 186 of the Treaty.

(2) Declaration No 36 on the overseas countries and territories, hereinafter referred to as the "OCTs", annexed to the final act of the Conference of the Representatives of the Governments of the Member States signed in Amsterdam in 1997, invites the Council, acting in accordance with Article 187 of the Treaty, to review the association arrangements with the OCTs with a fourfold objective as follows:

- promoting the economic and social development of the OCTs more effectively;
- developing economic relations between the OCTs and the European Union;
- taking greater account of the diversity and specific characteristics of the individual OCTs, including aspects relating to freedom of establishment;
- and ensuring that the effectiveness of the financial instrument is improved.

(3) On 11 February 1999 the European Parliament adopted a resolution on relations between the OCTs, the ACP States and the outermost regions of the European Union(2). Furthermore, on 4 October 2001, it adopted a resolution on the proposal from the Commission for a Council Decision on the association of the OCTs with the European Community(3).

(4) In its communication of 20 May 1999 entitled "the Status of OCTs associated with the EC and options for 'OCT 2000'", the Commission examined the features and the development of the OCT-EC association since 1957, noted the basic principles and the current situation of the association and sketched out alternative policies for it for the period beginning 1 March 2000.

(5) In accordance with Article 10 of Decision 91/482/EEC, the competent OCT authorities informed the Commission of the amendments or additions they desired in future, notably at a meeting held in the context of the partnership on 29 and 30 April 1999, attended by the Commission, the four Member States to which the OCTs are linked and the 20 OCTs concerned.

(6) Though not third countries, the OCTs do not form part of the single market and must comply with the obligations imposed on third countries in respect of trade, notably rules of origin, health and plant health standards and safeguard measures.

(7) As a general rule, when the Council adopts measures under Article 187 of the Treaty, it must take account both of the principles laid down in Part Four of the Treaty and of the other

principles of Community law. It should also take account of experience acquired in the implementation of the trade arrangements of Decision 91/482/EEC.

(8) These arrangements provide for duty-free access for products originating in the OCTs and rules of origin allowing cumulation with products originating in the ACP States, which are subject to different arrangements, or in the Community. This causes or threatens to cause serious disruption to the functioning of certain common market organisations under the common agricultural policy, in particular those for rice and sugar. Such disruption has on a number of occasions led the Commission and the Council to adopt safeguard measures.

(9) By limiting the scope for use of cumulation of origin, the changes made in relation to rice at the mid-term review of the Decision⁽⁴⁾ have helped maintain access for OCT products to the Community market on terms conducive to its balance. This access should be improved in respect of the least developed OCTs, but without modifying the overall quantity benefiting from cumulation. Given that only two other OCTs have ever operated in this sector, the remaining available quantities should be allocated to them, in the interest of transparency.

(10) However, as regards sugar and sugar mixes, the rise in OCT exports made from sugar of ACP or Community origin to a heavily oversupplied market has resulted in a greater reduction in the quota allowed for Community producers and therefore a greater loss of guaranteed income for them.

(11) Moreover, in view of the minimal, low value-added operations that currently suffice to obtain the status of a product originating in the OCTs in the sugar sector, the contribution of these exports to the development of the territories can only be small at best and, without a doubt, out of all proportion to the disruption caused to the Community sectors concerned.

(12) For the above reasons, origin rules should therefore be adopted which exclude the possibility of ACP/EC-OCT cumulation for sugar when only minimal operations are carried out. However, taking into account the investments already made in the OCTs on the basis of the rules in force since 1991, such exclusion should enter into force in a progressive way. Therefore, subject to the adoption of the necessary implementing provisions, cumulation should be temporarily allowed to continue within progressively decreasing quantitative limits which are compatible with the objectives of the Community's common market organisation for sugar whilst taking due account of the legitimate interests of OCT operators.

(13) Provision should also be made to ensure that agricultural products originating in the Community and which have benefited from an export refund cannot be re-imported duty-free into the Community by means of the cumulation procedure.

(14) Furthermore, all the OCT rules of origin should be updated, in the interests of the operators and administrations concerned, to take account of technical progress and the policy adopted by the Community of origin-rule harmonisation. Likewise, the procedure should be simplified to enable the necessary technical amendments to the rules to be made more easily in future.

(15) The procedure for the transshipment of goods not originating in the OCTs but in free circulation there should be completed and clarified, with a view to ensuring a transparent and reliable legal framework for operators and administrations. It should also be extended to cover certain fishery products of particular importance for Greenland and Saint-Pierre-et-Miquelon, subject to the adoption of the necessary implementing provisions.

(16) The general provisions of the Treaty and legislation derived thereunder do not automatically apply to the OCTs, barring express provisions to the contrary. OCT products imported into the Community must nevertheless comply with the Community rules in force.

(17) Financial assistance to the OCTs should be allocated on the basis of uniform, transparent and effective criteria, taking into account the needs and performances of the OCTs. Such

criteria should include in particular the economic and physical dimensions of the OCTs, the use made of past allocations, respect for the principles of sound financial management, fair fiscal policy, estimated absorption capacity, the need for establishing a reserve in order to finance non-programmable expenditure and a smooth transition to prevent a sudden considerable setback in allocation for New Caledonia, French Polynesia and the Netherlands Antilles. In the interests of efficiency, simplification and recognition of the management capacities of the OCT authorities, the financial resources granted to the OCTs should be managed more on the basis of partnership by applying procedures based on the rules in force for the structural funds.

(18) For this purpose, the procedures delegate the main responsibility for programming and implementing cooperation to the OCTs in particular. Cooperation will be conducted predominantly in conformity with OCT territorial regulations and will underpin support for the monitoring, evaluation and audit of the operations programmed. In addition, it is necessary to clarify which Community programmes and budget lines are open to the OCTs, as well as the procedures for a smooth transition from previous EDFs to the 9th one.

(19) Global changes, reflected in the continuing process of trade liberalisation, broadly implicate the Community, the OCTs' principal trading partner, as well as their ACP neighbours and other economic partners. In the market access equation, the level of tariffs plays an increasingly reduced role while trade in services and trade-related areas assume an ever greater importance in the relationship between the OCTs and their economic partners. That relationship should therefore be fostered, while retaining the broad outline of the current trade arrangements, and the conditions for the gradual integration of those OCTs who so wish into the regional and global economy simplified by helping them to increase their capacity to handle all these new areas.

(20) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999, laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁵⁾. However, so far as the implementation of the 9th EDF is concerned, the voting and the majority should be as laid down in Article 21 of the Internal Agreement between the representatives of the Governments of the Member States, meeting within the Council, on the financing and administration of Community Aid under the Financial Protocol to the Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States signed in Cotonou (Benin) on 23 June 2000 and the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty applies⁽⁶⁾, hereinafter the "Internal Agreement".

(21) The OCTs are fragile island environments requiring adequate protection, including in respect of waste management. In respect of radioactive waste, this is provided under Article 198 of the Euratom Treaty and legislation adopted thereunder, except for Greenland, to which the Euratom Treaty does not apply. For other waste, it should be specified which Community rules are to apply in respect of the OCTs.

(22) The arrangements for association laid down in this Decision should not be applied to Bermuda in accordance with the wishes of the Government of Bermuda.

(23) The Council should produce an innovative response to all the above mentioned new factors which is both consistent and tailored to the variety of situations. A new status for the association can provide such a response,

HAS DECIDED AS FOLLOWS:

PART ONE

GENERAL PROVISIONS OF THE ASSOCIATION OF THE OCTs WITH THE COMMUNITY

Chapter 1

General provisions

Article 1

Purpose, objectives and principles

1. The association of the OCTs with the Community, hereinafter referred to as the "OCT-EC Association", shall have as its basis the purpose set out in Article 182 of the Treaty, namely to promote the economic and social development of the OCTs and to establish close economic relations between them and the Community as a whole.

It shall pursue the objectives laid down in Article 183 of the Treaty in accordance with the principles set out in Articles 184 to 188 of the Treaty by focusing on the reduction, prevention and, eventually, eradication of poverty and on sustainable development and gradual integration into the regional and world economies.

2. The association relates to the OCTs listed in Annex I A.

3. In accordance with Article 188 of the Treaty, this Decision shall apply to Greenland subject to the specific provisions set out in the Protocol on the special arrangements for Greenland annexed to the Treaty.

Article 2

Basic elements

1. The OCT-EC association shall be based on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law. These principles, on which the Union is founded in accordance with Article 6 of the Treaty on European Union, shall be common to the Member States and the OCTs linked to them.

2. There shall be no discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in the areas of cooperation referred to in this Decision.

Article 3

The least-developed OCTs

1. The Community shall accord special treatment to the least-developed OCTs and to those unable to take advantage of the regional cooperation and integration referred to in Article 16.

2. To respond to such difficulties, development finance cooperation shall comprise, inter alia, special treatment when determining the volume of financial resources and the conditions attached thereto in order to enable the least-developed OCTs to overcome structural and other obstacles to their development. It shall pay special attention to improving the living conditions of the poorest sections of the population in the context of poverty alleviation.

3. The OCTs considered the least developed for the purposes of this Decision are listed in Annex I B. This list shall be amended by decision of the Council, acting unanimously on a proposal from the Commission, where the economic situation of an OCT undergoes a significant and lasting change, necessitating its inclusion in the category of least-developed OCTs or where its inclusion in that category is no longer warranted.

Chapter 2

Actors of cooperation in the OCTs

Article 4

Principles

1. Within the framework of the partnership laid down in Article 7, the OCT authorities shall assume primary responsibility for the formulation of association and development strategies and their implementation through the preparation, together with the Commission and the Member State to which the OCT is linked, of Single Programming Documents (hereinafter referred to as SPDs) and cooperation programmes.

2. The Community shall recognise that local public and private actors play a key role in achieving the objectives laid down in Article 183 of the Treaty.

3. In implementing this Decision, the parties shall have as their guiding principles transparency, subsidiarity and the need for efficiency.

Article 5

The different actors involved

1. Actors of cooperation in the OCTs shall include:

- the OCT authorities;
- the other regional and local authorities within the OCTs;
- civil society, social, business and trade union associations, public service providers and local, national or international non-governmental organisations (NGOs).

The Member States to which the OCTs are linked shall inform the Commission within three months of the entry into force of this Decision of the national, regional or local authorities referred to in the various Articles of the Decision.

2. The recognition of non-governmental actors shall depend on their capacity to meet the needs of the local population, their expertise and their having democratic and accountable organisation and management.

3. Non-governmental actors shall be identified by agreement between the OCT authorities, the Commission and the Member State to which the OCT is linked, taking into account the subject concerned, their expertise and field of activity. The process of identification shall be conducted in each OCT as part of the process for the preparation of cooperation programmes referred to in Article 4.

Article 6

Responsibilities of the non-governmental actors

Non-governmental actors identified pursuant to Article 5(3) may play a role in:

- information and consultation;
- the preparation and implementation of cooperation programmes;
- decentralised cooperation in the context of responsibilities delegated for the purpose of supporting local development initiatives.

Chapter 3

Principles and Procedures of the OCT-EC Partnership

Article 7

Dialogue and Partnership

1. With the aim of enabling the OCT to take a full part in the implementation of the OCT-EC association, with due regard for the way that the institutions of the Member States concerned are organised, the association shall use a consultation procedure based on the provisions referred to below. It shall deal with any issue arising in relations between the OCTs and the Community.

2. A broad-based dialogue should enable the Community, all the OCTs and the Member States to which they are linked to consult each other on the principles, detailed procedures and results of the association.

An OCT-EU forum for dialogue, hereinafter referred to as the "OCT Forum", shall meet annually to bring together OCT authorities, representatives of the Member States and the Commission.

3. There shall be separate partnerships between the Commission, the Member State to which the OCT is linked and each OCT, represented by its authorities, to enable the objectives and principles of this Decision, in particular those referred to in Articles 4 and 19 to be put into practice. This trilateral consultation shall hereinafter be referred to as the "partnership".

Partnership working parties, acting in an advisory capacity, shall be set up for each OCT. Their membership shall comprise the abovementioned three partners. These working parties may be convened at the request of the Commission, of a Member State or of an OCT. At the request of

one of the partners, several partnership working parties may hold joint meetings to consider subjects of common interest or the regional aspects of the association.

4. This consultation shall be conducted in full compliance with the respective institutional, legal and financial powers of each of the three partners.

The Commission shall chair the working parties and the OCT Forum and provide their secretariat. A representative of the European Investment Bank, hereinafter referred to as the EIB, shall be present at meetings when matters concerning it are on the agenda.

5. The opinions of the working parties and the OCT Forum shall, where appropriate, be the subject of Commission decisions, within the limits of its powers, or of proposals from the Commission to the Council with a view to implementation of new elements of the OCT-EC association or its amendment on the basis of Article 187 of the Treaty.

Article 8

ACP-EU Joint Parliamentary Assembly

The OCT authorities shall be informed of the agenda, resolutions and recommendations of the ACP-EU Joint Parliamentary Assembly.

Member States and the Commission shall support any request by OCT authorities to participate as observers at the plenary sessions of the ACP-EU Joint Parliamentary Assembly, subject to the Assembly's own rules of procedure.

Article 9

Management

Day-to-day management of this Decision shall be conducted by the Commission and the OCT authorities and, should the need arise, by the Member State to which the OCT is linked, in accordance with the institutional, legal and financial powers of each of the partners, notably as regards development finance cooperation and cooperation in the area of trade and services.

PART TWO

THE AREAS OF OCT-EC COOPERATION

Article 10

Areas of cooperation

The Community shall contribute to cooperation in those areas in the OCTs listed in this Title in accordance with the priorities established in the development strategies for each OCT or, where appropriate, in the form of regional measures.

Article 11

Productive sectors

Cooperation shall support sectoral policies and strategies that facilitate access to productive activities and resources, in particular:

(a) Agriculture: agricultural policy and institution building, diversification, irrigation, seed multiplication, crop protection measures, fertiliser production, equipment, agro-processing, livestock and cattle breeding, animal husbandry, extension and research; marketing; storage and transportation; food security; agricultural credit; land settlement and reform, land use and registration policy, technology transfer, irrigation and drainage infrastructure, other support services.

(b) Forestry: forestry policy and institution building, including use of trees to conserve the environment in erosion and desertification control; afforestation; forest management, including the rational utilisation and management of timber exports; issues relating to tropical rain-forests; research and training.

(c) Fisheries: fishing policy and institution building, fish stock protection and rational management of fish stocks; fish farming and artisanal fisheries; fishery transport; cold storage and fish marketing and preservation.

- (d) Rural development: rural policy and institution building, integrated rural development projects/programmes; assistance and projects targeted at people, production and marketing in rural areas; rural infrastructure.
- (e) Industry: sectoral policy and institution building; craft industries; agro-industries and other manufacturing sectors, transport equipment industry; technological research and development; quality control; development and expansion of SMEs and micro-enterprises.
- (f) Mining: sectoral policy and institution building, technological research and development; small-scale mining, etc.
- (g) Energy: energy policy and institution building; power generation (non-renewable and renewable); efficient use of energy resources; energy research and training; encouraging private sector involvement in power generation and distribution.
- (h) Transport: transport policy and institution building; transport by road, rail, air, sea or inland waterway and storage facilities.
- (i) Communication: communication policy and institution building; telecommunications and media.
- (j) Water: water policy and institution building; protecting water resources, waste management, water supplies in rural and urban areas for domestic, industrial or agricultural purposes; storage, distribution and management of water resources.
- (k) Banking, finance and business services: financial sector policy and institution building, business services; privatisation, equity participation and marketing; support to trade, commerce and business associations (including export promotion agencies); financial and banking institutions.
- (l) Technology development and application, research: policy and institution building; concerted action at local, national and/or regional level for the promotion of science and technology activities and their application to production and promotion of computer literacy in the public and private sectors, scientific programmes and equipment for research.

Article 12

Trade development

1. The Community shall implement measures for the development of trade at all stages up to final distribution of the product.

The object is to ensure that the OCTs derive the maximum benefit from the provisions of this Decision and may participate under the most favourable conditions in the Community, domestic, sub-regional, regional and international markets by diversifying the range and increasing the value and the volume of OCT trade in goods and services.

2. In addition to developing trade between the OCTs and the Community, particular attention shall be given to operations designed to increase the OCTs' self-reliance and improve regional cooperation in trade and services.

3. Within the instruments provided for in this Decision and in accordance with the provisions set out in relation thereto, operations shall be undertaken at the request of the OCT authorities, particularly in the following areas:

- (a) support for the definition of appropriate macroeconomic policies necessary for trade development;
- (b) support for the creation or reform of appropriate legal and regulatory frameworks as well as for the reform of administrative procedures;
- (c) the establishment of coherent trade strategies;
- (d) support for OCTs in developing their internal capacities, information systems and awareness of the role and importance of trade in economic development;

- (e) support for strengthening the infrastructure related to trade and in particular support for the OCTs' efforts to develop and improve supportive service infrastructure, including transport and storage facilities, in order to ensure their effective participation in the distribution of goods and services and in order to enhance the flow of exports from the OCTs;
- (f) development of human resources and professional skills in the field of trade and services, in particular in the processing, marketing, distribution and transport sectors for the Community, regional and international markets;
- (g) support to private sector development and, in particular, to SMEs for product identification and development, market outlets and export-oriented joint ventures;
- (h) support for OCT actions aimed at encouraging and attracting private investment and joint venture operations;
- (i) the establishment, adaptation and strengthening of organisations in the OCTs dealing with the development of trade and services, particular attention being paid to the special needs of organisations in the least-developed OCTs;
- (j) support for OCTs aiming to improve the quality of their products, adapt them to market requirements and diversify their outlets;
- (k) support for OCT efforts to penetrate third country markets more effectively;
- (l) market development measures including increasing contacts and exchange of information between economic operators in OCTs, ACP States, the Member States and in third countries;
- (m) support for OCTs in the application of modern marketing techniques in production-oriented sectors and programmes, in particular in areas such as rural development and agriculture;
- (n) the establishment and development of insurance and credit institutions in the field of trade development.

4. Support for OCTs' participation in trade fairs, exhibitions and trade missions shall be carried out only where such events form an integral part of overall trade and market development programmes.

5. Participation of the least-developed OCTs in various trade activities shall be encouraged by special provisions, inter alia, the payment of travel expenses of personnel and costs of transporting exhibits, on the occasion of their participation in local, regional and third-country fairs, exhibitions or trade missions, including the cost of the temporary construction and/or renting of exhibition booths and stalls. The least-developed OCTs shall be granted special aid to assist in the preparation and/or purchase of promotional materials.

Article 13

Trade in services

1. The Community agrees to develop and finance infrastructure and human resources as regards trade in services in accordance with the priorities established under the development strategies for each OCT.

2. The Community shall contribute to the development and promotion of cost-effective and efficient maritime transport services in the OCTs, by:

- (a) promoting the efficient shipment of cargo at economically and commercially meaningful rates;
- (b) implementing good policies and competition rules;
- (c) facilitating greater OCT participation in international shipping services;
- (d) encouraging regional programmes of maritime transport and trade development;
- (e) increasing local private sector involvement in shipping activities.

The Community and the OCTs undertake to promote shipping safety, security of crews and the prevention of pollution.

3. The Community shall step up cooperation with the OCTs so as to ensure regular improvement and growth in air traffic.

This shall involve:

- (a) examining all means of reforming and modernising the OCT air transport industries;
- (b) promoting their commercial viability and competitiveness;
- (c) encouraging higher levels of private sector investment and participation and a greater exchange of knowledge and good business practice;
- (d) providing passengers and exporters in all OCTs with access to global air transport networks.

4. Safety must be ensured in the air transport sector and the relevant international standards introduced and implemented.

To that end, the Community shall assist the OCTs in:

- (a) implementing air navigation safety systems, including the Communications, Navigation and Surveillance/Air Traffic Management (CNS/ATM) system;
- (b) implementing airport security and strengthening the capacity of civil aviation authorities to manage all aspects of operational security placed under their control;
- (c) developing infrastructures and human resources;
- (d) ensuring that any measures taken in this field are based on advice from the relevant international organisations and that they will be effective and sustainable in the long term.

5. Proper attention must be paid to minimising the environmental impact of air transport, in particular by means of appropriate environmental impact studies.

6. In many aspects of air transport, regional solutions may offer scope for greater cost effectiveness and economies of scale. To that end, the Community undertakes to support and encourage actions on a regional level where appropriate.

7. Since telecommunication and active participation in the information society are prerequisites for the successful integration of the OCTs into the world economy, the Community and the OCTs reconfirm their respective commitments under existing multilateral agreements, in particular the World Trade Organisation (WTO) Agreement on Basic Telecommunications.

8. The Community shall support the efforts of the OCTs to increase their capacity in the field of trade in services. Cooperation shall cover, inter alia, the following areas:

- (a) promoting consultations between competent telecommunications bodies in the OCTs and the Community with a view to encouraging development of a competitive telecommunications environment bringing rates closer to costs;
- (b) establishment of a dialogue on different aspects of the information society, including regulatory aspects and communications policy;
- (c) information exchanges and possible technical assistance on regulation, standardisation, conformity testing and certification of information and communications technologies and the use of frequencies;
- (d) dissemination of new information and communications technologies and the development of new facilities, particularly in relation to interconnection of networks and interoperability of applications;
- (e) promotion and implementation of joint research in the field of new technologies related to the information society;
- (f) design and implementation of programmes and policies to raise the awareness of the economic and social benefits deriving from the information society.

9. Cooperation shall, in particular, be directed towards greater complementarity and harmonisation of communication systems at local, national, regional, inter-regional and international level and their adaptation to new technologies.

10. The Community shall support measures and operations to develop and support sustainable tourism. These measures shall be implemented at all levels, from the identification of the tourist product to the marketing and promotion stage.

The aim shall be to support the efforts of the authorities of the OCT to derive maximum benefit from local, regional and international tourism in view of tourism's impact on economic development and to stimulate private financial flows from the Community and other sources into the development of tourism in the OCTs. Particular attention shall be given to the need to integrate tourism into the social, cultural and economic life of the people, as well as to respect for the environment.

Specific tourism development measures shall be aimed at the definition, adaptation and development of appropriate policies at local, regional, sub-regional and international levels.

Tourism development programmes and projects shall be based on these policies on the basis of the following four components:

(a) human resource and institutional development, inter alia:

- professional management development in specific skills and continuous training at appropriate levels in the private and public sectors to ensure adequate planning and development;
- establishment and strengthening of tourism promotion centres;
- education and training for specific segments of the population and public/private organisations active in the tourism sector, including personnel involved in sectors that support tourism;
- inter-OCT and OCT-ACP cooperation and exchanges in the fields of training, technical assistance and the development of institutions.

(b) the development of products including, inter alia:

- identification of the tourism product, development of non-traditional and new tourism products, adaptation of existing products including the preservation and development of cultural heritage, ecological and environmental aspects, management, protection and conservation of flora and fauna, historical, social and other natural assets, development of ancillary services;
- promotion of private investment in the OCTs' tourist industries, including the creation of joint ventures;
- production of crafts of a cultural nature for the tourist market.

(c) market development including, inter alia:

- assistance for the definition and execution of objectives and market development plans at local, sub-regional, regional and international levels;
- support for the OCTs' efforts to gain access to services for the tourist industry such as central reservation systems and air traffic control and security systems;
- marketing and promotional measures and materials in the framework of integrated market development plans and programmes with a view to improved market penetration, aimed at the main generators of tourism flows in traditional and non-traditional markets as well as specific activities such as participation at specialised trade events, such as fairs, production of quality literature, films and marketing aids;

(d) research and information including, inter alia:

- improving tourism information and collecting, analysing, disseminating and utilising statistical data;
- assessment of the socio-economic impact of tourism on the economies of the OCT with particular emphasis on the development of linkages to other sectors in the OCT and the surrounding regions, such as food production, construction, technology and management.

Article 14

Trade-related areas

1. The Community shall help reinforce, within the development strategies of each OCT, the capacity of the OCTs to handle all areas related to trade, including where necessary improving and supporting the institutional framework.
2. The Community shall cooperate with the OCTs in the introduction of the general principles on protection and promotion of investments.
3. The Community shall also help to reinforce cooperation with the OCTs with a view to formulating and supporting effective competition policies with the appropriate 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 least developed OCTs.
4. The Community shall continue to foster cooperation with the OCTs and extend it, in particular, to the following areas:
 - (a) 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 local, national and regional offices and other agencies including support for regional intellectual property organisations involved in enforcement and protection, including the training of personnel;
 - (b) the conclusion of agreements aimed at protecting trademarks and geographical indications for products of particular interest.
5. The Community shall assist the OCTs in their efforts with regard to standardisation and certification aimed at promoting compatible systems between the Community and the OCTs. Cooperation shall comprise the following in particular:
 - (a) measures 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 the OCTs;
 - (b) cooperation in the area of quality management and assurance in selected sectors of importance to the OCTs;
 - (c) support for OCT capacity building initiatives in the fields of conformity assessment, metrology and standardisation;
 - (d) developing links between OCT and European standardisation, conformity assessment and certification institutions.
6. The Community shall help strengthen cooperation with the OCTs with regard to human, animal and plant health measures with a view to building public and private sector capacity in this area.
7. Bearing in mind the Rio Principles and with a view to reinforcing the mutual supportiveness of trade and environment policies, the Community shall enhance cooperation with the OCTs. The aim of cooperation shall in particular be to:
 - (a) establish coherent local, national, regional and international policies;
 - (b) reinforce quality controls of goods and services related to the environment;
 - (c) improve environment-friendly production methods in relevant sectors.
8. The Community shall cooperate with the OCTs in relation to labour standards. Cooperation in this area shall mainly consist of:
 - (a) exchanges of information on respective labour laws and regulations;
 - (b) assistance in the formulation of labour legislation and strengthening of existing legislation;
 - (c) educational and awareness-raising programmes aimed at eliminating child labour;
 - (d) enforcement of labour legislation and regulations.

9. The Community shall cooperate with the OCTs in the area of consumer policy and consumer health protection by:

- (a) improving institutional and technical capacity in this area;
- (b) establishing rapid-alert systems of mutual information on dangerous products;
- (c) exchanging information and experiences on the establishment and operation of post-market surveillance of products and product safety;
- (d) improving information provided to consumers on prices, characteristics of products and services offered;
- (e) encouraging the development of private consumer associations and contacts between consumer-interest representatives;
- (f) improving compatibility of consumer policies and systems;
- (g) informing on the entry into force of legislation and promoting cooperation in investigating harmful or unfair business practices;
- (h) implementing exports prohibitions on the trade of goods and services the marketing of which has been prohibited in their country of production.

10. The Community shall support the efforts deployed by the OCT public and private actors in the field of information technology and telecommunications to:

- (a) modernise telecommunications infrastructure, data transmission services, remote processing applications and telematics application projects (TAP);
- (b) develop and improve the services and the human capacity needed for achieving the information society, and integrate those services in the best possible way in a regional context;
- (c) improve awareness of economic opportunities and exchanges of experience and of know-how;
- (d) provide better information to the users of those resources;
- (e) exploit the potential of this sector in an optimum and sustainable manner;
- (f) develop the use of communications and information technology in the field of education, including distance learning;
- (g) increase electronic commerce and economic cooperation;
- (h) improve and modernise health networks, through the development of links between hospitals, the use of remote diagnosis and the creation of joint databases;
- (i) develop multimedia access to cultural and tourist resources;
- (j) improve and increase the use of information and communications technology in industry and for innovation.

Article 15

Social sectors

The Community shall contribute, within the development strategies of each OCT, to human and social development measures. Cooperation could in particular support programmes in the following sectors:

- (a) Education policy and institution building (buildings and materials); language and teacher training; primary education; secondary education and vocational training; higher education (including sector-specific education activities, e.g. agricultural training).

In education, the focus should be on widening access to and improving the quality of basic education by constructing more schools, rehabilitating existing classrooms and providing educational materials, teacher training, and bursaries for poor students;

- (b) Health sector reform activities, health policy and institution building; medical education, training and research, health infrastructure; HIV/AIDS.

In the health sector, projects should help to provide primary and preventive care services, particularly family planning and child and maternal health services;

(c) Population policy and family planning; mother and child care, including support for projects on the nurturing and development of the next generation.

(d) Increasing the efficiency of policies to prevent the production, distribution and trafficking of all kinds of drugs, narcotics and psychotropic substances, preventing and reducing drug abuse, taking into account work done in this context by international bodies.

Cooperation shall comprise the following:

(i) training, education, health promotion and rehabilitation of addicts, including projects for the reintegration of addicts into work and social environments;

(ii) measures to encourage alternative economic opportunities, for example programmes for the alternative development of areas used for the illicit production of narcotic plants, linked to effective enforcement measures;

(iii) technical, financial and administrative assistance relating to the monitoring of precursors trade, and the establishment of standards equivalent to those adopted by the Community and international authorities concerned;

(iv) technical, financial and administrative assistance relating to the prevention, treatment and reduction of drug abuse;

(v) technical assistance and training, and the establishment of standards to prevent money laundering equivalent to those adopted by the Community and other international bodies, in particular the Financial Action Task Force on Money Laundering;

(vi) exchange of relevant information for the implementation of points (a) to (d).

(e) Water policy and institution building; water resources protection; waste management (water for agriculture or energy will be covered under the relevant sector).

In the water supply and sanitation sector, the aim shall be to provide services in under-served areas. Funding that supports increasing access to drinking water supply and sanitation services contributes directly to human resources development by improving the state of health, and thus increasing the productivity, of people who do not already have access to these services; the continuing need to extend basic services in water, sanitation, and transport to both urban and rural populations must be addressed in environmentally sustainable ways.

(f) The Community shall cooperate with the OCTs in the conservation, sustainable use and management of their biological diversity taking into account the Community Action Plan on biological diversity.

Cooperation in this area may, in particular, extend to:

(i) supporting the elaboration, updating and implementation of national biodiversity strategies and action plans;

(ii) facilitating the establishment of local, regional and sub-regional mechanisms for the exchange of information and the monitoring and assessment of progress in the implementation of the Convention on Biological Diversity (CBD)(7);

(iii) developing and maintaining up-to-date databases on OCT biological diversities;

(iv) implementing appropriate measures relating to the access to genetic resources;

(v) promoting the conclusion of agreements with the private sector for the use of the country's genetic resources, so that local communities may effectively benefit from the economic revenue derived from such agreements and so that the use of genetic resources does not harm the protection and conservation of the biodiversity;

(vi) assisting the OCTs to participate actively in the policy-making process and negotiations under the CBD.

(g) Housing and integrated urban development projects and programmes.

In urban development, efforts shall focus on building or rehabilitating roads and other basic infrastructure, including low-income housing.

Article 16

Regional cooperation and integration

Cooperation shall ensure that effective aid is provided in order to achieve the objectives and priorities established by the competent OCT authorities in the framework of regional and sub-regional cooperation and integration:

1. Regional cooperation shall cover operations agreed on between:

- (a) two or more OCTs;
- (b) one or more OCTs and one or more neighbouring ACP or non-ACP States;
- (c) one or more OCTs and one or more ACP States or one or more of the most remote regions referred to in Article 299(2) of the Treaty (Guadeloupe, Guyana, Martinique, Réunion, the Canary Islands, Azores and Madeira);
- (d) two or more regional bodies of which OCTs are members;
- (e) one or more OCTs and regional bodies of which OCTs, ACP States or one or more of the most remote regions are members.

2. The objectives of cooperation in this context shall be to:

- (a) foster the gradual integration of the OCTs into the world economy;
- (b) accelerate economic cooperation and development within the regions of the OCT and between them and the regions of the ACP States;
- (c) promote the free movement of persons, goods, services, capital, labour and technology;
- (d) accelerate economic diversification and the coordination and harmonisation of regional and sub-regional cooperation policies;
- (e) promote and foster inter-OCT and intra-OCT trade as well as trade with the most remote regions, ACP States or other third countries.

3. In the context of regional integration, the aim of cooperation shall be to:

- (a) build and enhance the capacity of regional cooperation and integration organisations and institutions to promote regional cooperation and integration;
- (b) encourage the least developed OCTs to take part in the development of regional markets and benefit therefrom;
- (c) implement sectoral reform policies at regional level;
- (d) liberalise trade and payments;
- (e) stimulate cross-border foreign and domestic investment and other regional or sub-regional economic integration initiatives;
- (f) take account of the net transitional cost of regional integration on budget revenue and balance of payments.

4. Cooperation shall, in the area of regional cooperation, cover a wide variety of functional and thematic fields which specifically address common problems and take advantage of economies of scale, including:

- (a) infrastructure, particularly transport and communications infrastructure and related safety problems, energy;
- (b) the environment, water resource management;
- (c) health, education and training;
- (d) research and scientific and technical cooperation;
- (e) regional disaster preparedness and alleviation initiatives;
- (f) other areas, e.g. arms controls, drugs, organised crime, money laundering, fraud and corruption.

5. Cooperation shall also support inter-regional, inter-OCT and inter-ACP cooperation schemes and initiatives.

Article 17

Cultural and social cooperation

Cooperation shall contribute to the self-reliant development of the OCTs, this being a process centred on people themselves and rooted in each people's culture. The human and cultural dimension shall embrace all areas and be reflected in all development projects and programmes. Cooperation shall back up the policies and measures adopted by the competent OCT authorities to enhance their human resources, increase their own creative capacities and promote their cultural identities. It shall foster participation by the population in the process of development. Cultural and social cooperation shall be expressed through:

- the taking into account of the cultural and social dimension;
- promotion of cultural identities and intercultural dialogue, with particular reference to preserving the cultural heritage, the production and dissemination of cultural products, cultural events and information and communication;
- operations to enhance human resources, notably covering education and training, scientific and technical cooperation, the role of women in development, health and combating drug abuse, population and demography.

PART THREE

INSTRUMENTS OF OCT-EC COOPERATION

TITLE I

DEVELOPMENT FINANCE COOPERATION

Chapter 1

General provisions

Article 18

Objectives

The objective of development finance cooperation shall be, through the provision of adequate financial resources and appropriate technical assistance, to:

- (a) support and promote the OCTs' own efforts to achieve sustainable social, cultural and economic development on the basis of mutual interest and in a spirit of interdependence;
- (b) help raise the standard of living of the peoples of the OCTs;
- (c) promote measures likely to mobilise the capacity for initiative of communities, groups, associations and individuals and their participation in the design and implementation of development programmes;
- (d) contribute to the fullest participation of the population in the benefits of development in the interests of alleviating poverty;
- (e) contribute to the development of the capacity of the OCTs to innovate, adapt and transform local technologies and to master appropriate new technologies;
- (f) support the efforts of the OCTs to achieve economic diversification, inter alia by contributing to sustainable exploration, conservation, processing and exploitation of their natural resources;
- (g) provide support for and promote the optimal development of human resources in the OCTs;
- (h) facilitate an increase in the financial flows to the OCTs that meet their evolving needs and support the efforts of the OCTs to harmonise international cooperation for their development through cofinancing of operations with other financing agencies or third parties;
- (i) promote direct private investment in the OCTs, support the development of a healthy, prosperous and dynamic OCT private sector and encourage local, national and foreign private investment flows into the productive sectors in the OCTs;

- (j) encourage inter-OCT and OCT-ACP regional cooperation, solidarity and integration;
- (k) permit the establishment of more balanced economic and social relations and better understanding between the OCTs, ACP States, Member States and the rest of the world, with a view to assisting the integration of the OCTs into the world economy;
- (l) enable OCTs faced with serious economic and social difficulties of an exceptional nature resulting from natural disasters or extraordinary circumstances having comparable effects to benefit from emergency assistance;
- (m) help the least-developed OCTs to overcome the specific obstacles which hamper their development efforts.

Article 19

Principles

1. Development finance cooperation shall be based on partnership, complementarity and subsidiarity and shall:
 - (a) be implemented, in accordance with the association and development strategies adopted pursuant to Article 4, with due regard to the OCTs respective geographical, social and cultural characteristics, as well as their specific potential;
 - (b) ensure that resource flows are accorded on a predictable and regular basis;
 - (c) be flexible and tailored to the situation in each OCT.
2. Member States shall cooperate with the Commission to ensure sound financial management in the use of Community funds.
3. Following a partnership approach, Community activities shall be decided in close consultation between the Commission, the OCT authorities concerned and the Member State to which it is linked. Such partnership shall be conducted in full compliance with the respective institutional, legal and financial powers of each of the partners.
4. Without prejudice to the second subparagraph of Article 25(1), Community and Member States contributions shall be complementary.
5. In accordance with the principle of subsidiarity, the authorities of the OCT concerned shall be responsible for implementing operations without prejudice to the powers of the Commission designed to ensure sound financial management in the use of Community funds.

Article 20

Single Programming Documents

1. Pursuant to Article 4, the OCT authorities, the Commission and the Member State to which the OCT is linked, acting in partnership, shall lay down the strategy and the priority aims on which the SPD is to be based.
2. The OCT authorities shall be responsible for:
 - (a) establishing their priorities on which the cooperation strategy should be based;
 - (b) in the framework of sectoral planning, identifying projects and programmes and establishing back-up measures to ensure the sustainability and viability of the proposed schemes;
 - (c) preparing project and programme dossiers;
 - (d) preparing, negotiating and concluding contracts;
 - (e) implementing and managing projects and programmes;
 - (f) maintaining projects and programmes and ensuring their sustainability.
3. The relevant authorities of the OCTs and the Commission shall be jointly responsible for:
 - (a) adopting the SPD;
 - (b) ensuring equality of conditions for participation in invitations to tender and contracts;
 - (c) monitoring and evaluating the effects and results of projects and programmes;
 - (d) ensuring the proper, prompt and efficient execution of projects and programmes.

4. The Commission shall be responsible for taking the financing decision on the overall allocation corresponding to the SPD, in accordance with the procedure referred to in Article 24.

5. Unless otherwise provided in this Decision, all decisions requiring the approval of a party to the association shall be approved, or be deemed approved, within six months of notification by the other party.

Article 21

Scope of financing

Within the framework of the strategy and priorities established by the OCT concerned at local or regional level, financial support may be given to operations helping to achieve the objectives set out in this Decision.

The following activities shall fall within its scope:

- (a) sectoral policies and reforms as well as projects that are in coherence with them;
- (b) institutional development, capacity building and integration of environmental aspects;
- (c) technical cooperation programmes;
- (d) humanitarian aid and emergency relief operations;
- (e) additional support in the event of fluctuations in export earnings from exports of goods and services.

Article 22

Eligibility for financing

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

- (a) OCTs;
- (b) regional or inter-State bodies to which one or more OCTs belong and which are authorised by their relevant authorities;
- (c) joint bodies set up by the Community and the OCTs to pursue certain specific objectives.

2. Subject to the agreement of the authorities of OCTs concerned, the following shall also be eligible for support:

- (a) local, national and/or regional public or semi-public agencies, departments or local authorities of the OCTs and in particular their financial institutions and development banks;
- (b) companies and firms of the OCTs and of regional groups;
- (c) enterprises of a Member State, so as to enable them, in addition to their own contribution, to undertake productive projects in the territory of an OCT;
- (d) OCT or Community financial intermediaries promoting and financing private investments in the OCTs;
- (e) actors of decentralised cooperation and other non-State actors from OCTs and from the Community, to enable them to undertake economic, cultural, social and educational projects and programmes in the OCTs in the framework of decentralised cooperation, as referred to in Article 29.

Article 23

Programming and implementation

The Commission shall adopt the implementing provisions for this Part of the Decision and for Annexes II A to D within 12 months of its entry into force, in accordance with the procedure laid down in Article 24 and in cooperation with the OCTs in accordance with Article 7.

It shall support the full utilisation by the OCTs of the instruments laid down in this Decision, in particular the trade and financial provisions, by providing the relevant guidelines and information within 12 months of its entry into force.

The provisions shall include in particular:

- (a) the procedure for preparing the SPD and its essential elements;

(b) the procedures and criteria for the follow-up, audit, ex-ante, mid-term and ex-post evaluation, review and implementation of the SPD, including those in relation to the Commission's participation in these activities;

(c) the preparation of periodical or other reports;

(d) detailed rules for the financial corrections referred to in Article 32.

The financial and accounting procedures shall be laid down in the 9th EDF Financial Regulation.

Article 24

The EDF-OCT Committee

1. The Commission shall, where appropriate, be assisted by the Committee created by the Internal Agreement, hereinafter referred to in this Article as "the Committee".

2. When exercising the powers conferred on it by this Decision, the Committee shall be known as the "EDF-OCT Committee". The internal rules of procedure of the Committee created by the Internal Agreement shall apply to the EDF-OCT Committee.

3. The Committee shall focus its work on the substantive issues of development cooperation at OCT and regional level. In the interests of coherence, coordination and complementarity, it shall monitor the implementation of the SPDs.

4. The Committee shall give its opinion on:

(a) draft SPDs and any amendments to them;

(b) the implementing provisions for this Part of the Decision and for Annexes II A to D.

5. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit laid down by the chairman. The opinion shall be delivered by the majority laid down in Article 21(4) of the Internal Agreement. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in paragraph 3 of that Article. The chairman shall not vote.

6. The Commission shall adopt the measures, which shall apply immediately. However, if the measures are not in accordance with the opinion of the Committee they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided on for a period of not more than three months from the date of such communication.

7. The Council, acting by the majority and in accordance with the weighting referred to in paragraph 5, may take a different decision within the period provided for in paragraph 6.

8. The Commission shall inform the Committee of the follow-up, evaluation and audit of SPDs.

Chapter 2

Resources made available to the OCTs

Article 25

Financial assistance

1. The overall amount of Community financial assistance for the purposes of Chapter 1, its allocation, financing terms and arrangements and of the use of the assistance for the period from 2000 to 2007 can be found in Annexes II A to D and in Chapter 3, without prejudice to the provisions to be adopted by the Commission as laid down in Article 24.

Financial assistance under this Decision may be used to cover the total cost of both the local and foreign expenditure of projects and programmes, including financing of recurrent costs.

2. OCTs are also eligible for financing under the legislation in force in favour of the developing countries listed in Annex II E and for the Community programmes listed in Annex II F.

Chapter 3

Private Sector Investment Support

Article 26

Investment promotion

The authorities of the OCT, Member States and the Community, 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 OCT-EC development cooperation and with the appropriate laws and regulations;
- (b) accord fair and equitable treatment to such investors;
- (c) 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 a climate;
- (d) promote effective cooperation among OCT economic operators and between them and those of the Community in order to increase the flow of capital, management skills, technology and other forms of know-how;
- (e) seek to promote a greater flow of private resources between the Community and the OCTs by contributing, inter alia, to the removal of obstacles which impede OCT operators' access to international capital markets, including those of the Community;
- (f) create an environment which encourages the development of financial institutions and the mobilisation of resources which are essential to capital formation and the growth of entrepreneurship;
- (g) promote the development of enterprises by taking such steps as are necessary to improve the business environment and, in particular, foster a legal, administrative and incentive framework which is conducive to the emergence and development of dynamic private sector enterprises including grassroots operations;
- (h) strengthen the capacity of local institutions in the OCTs to provide the range of services which can encourage greater local participation in industrial and business activity.

Article 27

Investment support and financing

Cooperation will provide long-term financing to help promote private sector growth and mobilise national and foreign capital to that effect. To this end, cooperation shall in particular provide:

- (a) grants to cover technical and financial assistance in support of human resource development, institutional capacity building, or other forms of institutional aid linked to a specific investment; measures designed to make enterprises more competitive and build the capacity of private financial and non-financial intermediaries; measures to facilitate and promote investment and activities to improve competitiveness;
- (b) advisory and consultancy services to help create an investment-friendly climate and a stock of information to help guide and encourage capital flows;
- (c) grants funded by the Investment Facility referred to in Annex II C;
- (d) loans from the EIB's own resources.

The conditions applicable to the Investment Facility and the abovementioned loans are laid down respectively in Annexes II B and C.

Chapter 4

Additional support in the event of fluctuations in export earnings

Article 28

Additional support

1. In order to mitigate the adverse effects of any short-term fluctuations in export earnings, in particular in the agricultural and mining sectors, which might jeopardise the attainment of the

development objectives of the OCT concerned, a system of additional support shall be instituted within the financial allocation referred to in Annex II A.

2. The purpose of support in the event 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 dependence of the OCT economies on exports, in particular in the agricultural and mining sectors, shall be taken into account in the allocation of resources referred to in Annex II D. In this context, the least developed OCTs 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 D.

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

Chapter 5

Support for other actors of cooperation

Article 29

Objectives and financing

1. In order to respond to the development needs of local communities and encourage all actors of decentralised cooperation which are in a position to contribute to the autonomous development of the OCTs to put forward and implement initiatives, OCT-EC cooperation shall support such development operations within limits laid down by the OCTs concerned and by the Member States to which these OCTs are linked, and within the framework of the SPD provisions.

2. In this context, financial support shall be given to decentralised projects and microprojects as follows:

(a) The cooperation partners eligible for financial support under this Chapter shall be decentralised cooperation agents in the Community or the OCTs or other developing countries, namely: local authorities, non-governmental organisations, local traders' associations and local citizens' groups, cooperatives, trade unions, women's and youth organisations, teaching and research institutions, churches and any non-governmental associations likely to contribute to development.

This form of cooperation shall make available for the development of the OCTs the capabilities, innovative operating methods and resources of the actors of decentralised cooperation. Support will take account in particular joint actions between Community, OCT and other developing countries;

(b) Local microprojects shall have an economic and social impact on the life of the people, meet a demonstrated and observed priority need and be undertaken at the initiative and with the active participation of the local community which will benefit therefrom.

3. Projects or programmes under this form of cooperation may be a way of achieving the specific objectives of the SPD or the results of initiatives by local communities or decentralised actors.

4. The support provided for under this Chapter shall be additional or, if need be, complementary in respect of the provisions in Annex II E.

5. Contributions to the funding of microprojects and decentralised cooperation shall come from grants, in which case the contribution shall not normally exceed three-quarters of the total cost of each project. The balance shall be financed:

(a) for microprojects, by the local community concerned, in kind or in the form of services or cash and adapted to its capacity to contribute;

(b) for decentralised cooperation, by the actors of decentralised cooperation, provided that the financial, technical, material and other resources brought in by such actors is not, as a general rule, less than 25 % of the estimated cost of the project/programme;

(c) in exceptional cases where both microprojects and decentralised cooperation are concerned, by the authorities of the OCT concerned, either in the form of financial contribution or through the use of public equipment or the supply of services.

The procedures applicable to projects and programmes financed in the context of microprojects or decentralised cooperation shall be as set out in this Decision, notably with regard to the SPD implementing provisions.

Chapter 6

Support for humanitarian and emergency aid

Article 30

Objectives and means

1. Humanitarian and emergency aid shall be granted to OCTs faced with serious economic and social difficulties of an exceptional nature resulting from natural disasters or extraordinary circumstances having comparable effects. Humanitarian and emergency aid shall be maintained as long as necessary to deal with the urgent problems which arise in such situations.

Humanitarian and emergency aid shall be granted solely on the basis of the needs and interests of disaster victims.

2. The aim of humanitarian and emergency aid shall be to:

(a) save human lives in crisis and post-crisis situations caused by natural disasters or extraordinary circumstances having comparable effects;

(b) help finance the transport of aid and efforts to ensure that it is accessible to those for whom it is intended, by all logistical means available;

(c) implement short-term rehabilitation and reconstruction measures in order to establish conditions as soon as possible for the people concerned to be integrated or reintegrated;

(d) respond to needs arising as a result of people being displaced, such as refugees, displaced persons and returnees following natural or man-made disasters so as to meet all the requirements of refugees and displaced persons wherever they may be for as long as is necessary and facilitate their voluntary resettlement;

(e) help the OCTs to develop or perfect systems of disaster prevention and preparedness, including prediction and early-warning systems, with a view to reducing the consequences of disasters.

3. Similarly aid may be granted to OCTs taking in refugees or returnees to meet acute needs not covered by emergency assistance.

4. Aid provided for by this Article shall be financed from the Community budget. However, it may exceptionally be financed from the allocations laid down in Annex II A, in addition to the funding from the budget heading concerned.

5. Humanitarian and emergency aid operations shall be undertaken at the request of the OCT affected, the Commission, the Member State to which the OCT is linked, international organisations or local or international non-governmental organisations. Such aid shall be administered and implemented under procedures that facilitate rapid, flexible and effective operations.

Chapter 7

Implementation Procedures

Article 31

Technical assistance

1. On the initiative of or on behalf of the Commission, studies or technical assistance measures may be financed in order to ensure the preparation, monitoring, evaluation and supervision necessary for implementing this Decision.

Such studies or technical assistance measures shall be financed by the overall grant allocation.

2. On the initiative of the OCT, studies or technical assistance measures may be financed in relation to the implementation of the activities contained in the SPD, subject to the Commission's opinion.

Such studies or technical assistance measures shall be financed from the allocation of the OCT concerned.

Article 32

Financial control

1. The OCT concerned shall bear primary responsibility for the financial supervision of the operation. This shall be carried out, where appropriate, in coordination with the Member State to which the OCT is linked in accordance with the applicable national legislation.

2. The Commission shall be responsible for:

(a) ensuring that management and control systems exist and function properly in the OCT concerned so as to ensure that the Community funds are used correctly and effectively;

(b) in the event of irregularities, sending recommendations or requests for corrective measures to remedy those irregularities and rectify any management shortcomings found.

3. The Commission, OCT and, where appropriate, the Member State to which it is linked, shall cooperate on the basis of administrative arrangements at annual or biannual meeting to coordinate programmes, methodologies and the implementation of controls.

4. With regard to financial corrections:

(a) the OCT shall be responsible in the first instance for detecting and correcting financial irregularities;

(b) however, in the event of shortcomings by the OCT concerned, the Commission shall take action, if the OCT fails to remedy the situation and attempts at conciliation are unsuccessful, to reduce or withdraw the balance of the overall allocation corresponding to the SPD financing decision.

Chapter 8

Transition from previous European Development Funds (EDFs) to the 9th EDF

Article 33

Implementing the previous EDFs and the transitional phase

1. Commitments made in the framework of the 6th, 7th and 8th EDFs before the entry into force of this Decision shall continue to be executed following the rules applicable to those EDFs. Resources from the sixth, seventh and eighth EDFs which were allocated to OCTs before the entry into force of this Decision shall remain allocated to them. These resources shall continue to be used in accordance with the relevant provisions of Decision 91/482/EEC, which shall remain applicable for such purposes, until the entry into force of the Internal Agreement establishing the 9th EDF.

Until the Internal Agreement establishing the 9th EDF comes into force, the officials responsible for managing and implementing European Development Fund resources, namely the EDF Chief Authorising Officer, the OCT Local Authorising Officer and the Commission's Head of Delegation, shall remain responsible for the management and implementation tasks assigned to them by Council Decision 91/482/EC.

2. Any balances remaining from previous EDFs on the date of entry into force of the Internal Agreement establishing the 9th EDF, 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 used in accordance with the conditions laid down in this Decision.

Any resources thus transferred to the 9th EDF that previously had been allocated to the indicative programme of an OCT or region shall remain allocated to that OCT or to regional cooperation.

Any other remaining balances not allocated to an indicative programme shall be transferred to the non-committed amount of the 9th EDF. The overall amount of this Decision, supplemented by the transferred balances from previous EDFs, shall cover the period 2000-2007. This paragraph shall apply in particular to any remaining balances of the overall amounts referred to in Articles 118 and 142 of Decision 91/482/EEC concerning, respectively, the stabilisation of export earnings from agricultural commodities (Stabex) and the special financing facility (Sysmin).

TITLE II

ECONOMIC AND TRADE COOPERATION

Article 34

Objective

1. The objective of economic and trade cooperation shall be to promote the economic and social development of the OCTs, in particular by establishing close economic relations between them and the Community as a whole.

The implementation of such cooperation must be consistent with the objectives of the other common policies.

2. Furthermore, the Community undertakes to support the effective integration of the OCTs in the global economy and the development of their trade in goods and services to regional and world markets.

Chapter 1

Arrangements for trade in goods

Article 35

Free access for originating products

1. Products originating in the OCTs shall be imported into the Community free of import duty.

2. The concept of originating products and the methods of administrative cooperation relating thereto are laid down in Annex III.

Article 36

Transshipment of non-originating products in free circulation in the OCTs

1. Products not originating in the OCTs but which are in free circulation in an OCT and are re-exported as such to the Community shall be accepted for import into the Community free of customs duties and taxes having equivalent effect providing that they:

- (a) have paid, in the OCT concerned, customs duties or taxes having equivalent effect of a level equal to, or higher than, the customs duties applicable in the Community on import of these same products originating in third countries eligible for the most-favoured-nation clause;
- (b) have not been the subject of an exemption from, or a refund of, in whole or in part, customs duties or taxes having equivalent effect, without prejudice to paragraph 2;
- (c) are accompanied by an export certificate.

2. Without prejudice to paragraph 1, the Commission may, following a duly substantiated request from the authorities of the OCT concerned and in the light of the objectives of this Decision, authorise OCT public financial aid to those operating the transshipment procedure. The request shall in particular indicate the nature and the anticipated volume of trade, which would benefit from the aid.

This aid must take the form of an aid for transport of goods put in free circulation, including legitimate running costs supported in relationship with the transshipment procedure. This aid shall not provoke a serious disturbance or difficulties, which may result in a deterioration in an economic sector of the Community or of one or more Member States.

The OCT authorities may make representations to the Commission in order to provide further information to substantiate their written request.

If the OCT authorities so request, a partnership working party referred to in Article 7(3) shall be convened to resolve any issues arising from the administration of the transshipment procedure.

3. Paragraphs 1 and 2 shall not apply to:

(a) the agricultural products listed in Annex I to the Treaty nor to products covered by Council Regulation (EEC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products⁽⁸⁾ except, as from 1 February 2002 and subject to the adoption by the Commission of the necessary implementing arrangements, for fisheries products:

(A) falling within CN codes 0303 31 10 00, 0304 20 95 10 and 0306 13 10 transhipped through Greenland within an annual quantity of 10000 tons, and

(B) falling within CN codes 0302 21 10, 0303 31 10, 0305 49 10, 0306 12 10, 0306 12 90, 0306 22 91, 0306 22 99, 0306 13 10, 0306 13 30, 0306 13 40, 0306 13 50, 0306 13 80, 0306 23 10, 0306 23 31, 0306 23 39, 0306 23 90 transhipped through Saint-Pierre-et-Miquelon within an annual quantity of 2000 tonnes;

(b) products subject, on import into the Community, to quantitative restrictions or limitations or to anti-dumping duties.

4. The conditions for entry into the Community of products not originating in the OCTs but in free circulation in an OCT, and the methods of administrative cooperation relating thereto, are laid down in Annex IV.

Article 37

Committee procedure

1. In matters covered by Article 36, the Commission shall be assisted by a Committee.

2. Articles 3 and 7 of Decision 1999/468/EC shall apply to the proceedings of the Committee.

3. The Committee shall adopt its rules of procedure.

Article 38

Quantitative restrictions and measures having equivalent effect

1. The Community shall not apply to imports of products originating in the OCTs 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 or public policy, the protection of health and life of humans, animals and plants, the protection of national treasures possessing artistic, historic or archaeological value, the conservation of exhaustible natural resources or the protection of industrial and commercial property.

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

Article 39

Waste

1. Movements of waste between the Member States and the OCTs shall be controlled in accordance with international and Community law. The Community shall support the establishment and development of effective international cooperation in this area with a view to protecting the environment and public health.

2. The Community shall prohibit all direct or indirect export of waste to the OCTs, with the exception of exports of non-hazardous waste destined for recovery operations while at the same time the OCT authorities shall prohibit the direct or indirect import into their country of such waste from the Community or any other country, without prejudice to specific international undertakings concerning these areas that have been made, or may be made in future, in the competent international fora.

3. As regards the Community, Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community(9) shall apply.

4. As regards those OCTs, which, due to their constitutional status, are not Party to the Basle Convention, their relevant authorities shall expedite adoption of the necessary internal legislation and administrative regulations to implement the provisions of the Basle Convention(10).

5. In addition, the Member States concerned shall promote the adoption by the OCTs of the necessary internal legislation and administrative regulations to implement:

(a) Regulation (EEC) No 259/93 as follows:

(i) Article 13 as regards shipments of waste within the OCTs,

(ii) Article 18 as regards exports of waste to the ACP States from the OCTs;

(b) Regulation (EC) No 1420/1999(11);

(c) Commission Regulation (EC) No 1547/1999(12);

(d) European Parliament and Council Directive 2000/59/EC subject to the time limits for transposition laid down in Article 16 thereof(13).

6. As regards imports into the Community from the OCTs of hazardous waste and of non-hazardous waste destined for final disposal, Articles 1 to 12 and 25 to 39 of Regulation (EEC) No 259/93 and Commission Decision 94/774/EC(14), shall apply.

7. One or more OCTs and the Member State to which they are linked may apply national procedures to export of waste from the OCTs to that Member State.

In this case, the Member State concerned notifies to the Commission the applicable legislation within six months from the entry into force of this Decision or of any future relevant national legislation, including any amendments to it.

Article 40

Measures adopted by the OCTs

1. In view of the present development needs of the OCTs, the authorities of the OCTs may retain or introduce, in respect of imports of products originating in the Community, such customs duties or quantitative restrictions as they consider necessary.

2. (a) The trade arrangements applied to the Community by the OCTs may not give rise to any discrimination between Member States nor be less favourable than most-favoured-nation treatment.

(b) Notwithstanding specific provisions of this Decision, the Community shall not discriminate between OCTs in the field of trade.

(c) The provisions of (a) shall not preclude a country or territory from granting certain other OCTs or other developing countries more favourable treatment than that accorded to the Community.

3. The authorities of the OCTs shall communicate to the Commission, within a period of three months following the entry into force of this Decision, the customs tariffs and lists of quantitative restrictions which they apply.

They shall also communicate to the Commission any subsequent amendments to such measures as and when they are adopted.

Article 41

Surveillance clause

1. The products originating in the OCTs referred to in Article 35 or products not originating in the OCT referred to in Article 36 may be subject to special surveillance. The Commission shall decide to which products surveillance shall apply in consultation with the OCT authorities and the Member State to which the OCT is linked.
2. Article 308d of Commission Regulation (EEC) No 2454/93 of 2 July 1993, laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 on the Community Customs Code⁽¹⁵⁾, shall apply.
3. The Commission and the competent OCT authorities shall ensure the effectiveness of the surveillance measures by introducing the methods of administrative cooperation set out in Annexes III and IV.

Article 42

Safeguard measures

1. If, as a result of the application of this Decision, serious disturbances occur in a sector of the economy of the Community or one or more of its Member States, or their external financial stability is jeopardised, or if difficulties arise which may result in a deterioration in a sector of the Community's activity or in a region of the Community, the Commission may, on its own initiative or at the request of one or more Member States and following consultation with the Committee referred to in Article 43 take or authorise the Member States concerned to take the necessary safeguard measures, in accordance with the paragraphs below.
2. For the purpose of implementing paragraph 1, priority shall be given to such measures as would least disturb the functioning of the association and the Community. These measures shall not exceed the limits of what is strictly necessary to remedy the difficulties that have arisen. They cannot exceed the withdrawal of the preferential treatment granted by this Decision.
3. When safeguard measures are taken or modified, particular attention shall be paid to the interests of the least-developed OCTs.
4. This Article is without prejudice to the rights and obligations of the Community under WTO rules, including those contained in the WTO Agreement on Safeguards⁽¹⁶⁾. Neither shall it preclude application of the regulations establishing a common organisation of agricultural markets, or Community or national administrative provisions derived therefrom, or the specific rules adopted under Article 235 of the Treaty for processed agricultural products.
5. (a) If a Member State asks the Commission for safeguard measures to be applied, the Commission shall inform the Council, the Member States and the OCT authorities accordingly within three working days from the date of receipt of the Member State's request, and shall invite the OCT authorities to supply any information which they consider important to the situation at hand.
(b) When the Commission acts on its own initiative, it shall inform the OCTs concerned and the Member States at the earliest possible stage.
(c) If the OCT authorities so require and without prejudice to the deadlines referred to in this Article, a partnership working party referred to in Article 7(3) shall be convened. The outcome of the working party shall be transmitted to the consultative committee. In this case, the deadline referred to in paragraph 9 of this Article shall be extended by ten working days. At the same time it shall invite the Member States to a meeting of the committee referred to in Article 43.

Member States and the OCTs shall provide the Commission with any information necessary to justify their requests to apply safeguard measures or not to do so.

6. The Commission shall notify the Council, the Member States and the OCT authorities immediately of the decision to take the necessary safeguard measures. The Decision shall apply with immediate effect.

7. Any Member State may refer the Commission's decision referred to in paragraph 6 to the Council within 10 working days of receiving notification of the decision.

8. Should the Commission fail to adopt a decision within 21 working days or if it rejects the request or if the Commission decides not to take safeguard measures, any Member State that has brought the matter before the Commission may refer it to the Council.

9. In the cases referred to in paragraphs 7 and 8, the Council, acting by a qualified majority, may adopt a different decision within 21 working days.

Article 43

Committee procedure

1. In matters covered by Article 42, the Commission shall be assisted by a Committee.

2. Articles 3 and 7 of Decision 1999/468/EC shall apply to the proceedings of the Committee.

3. The Committee shall adopt its rules of procedure.

Chapter 2

Trade in services and rules of establishment

Article 44

General objective

The long-term aim in this area is a progressive liberalisation of trade in services, with due respect for the OCTs' local policy objectives, and taking due account of the level of development of the OCT and the obligations entered into by the Community, Member States or the OCTs in the WTO framework.

Article 45

General principles of establishment and the provision of services

1. For the purposes of this Chapter, the following definitions shall apply:

(a) "companies or enterprises": companies or enterprises constituted under civil or commercial law, including public or other companies, cooperative societies and any other legal person or association governed by public or private law, save for those which are non-profit-making.

"Companies or enterprises of Member States" are those formed in accordance with the laws of a Member State and whose registered office, central administration or principal place of business is in a Member State. However, a company or enterprise having only its registered office in a Member State must be engaged in an activity which has an actual and continuous link with the economy of that Member State.

"OCT companies or enterprises" are those formed in accordance with the law applicable in a given OCT and whose registered office, central administration or principal place of business is in that OCT; however, a company or enterprise having only its registered office in a country or territory must be engaged in an activity which has an actual and continuous link with the economy of that country or territory;

(b) "inhabitants of an OCT": persons ordinarily resident in an OCT who are nationals of a Member State or who enjoy a legal status specific to an OCT. This definition is without prejudice to the rights conferred by citizenship of the Union within the meaning of the Treaty.

2. As regards the arrangements applicable to establishment and the provision of services, in line with Article 183(5) of the Treaty and subject to paragraph 3 below:

(a) the Community shall apply to the OCTs the undertakings entered into under the General Agreement on Trade in Services (GATS) under the conditions laid down in that Agreement and in accordance with this Decision; in application of such undertakings, Member States shall not discriminate between inhabitants, companies or enterprises of the OCTs;

(b) the OCT authorities shall afford nationals, companies or enterprises of the Member States treatment that is no less favourable than that which they extend to nationals, companies or enterprises of third countries and shall not discriminate between nationals, companies or enterprises of Member States.

3. The authorities of an OCT may with a view to promoting or supporting local employment, adopt regulations to aid their inhabitants and local activities.

In this event, the OCT authorities shall notify the Commission of the regulations they adopt so that it may inform the Member States.

4. With regard to the professions of doctor, dentist, midwife, general nurse, pharmacist and veterinary surgeon, the Council, acting unanimously on a proposal from the Commission, shall adopt the list of professional qualifications specific to OCT inhabitants which are to be recognised in the Member States.

Article 46

Maritime transport

The objective of cooperation in this field shall be to ensure harmonious development of efficient and reliable shipping services on economically satisfactory terms by facilitating the active participation of all parties according to the principle of unrestricted access to the trade on a commercial basis.

This provision shall not apply to Greenland.

Chapter 3

Trade-related areas

Article 47

Current payments and capital movements

1. Without prejudice to paragraph 2:

(a) Member States and the OCT authorities shall 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 OCTs;

(b) with regard to transactions on the capital account of balance of payments, the Member States and the OCT authorities shall impose no restrictions on the free movement of capital for direct investments in companies formed in accordance with the laws of the host Member State, country or territory and to ensure that the assets formed by such investment and any profit stemming therefrom can be realised and repatriated.

2. The Community, Member States and OCTs shall be entitled to take the measures referred to mutatis mutandis in Articles 57, 58, 59, 60 and 301 of the Treaty in accordance with the conditions laid down therein. Equally, where one or more OCTs or one or more Member States is in serious balance of payments difficulties, or under threat thereof, the OCT authorities, 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. When taking such measures, the OCT authorities, the Member State or the Community shall inform each other without delay and submit to each other as soon as possible a timetable for the elimination of the measures concerned.

Article 48

Competition policies

1. 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 competition and with due consideration to the different levels of development and economic needs of each OCT, the Community and the OCTs undertake to implement local, 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 above prohibition also relates to the abuse by one or more undertakings of a dominant position in the territory of the Community or of the OCTs.

Article 49

Protection of intellectual property rights

1. An adequate and effective level of protection of intellectual, industrial and commercial property rights, including means for enforcing such rights, shall be ensured in line with the highest international standards with a view to reducing distortions and impediments to bilateral trade.

2. Intellectual property rights cover copyright, including in particular the copyright on computer programmes and neighbouring rights, utility models, patents including bio-technological inventions, industrial designs, geographical indications including appellations of origin, trademarks for goods or services, topographies of integrated circuits, the legal protection of data bases and the protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the Protection of Industrial Property and protection of undisclosed information on know-how.

Article 50

Standardisation and certification

Closer cooperation shall be pursued in the field of standardisation, certification and quality assurance to remove unnecessary technical barriers and to reduce differences in those areas, so as to facilitate trade.

Article 51

Trade and the environment

Development of international trade shall be promoted in such a way as to ensure sustainable and sound management of the environment, in accordance with the relevant international agreements and undertakings and with due regard to the respective levels of development of the OCTs. The special needs and requirements of the OCTs shall be taken into account in the design and implementation of environmental measures.

Bearing in mind the Rio Principles, cooperation shall aim at ensuring the mutual supportiveness of trade and environment policies, in particular through the reinforcement of quality controls of goods and services related to the environment and the improvement of environment-friendly production methods.

Article 52

Trade and labour standards

The internationally and nationally recognised core labour standards must be respected, in particular the freedom of association and protection of the right to organise, application of the right to organise and to bargain collectively, the abolition of forced labour, the elimination of worst forms of child labour, the minimum age for admission to employment and non-discrimination in respect to employment.

Article 53

Consumer policy and consumer health protection

Cooperation shall be pursued in the area of consumer policy and consumer health protection, having due regard to the legislation in force in OCTs and the Community to avoid barriers to trade.

Article 54

Prohibition of disguised protectionist measures

The provisions of this Chapter shall not be used as a means of arbitrary discrimination or a disguised restriction on trade.

Chapter 4

Monetary and tax matters

Article 55

Tax carve-out clause

1. Without prejudice to the provisions of Article 56, the most-favoured-nation treatment granted in accordance with the provisions of this Decision shall not apply to tax advantages which the Member States or OCT authorities 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 in force.
2. Nothing in this Decision may be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or fraud of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation in force.
3. Nothing in this Decision shall be construed to prevent the respective competent authorities 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.

Article 56

Tax and customs arrangements for Community-funded contracts

1. The OCTs shall apply to Community-funded contracts 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 treatment, account shall not be taken of arrangements applied by the relevant authorities of the country or territory concerned to other developing countries.
2. Subject to paragraph 1, the following arrangements shall apply to contracts financed by the Community:
 - (a) the contract shall not be subject in the beneficiary OCT 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 OCT 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 OCT concerned, provided that the natural or legal persons who realise such profit and/or income have a permanent place of business in that OCT, or that the performance of the contract takes longer than six months;
 - (c) enterprises which must import 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 legislation of the beneficiary OCT in respect of that equipment;
 - (d) professional equipment necessary for carrying out tasks defined in a service contract shall be temporarily admitted into the beneficiary OCT in accordance with the legislation of that OCT 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 OCT without customs duties, import duties, taxes or fiscal charges having equivalent effect. The contract for supplies originating in the country or territory 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 country or territory;

(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 legislation in force in the beneficiary OCT;

(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 limits of the legislation in force in the beneficiary OCT.

3. Any matter not covered by paragraphs 1 and 2 shall remain subject to the legislation of the OCT concerned.

4. The Commission officials, excluding locally hired staff, shall be exempt from all taxes levied in the country or territory where they are posted.

Chapter 5

Vocational training, eligibility for Community programmes and other provisions

Article 57

Vocational training

Individuals from an OCT with the nationality of a Member State shall be eligible to receive vocational training in the Community on the same basis as nationals of the Member State in question where they can meet the conditions required to be met by those nationals, including any condition of residence within the Community or the EEA.

Article 58

Programmes open to the OCTs

Individuals from an OCT and where applicable the relevant public and/or private bodies and institutions in an OCT shall be eligible for the Community programmes listed in Annex II F and any programmes succeeding them, subject to the rules of the programmes and the arrangements applicable to the Member State with which they are connected.

The Commission may modify this list at the request of an OCT or a Member State or at its own initiative.

Article 59

Euro-Info Correspondence Centres (EICC)

At the request of the OCT authorities and in accordance with the procedures specified in Part Three, Title I, a Euro-Info Correspondence Centre, hereinafter referred to as "EICC", may be set up in an OCT. Part-financing may be made available to the EICC host structure from the grant aid available under the SPD or regional cooperation.

The tasks of the EICCs, the tools and services made available to them, the establishment procedures and criteria for selecting the host structure are set out in Annex V.

Article 60

CDE and CTA

At the request of their authorities, the OCT shall be eligible for the services of the Centre for the Development of Enterprise (CDE) and of the Technical Centre for Agricultural and Rural Cooperation (CTA) referred to in Article 1 of Annex III to the ACP/EC Partnership Agreement. Any costs resulting from services provided by the CDE or CTA for the benefit of the OCTs shall be financed from the funds provided for in Annex II A.

PART FOUR

FINAL PROVISIONS

Article 61

Change of status

If an OCT becomes independent:

- (a) the arrangements provided for in this Decision may continue to apply provisionally to that country or territory under conditions laid down by the Council;
- (b) the Council, acting unanimously on a proposal from the Commission, shall decide on any necessary adjustments to this Decision, in particular to the amounts specified in Annex II A.

Article 62

Review

Before 31 December 2007, the Council, acting unanimously on a proposal from the Commission, shall establish the provisions to be laid down for the subsequent application of the principles set out in Articles 182 to 186 of the Treaty. In this context, the Council shall in particular adopt any necessary measures where an OCT decides in accordance with its own constitutional procedures to enter into special preferential arrangements between the Community and various partners in the region to which it belongs. The Council shall take particular account in this respect of international obligations entered into by the Community, its Member States or the OCTs, including those within the framework of the WTO.

Article 63

Entry into force

This Decision shall enter into force on 2 December 2001. It shall be applicable until 31 December 2011.

Article 64

Publication

This Decision shall be published in the Official Journal of the European Communities.

Done at Brussels, 27 November 2001.

For the Council

The President

A. Neyts-Uyttebroeck

- (1) OJ L 263, 19.9.1991, p. 1. Decision as last amended and extended by Decision 2001/161/EC (OJ L 58, 28.2.2001, p. 21).
- (2) PE 228.210, 1.12.1998.
- (3) Not yet published C5-0070 - 2001/2033 (COS).
- (4) Council Decision 97/803/EC of 29 November 1997 amending at mid-term Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community (OJ L 329, 29.11.1997, p. 50).
- (5) OJ L 184, 7.7.1999, p. 23.
- (6) OJ L 317, 15.12.2000, p. 355.
- (7) Council Decision 93/626/EC of 25 October 1993 concerning the conclusion of the convention on Biological Diversity (OJ L 309, 13.12.1993, p. 1).
- (8) OJ L 318, 20.12.1993, p. 18. Regulation as last amended by Regulation (EC) No 2580/2000 (OJ L 298, 25.11.2000, p. 5).
- (9) OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Decision 1999/816/EC (OJ L 316, 10.12.1999, p. 45).
- (10) Council Decision 93/98/EEC of 1 February 1993 on the conclusion on behalf of the Community, of the Convention on the control of transboundary movements of hazardous wastes and their disposal (Basle Convention) (OJ L 39, 16.2.1993, p. 1).

(11) Council Regulation (EC) No 1420/1999 of 29 April 1999 establishing common rules and procedures to apply to shipments to certain non-OECD countries of certain types of waste (OJ L 166, 1.7.1999, p. 6). Regulation as last amended by Commission Regulation (EC) No 1800/2001 (OJ L 244, 14.9.2001, p. 19).

(12) Commission Regulation No 1547/1999/EC of 12 July 1999 determining the control procedures under Council Regulation (EEC) No 259/93 to apply to shipments of certain types of waste to certain countries to which OECD Decision C(92)39 final does not apply (OJ L 185, 17.7.1999, p. 1). Regulation as last amended by Regulation (EC) No 1800/2001.

(13) European Parliament and Council Directive No 2000/59/EC of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332, 28.12.2000, p. 81).

(14) Commission Decision 94/774/EC of 24 November 1994 concerning the standard consignment note referred to in Council Regulation No 259/93/EEC on the supervision and control of shipments of waste within, into and out of the European Community (OJ L 310, 3.12.94, p. 70).

(15) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 993/2001 (OJ L 141, 28.5.2001, p. 1).

(16) OJ L 336, 23.12.1994, p. 184.

ANNEX I A

LIST OF THE COUNTRIES AND TERRITORIES (OCTs) REFERRED TO IN ARTICLE 1

- Greenland,
- New Caledonia and Dependencies,
- French Polynesia,
- French Southern and Antarctic Territories,
- Wallis and Futuna Islands,
- Mayotte,
- St Pierre and Miquelon,
- Aruba,
- Netherlands Antilles:
 - Bonaire,
 - Curaçao,
 - Saba,
 - Saint Eustatius,
 - Saint Martin (Sint Maarten),
- Anguilla,
- Cayman Islands,
- Falkland Islands,
- South Georgia and the South Sandwich Islands,
- Montserrat,
- Pitcairn,
- Saint Helena, Ascension Island, Tristan da Cunha,
- British Antarctic Territory,
- British Indian Ocean Territory,
- Turks and Caicos Islands,
- British Virgin Islands.

ANNEX I B

LIST OF THE OCTs CONSIDERED THE LEAST DEVELOPED, FOR THE PURPOSES OF THIS DECISION, REFERRED TO IN ARTICLE 3(3)

- Anguilla,

- Mayotte,
- Montserrat,
- Saint Helena, Ascension Island, Tristan da Cunha,
- Turks and Caicos Islands,
- Wallis and Futuna Islands,
- St Pierre and Miquelon.

ANNEX II A

COMMUNITY FINANCIAL ASSISTANCE: 9TH EDF

Article 1

Allocation between the various instruments

1. For the purposes set out in this Decision, for the five-year period from 1 March 2000 to 28 February 2005, the overall amount of Community financial assistance of EUR 175 million under the 9th European Development Fund (EDF) fixed by the Internal Agreement shall be allocated as follows:

(a) EUR 153 million in the form of grants, including:

(i) EUR 145 million for programmable support for long-term development, humanitarian aid, emergency aid, refugee aid and the additional support in the event of fluctuations in export earnings. This amount shall be used in particular to finance the initiatives referred to in the Single Programming Documents (SPD);

(ii) EUR 8 million to support regional cooperation and integration including the dialogue and partnership actions laid down in Article 7;

(b) EUR 20 million shall be allocated to finance the OCT Investment Facility referred to in Annex II C.

(c) EUR 2 million shall be allocated to studies or technical assistance measures on the initiative or on the behalf of the Commission, notably for an overall evaluation of the Decision to be made two years before it expires at the latest.

2. In addition, the overall amount of financial assistance under the 9th EDF, plus any balances transferred to the 9th EDF from previous Funds pursuant to the Internal Agreement shall cover the period 2000 to 2007. Before the expiry of the 9th EDF, the Member States shall assess the degree of realisation of commitments and disbursements. The need for new resources to support financial cooperation shall be determined in the light of this assessment and shall take due account of the uncommitted and non-disbursed resources under the 9th EDF.

3. Before the expiry of the 9th EDF, the Member States shall set a date beyond which the funds of the 9th EDF may no longer be committed.

4. Should the funds provided for in paragraph 1 be exhausted before this Decision expires, the Council shall take the appropriate measures.

Article 2

Administration of resources

The EIB shall administer the loans made from its own resources, as well as the operations financed under the OCT Investment Facility. All other financial resources under this Decision shall be administered by the Commission.

Article 3

Allocation between the OCTs

1. The amount of EUR 145 million mentioned in Article 1(1)(i) shall be allocated on the basis of the needs and performance of the OCTs in accordance with the following criteria:

(a) An amount A of EUR 66,1 million shall be allocated to the OCTs whose economic development is least advanced, namely those with a per capita Gross National Product (GNP) not exceeding 75 % of the Community GNP, according to the available statistical data.

(b) An amount B of EUR 61 million is allocated to the OCT with a per capita GNP not exceeding the Community's GNP, in order to finance priority actions for social development and environmental protection, within the framework of the fight against poverty.

(c) The allocation of amounts A and B shall take into account the population, the level of the GNP, the use made of previous EDFs, the respect of the principles of sound international tax and financial management, constraints due to geographical characteristics, the estimated absorption capacity and a smooth transition to prevent a sudden considerable setback in allocation for New Caledonia, French Polynesia and the Netherlands Antilles. Any allocation shall be such as to allow its effective use. It should be decided in conformity with the principle of subsidiarity.

2. The question of a possible allocation to Greenland will be examined in the light of the review provided for in Article 14 of the Protocol on the fishing conditions for the period 2001 to 2006(1).

3. A non-allocated reserve C of EUR 17,9 million is set aside in order:

(a) to finance humanitarian, emergency and refugee aid for all the OCTs and, if necessary, the additional support in the event of fluctuations in export earnings, in accordance with Annex II D;

(b) to make new allocations in accordance with the development of the needs and performance of the OCTs.

Performance is evaluated in an objective and transparent way, taking into account the use of the allocated resources, the effective implementation of the on-going operations, the alleviation or reduction of poverty and the sustainable development measures adopted;

(c) If appropriate, to take the necessary measures, following the review referred to in paragraph 2;

(d) A maximum amount of EUR 1 million is set aside to fund the interest subsidies for operations to be financed by the Bank from its own resources, in accordance with Annex II B, or under the OCT Investment Facility.

4. In accordance with the paragraphs above and without prejudice to the transfer of the unspent balances from previous EDF, the indicative amounts allocated under the 9th EDF are the following:

>TABLE POSITION>

5. The Commission, following a mid-term review, may decide a different allocation of any non-allocated balances of the funds mentioned in this Article. The procedures for this review and the decision on any new allocation are adopted in accordance with Article 24 of this Decision.

(1) Council Regulation (EC) No 1575/2001 of 25 June 2001 on the conclusion of the Fourth Protocol laying down the conditions relating to fishing provided for in the Agreement on fisheries between the European Economic Community, on the one hand, and the Government of Denmark and the local Government of Greenland, on the other (OJ L 209, 2.8.2001, p. 1).

ANNEX II B

COMMUNITY FINANCIAL ASSISTANCE: LOANS FROM THE EUROPEAN INVESTMENT BANK'S OWN RESOURCES

Article 1

Amount

An amount of up to EUR 20 million as laid down in Article 5 of the Internal Agreement shall be provided by the EIB in the form of loans from its own resources in accordance with the conditions provided for by its statutes and this Annex.

Article 2

European Investment Bank

1. The EIB shall:

(a) contribute, through the resources it manages, to the economic and industrial development of the OCTs on a territorial 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 OCTs and of the Community;

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

2. Loans from the EIB'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 EIB 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) for private sector projects which involve restructuring operations in the framework of privatisation or for projects with substantial and clearly demonstrable social or environmental benefits, 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.

(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 laid down in Annex II A, Article 3(3)(d), and paid directly to the EIB;

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

(d) the repayment period of loans made by the EIB 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 EIB from its own resources in public sector companies, specific project-related guarantees or undertakings may be required from the OCT concerned.

Article 3

Conditions for foreign exchange transfer

The OCT concerned shall, in respect of operations under this Decision and in respect of which they have given their written approval:

(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 OCTs 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;

(c) make available to the EIB 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.

ANNEX II C

COMMUNITY FINANCIAL ASSISTANCE: THE OCT INVESTMENT FACILITY

Article 1

Objective

An OCT Investment Facility (hereinafter referred to as "the Facility") shall be set up to promote commercially viable enterprises, mainly in the private sector but also those in the public sector supporting private sector development.

The terms and conditions of financing in relation to the operations of the Facility and the loans from own resources of the EIB shall be as laid down in this Annex, Annex II B and Articles 29 and 30 of the Internal Agreement. 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 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 OCT enterprises, including financial institutions;

(ii) quasi-capital assistance to OCT enterprises, including financial institutions;

(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;

(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;

(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 EIB for comparable loans with the same terms and conditions as to grace and repayment periods and a mark up determined by the EIB.

7. Ordinary loans may be extended on concessional terms and conditions in the following cases:

(a) for infrastructure projects in the least developed OCTs that are prerequisites for private sector development. In such cases, the interest rate of the loan will be reduced by 3 %;

(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 Facility and shall not exceed 5 % of the overall amount allocated for investment financing by the Facility and by the EIB 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 OCTs.

Article 3

Operations of the Facility

1. The 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;

(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 OCTs.

2. On expiry of this Decision and in the absence of a specific decision by the Council, the cumulative net reflows to the Facility shall be carried over to the next OCT Financial Instrument.

Article 4

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 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;

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

ANNEX II D

COMMUNITY FINANCIAL ASSISTANCE: ADDITIONAL SUPPORT IN THE EVENT OF SHORT-TERM FLUCTUATIONS IN EXPORT EARNINGS

Article 1

Principles

1. The degree of dependence of an OCT economy on the export of goods, and in particular from agricultural and mining products shall 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 2 and 3.

Article 2

Eligibility criteria

1. Eligibility for additional resources shall be established by:

- a 10 %, or 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 %, or 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.

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 the implementing provisions to be laid down pursuant to Article 23 of this Decision. 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 3

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 authorities of the OCTs 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 authorities of the OCT in the light of final consolidated export statistics and the final figure of the public deficit.

Article 4

Revision

The provisions in this Annex shall be subject to review at the latest after two years from the entry into force of the implementing provisions referred to in Article 23 of this Decision and subsequently at the request of the Commission, a Member State or an OCT.

ANNEX II E

COMMUNITY FINANCIAL ASSISTANCE: BUDGETARY AID FOR DEVELOPING COUNTRIES

Without prejudice to future modifications of budgetary provisions, the OCTs benefit from the following budget lines foreseen for developing countries within the general budget of the European Union. Except if explicitly excluded, the OCTs may benefit from the general budget funds granted to developing countries.

1. Food and Humanitarian aid (Title B7-2 1)

- Council Decision 1999/576/EC of 29 June 1999 on the signing and notification of the provisional application of the Food Aid Convention 1999 on behalf of the European Community(1).

- Council Decision 2000/421/EC of 13 June 2000, on the conclusion, on behalf of the European Community, of the Food Aid Convention 1999(2).

- Council Regulation (EC) No 1292/96 of 27 June 1996 on food aid policy and food aid management and special operations in support of food security(3).

- Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid(4).
 - 2. Community measures to support NGOs (Chapter B7.60)
 - Resolution of the European Parliament of 14 May 1992 on the role of the non-governmental organisations in development cooperation(5).
 - Council Regulation (EC) No 1658/98 of 17 July 1998 on co-financing operations with European non-governmental development organisations (NGOs) in fields of interest to the developing countries(6).
 - 3. Training and promotion of awareness of development issues (Chapter B7.61)
 - Council Regulation (EC) No 2836/98 of 22 December 1998 on integrating gender issues in development cooperation(7).
 - 4. Environment (Chapter B7.62)
 - Regulation (EC) No 2493/2000 of the European Parliament and of the Council of 7 November 2000 on measures to promote the full integration of the environmental dimension in the development process of developing countries(8).
 - Regulation (EC) No 2494/2000 of the European Parliament and of the Council of 7 November 2000 on measures to promote the conservation and sustainable management of tropical forests and other forests in developing countries(9).
 - 5. Health and the fight against drugs, population and demography in the developing countries (Chapter B7.63)
 - Council Regulation (EC) No 2046/97 of 13 October 1997 on north-south cooperation in the campaign against drugs and drug addiction(10).
 - Council Regulation (EC) No 550/97 of 24 March 1997 on HIV/AIDS-related operations in developing countries(11).
 - 6. Specific aid schemes in the development field (Chapter B7.64)
 - Council Regulation (EC) No 2258/96 of 22 November 1996 on rehabilitation and reconstruction operations in developing countries(12).
 - Council Regulation (EC) No 1659/98 of 17 July 1998 on decentralised cooperation(13).
 - 7. Campaign against sex tourism in third countries (Chapter B7.626)
 - Implementation of the activities envisaged under the campaign against child sex tourism will continue on the basis of the Commission communication of 26 May 1999 and the Council conclusions of 21 December 1999.
- (1) OJ L 222, 24.8.1999, p. 38.
- (2) OJ L 163, 4.7.2000, p. 37.
- (3) OJ L 166, 5.7.1996, p. 1.
- (4) OJ L 163, 2.7.1996, p. 1.
- (5) OJ C 150, 15.6.1992, p. 273.
- (6) OJ L 213, 30.7.1998, p. 1. Regulation as amended by Regulation of the European Parliament and of the Council (EC) No 1726/2001 (OJ L 234, 1.9.2001, p. 10).
- (7) OJ L 354, 30.12.1998, p. 5.
- (8) OJ L 288, 15.11.2000, p. 1.
- (9) OJ L 288, 15.11.2000, p. 6.
- (10) OJ L 287, 21.10.1997, p. 1.
- (11) OJ L 85, 27.3.1997, p. 1.
- (12) OJ L 306, 28.11.1996, p. 1.
- (13) OJ L 213, 30.7.1998, p. 6.

ANNEX II F

OTHER COMMUNITY ASSISTANCE: PARTICIPATION IN COMMUNITY PROGRAMMES

The following programmes, and any programmes succeeding them, shall apply to OCT nationals within the framework of the quota for the Member State to which the OCT concerned is linked:

1. Education and training programmes:

- (a) Leonardo da Vinci, second phase of the Community vocational training action programme, set up by Council Decision 1999/382/EC of 26 April 1999(1),
- (b) Promotion of European pathways for work-linked training, including apprenticeship, set up by Council Decision 1999/51/EC of 21 December 1998(2),
- (c) Socrates, second phase of the Community action programme in the field of education, set up by Decision 253/2000/EC of the European Parliament and of the Council of 24 January 2000(3),
- (d) "Youth" Community action programme, established by Decision 1031/2000/EC of the European Parliament and of the Council of 13 April 2000(4).

2. The enterprise support programmes:

- (a) Multi-annual Programme for Enterprise and Entrepreneurship (2001-2005), set up by Council Decision 2000/819/EC of 20 December 2000(5),
- (b) Artisanat, provided for in the programme referred to in (a),
- (c) Euromanagement, provided for in the programme referred to in (a),
- (d) Seed capital, according to the third multiannual programme for SMEs, set up by Council Decision 97/15/EC of 9 December 1996(6).

3. Research, development and innovation programmes of the 5th Framework Programme:

3.1. Theme programmes:

- (a) Specific programme for research, technological development and demonstration on quality of life and management of living resources (1998 to 2002)(7),
- (b) Specific programme for research, technological development and demonstration on a user-friendly information society (1998 to 2002)(8),
- (c) Specific programme for research, technological development and demonstration on competitive and sustainable growth (1998 to 2002)(9),
- (d) Specific programme for research, technological development and demonstration on energy, environment and sustainable development (1998 to 2002), set up by Council Decision 1999/171/EC of 25 January 1999(10).

3.2. Horizontal Programmes:

- (a) Specific programme on confirming the international role of Community research (1998-2002)(11).
- (b) Specific programme for research, technological development and demonstration on promotion of innovation and encouragement of SME participation (1998-2002)(12).
- (c) Specific programme for research, technological development and demonstration on improving the human research potential and the socio-economic knowledge base (1998-2002)(13).

4. Cultural and audio-visual programmes:

- (a) Programme to encourage the development, distribution and promotion of European audio-visual works (Media Plus - Development, Distribution and Promotion) for the period 2001-2005, set up by Council Decision 2000/821/EC of 20 December 2000.
- (b) Culture 2000 (2000-2004), set up by Decision 508/2000/EC of the European Parliament and the Council of 14 February 2000(14).

5. The H RTP Japan programme (human resources training programme in Japan) and topical missions, set up by Council Decision 92/278/EEC of 18 May 1992.(15)

(1) OJ L 146, 11.6.1999, p. 33.

(2) OJ L 17, 22.1.1999, p. 45.

- (3) OJ L 28, 3.2.2000, p. 1.
- (4) OJ L 117, 18.5.2000, p. 1.
- (5) OJ L 333, 29.12.2000, p. 84.
- (6) OJ L 6, 10.1.1997, p. 25.
- (7) OJ L 64, 12.3.1999, p. 1.
- (8) OJ L 64, 12.3.1999, p. 20.
- (9) OJ L 64, 12.3.1999, p. 40.
- (10) OJ L 64, 12.3.1999, p. 58.
- (11) OJ L 64, 12.3.1999, p. 78.
- (12) OJ L 64, 12.3.1999, p. 91.
- (13) OJ L 64, 12.3.1999, p. 105.
- (14) OJ L 63, 10.3.2000, p. 1.
- (15) OJ L 144, 26.5.1992, p. 19.

ANNEX III

CONCERNING THE DEFINITION OF THE CONCEPT OF "ORIGINATING PRODUCTS" AND METHODS OF ADMINISTRATIVE COOPERATION

INDEX

>TABLE POSITION>

TITLE I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Annex:

- (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) "value added" 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 OCT;
- (j) "chapters" and "headings" mean the chapters and the headings (four-digit codes) used in the nomenclature which makes up the Harmonised Commodity Description and Coding System, referred to in this Annex as "the Harmonised 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 cooperation provisions of the Decision, the following products shall be considered as originating in the OCT:

- (a) products wholly obtained in the OCT within the meaning of Article 3 of this Annex;
- (b) products obtained in the OCT incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the OCT within the meaning of Article 4 of this Annex.

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

3. Originating products made up of materials wholly obtained or sufficiently worked or processed in two or more OCT shall be considered as products originating in the OCT where the last working or processing took place, provided this working or processing goes beyond that referred to in Article 5 of this Annex.

Article 3

Wholly obtained products

1. The following shall be considered as wholly obtained, in the OCT, in the Community, or in the ACP States:

- (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 the 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 OCT, in a Member State or in an ACP State;
- (b) which sail under the flag of an OCT, of a EC Member State or of an ACP State;
- (c) which are owned to an extent of at least 50 per cent by OCT, Member State or ACP nationals, or by a company with its head office in the OCT or one of these States, of which Chairman of the Board of Directors or the Supervisory Board, and the majority of the members of such boards are OCT, Member State, or ACP nationals and of which, in addition, in the case of

partnerships or limited companies, at least half the capital belongs to Member States or ACP States 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 OCT, Member State, or ACP nationals.

3. Notwithstanding the provisions of paragraph 2, where an OCT offers the Community the opportunity to negotiate a fisheries agreement and the Community does not accept this offer, the OCT concerned may charter or lease third country vessels to undertake fisheries activities in its exclusive economic zone and request that such vessels be treated as "their vessels" under the following conditions:

- that the OCT 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 OCT, Member State, or ACP nationals;
- that the charter or lease contract has been accepted by the Commission as providing adequate opportunities for developing the capacity of the OCT concerned to fish on its own account and in particular as conferring on the OCT concerned 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 Annex, products which are not wholly obtained are considered to be sufficiently worked or processed in the OCT, in the Community or in the ACP States, when the conditions set out in the list in Appendix 2 are fulfilled.

The conditions referred to above indicate, for all products covered by this Decision, 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) preserving operations to ensure that the products remain in good condition during transport and storage;
- (b) breaking-up and assembly of packages;
- (c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- (d) ironing or pressing of textiles;
- (e) simple painting and polishing operations;
- (f) husking, partial or total milling, polishing, and glazing of cereals and rice;

- (g) operations to colour sugar or form sugar lumps; partial or total milling of sugar;
- (h) peeling, stoning and shelling, of fruits, nuts and vegetables;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, matching; (including the making-up of sets of articles);
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) 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 Annex to enable them to be considered as originating in the OCT, in the Community or in an ACP State;
- (n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (o) a combination of two or more operations specified in subparagraphs (a) to (n);
- (p) slaughter of animals.

2. All the operations carried out in either the OCT, the Community or the ACP States 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

1. Materials originating in the Community or in the ACP States shall be considered as materials originating in the OCT 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 ACP States shall be considered as having been carried out in the OCT, when the materials undergo subsequent working or processing in the OCT.
3. Products which have acquired originating status by virtue of paragraph 2 shall only continue to be considered as products originating in the OCT, when the working or processing carried out in the OCT goes beyond that referred to in Article 5.
4. Paragraphs 1 and 2 shall not apply to the products falling within Chapters 1 to 24 of the Harmonised System if the materials used originate in the Community and are covered by an export refund system for agricultural products, unless evidence is provided that no export refund has been paid for the materials used.

With regard to products falling within HS Chapter 17 and HS tariff headings 1806 10 30 and 1806 10 90, ACP/EC-OCT cumulation of origin shall only be allowed as from 1 February 2002 within an annual quantity of 28000 tonnes until 31 December 2007. Such annual quantity shall be progressively reduced and eventually phased out, as follows:

- 21000 tonnes on 1 January 2008;
- 14000 tonnes on 1 January 2009;
- 7000 tonnes on 1 January 2010;
- zero tonnes on 1 January 2011.

Such annual quantities may not be carried over from one year to the next.

For the purpose of implementing the rules on cumulation of origin, forming sugar lumps or cubes and milling of sugar shall be considered as sufficient to confer OCT-originating status.

The Commission shall adopt the necessary implementing arrangements.

5. With regard to products falling within HS code 1006 and without prejudice to the possible increases referred to in subparagraphs 4 and 5, ACP-OCT cumulation of origin shall only be allowed as from 1 February 2002 within a total annual quantity of 160000 tonnes expressed as husked rice equivalent, which shall include the tariff quota for rice originating in ACP States provided for in the ACP-EC Partnership Agreement.

An initial issue of import licences for a quantity of 35000 tonnes expressed as husked rice equivalent shall be made to the OCTs each year, and within this quantity, import licences for a quantity of 10000 tonnes expressed as husked rice equivalent shall be issued to the least developed OCTs listed in Annex IB. All other import licences shall be issued to the Netherlands Antilles and Aruba. OCT imports may reach the level of 160000 tonnes referred to in the first subparagraph, including the abovementioned 35000 tonnes, without prejudice to any increases referred to in subparagraphs 4 and 5, in so far as the ACP States do not actually use their direct export possibilities under the quota referred to in the first subparagraph.

The issue of import licences shall be spaced out over the year in a series of periods laid down to ensure balanced market management.

In accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95, the Commission may increase the quantity referred to in the first subparagraph by a maximum of 20000 tonnes expressed as husked rice equivalent if, during April and once it has a sufficiently clear view of the current Community marketing year, it finds that such an increase will not disrupt the Community market.

If the Commission finds, as from 1 August, that there is an established risk of a shortage of Indica rice on the Community market, it may, by way of derogation from subparagraphs 1 to 4 and in accordance with the applicable management procedures, increase the above quantities. For the purposes of implementing this paragraph and notwithstanding Article 5(1)(f), wholly milling or semi-milling operations shall be considered as sufficient to confer the status of OCT-originating products.

The Commission shall adopt the necessary implementing arrangements by the same procedure. The quantities set out in this paragraph may not be carried over from one year to the next.

Article 7

Unit of qualification

1. The unit of qualification for the application of the provisions of this Annex shall be the particular product which is considered as the basic unit when determining classification using the nomenclature of the Harmonised System.

Accordingly, it follows that:

(a) when a product composed of a group or assembly of articles is classified under the terms of the Harmonised System in a single heading, the whole constitutes the unit of qualification;

(b) when a consignment consists of a number of identical products classified under the same heading of the Harmonised System, each product must be taken individually when applying the provisions of this Annex.

2. Where, under General Rule 5 of the Harmonised 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 Harmonised 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 OCT, except as provided for in Article 6.
2. If originating goods exported from the OCT, the Community, or the ACP States to another country are returned, 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;
 - (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 cooperation provisions of the Decision applies only to products, satisfying the requirements of this Annex, which are transported directly between the territories of the OCT, of the Community, or of the ACP States, 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 OCT, of the Community, or of an ACP State.

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 or territory 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;

- (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 OCT for exhibition in a country other than an OCT, an ACP State or a Member State and sold after the exhibition for importation in the Community shall benefit on importation from the provisions of the Decision provided it is shown to the satisfaction of the customs authorities that:

- (a) an exporter has consigned these products from an OCT 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;
- (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 organised 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 OCT shall, on importation into the Community benefit from this Decision upon submission of either:

- (a) a movement certificate EUR.1, a specimen of which appears in Appendix 3; or
- (b) in the cases specified in Article 19(1), a declaration, the text of which appears in Appendix 4, 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 Annex shall, in the cases specified in Article 25, benefit from this Decision 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 OCT on application having been made in writing by the exporter or, under the exporter's responsibility, by his authorised representative.

2. For this purpose, the exporter or his authorised representative shall fill out both the movement certificate EUR.1 and the application form, specimens of which appear in Appendix 3. These forms shall be completed in accordance with the provisions of this Annex. If they are hand-written, 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 OCT where the movement certificate EUR.1 is issued, all appropriate documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Annex.

4. A movement certificate EUR.1 shall be issued by the customs authorities of the exporting OCT if the products concerned can be considered as products originating in the OCT, in the Community or in the ACP and fulfil the other requirements of this Annex.

5. The issuing customs authorities shall take any steps necessary to verify the originating status of the products and the fulfilment of the other requirements of this Annex. 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 in the "Remarks" box (Box 7) of the movement certificate EUR.1.

"EXPEDIDO A POSTERIORI", /"UDSTEDT EFTERFØLGENDE", /"NACHTRÄGLICH AUSGESTELLT", / ">ISO_7>ÂÊÄÏÈÁ ÂÊ ÔÛ ÎÏÔÂÑÛÍ", /">ISO_1>ISSUED RETROSPECTIVELY", /"DÉLIVRÉ A POSTERIORI", /"RILASCIATO A POSTERIORI", /"AFGEGEVEN 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 movement certificate EUR.1 shall be endorsed in the "Remarks" box (Box 7) with one of the following words:

"DUPLICADO", "DUPLIKAT", ">ISO_7>ÁÍÔÉÑÁÖÏ", ">ISO_1>DUPLICATE", "DUPLICATA", "DUPLICATO", "DUPLICAAT", "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 the Community or in an OCT, 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 Community or within the OCT. 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 OCT, in the ACP States or in the Community and fulfil the other requirements of this Annex.

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 or territory, all appropriate documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Annex.

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 Appendix 4, 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 or territory. If the declaration is hand-written, 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 authorise any exporter who makes frequent shipments of products under the trade cooperation provisions of the Decision to make out invoice declarations irrespective of the value of the products concerned. An exporter seeking such authorisation 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 Annex.

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 authorisation number which shall appear on the invoice declaration.

4. The customs authorities shall monitor the use of the authorisation by the approved exporter.

5. The customs authorities may withdraw the authorisation 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 authorisation.

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 OCT or an ACP State other than the country of origin, a further period of validity of 4 months shall commence on the date on which the customs authorities in the country of transit enter the following in the Remarks box (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 the Decision.

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 Harmonised System falling within Sections XVI and XVII or heading Nos 7308 and 9406 of the Harmonised 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 Annex 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 500 EUR in the case of small packages or 1200 EUR in the case of products forming part of travellers' personal luggage.

Article 26

Information procedure for cumulation purposes

1. When Article 2(2) or Article 6(1) are applied, the evidence of originating status within the meaning of this Annex of the materials coming from the other OCT, the Community or the ACP States shall be given by a movement certificate EUR.1 or by the supplier's declaration, a specimen of which appears in Appendix 5 A, given by the exporter in the country from which the materials came.

2. When Article 2(2) or Article 6(2) are applied, the evidence of the working or processing carried out in the other OCT, the Community or in the ACP States shall be given by the supplier's declaration a specimen of which appears in Appendix 5 B, given by the exporter in the country 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 country or territory 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 OCT 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 Decision in accordance with Article 23 of Annex II to Decision 91/482/EEC shall remain valid.

8. For the purpose of Article 6(4), first subparagraph, the movement certificate EUR.1 shall be endorsed with one of the following phrases in the "Remarks" box (Box 7) of the movement certificate EUR.1:

"RESTITUCIÓN A LA EXPORTACIÓN NO PAGADA", /"EKSPORTRESTITUTION IKKE UDBETALT", /"KEINE AUSFUHRERSTATTUNG GEZAHLT", /">ISO_7>ÄÄÍ ÊÁÔÄÊÇÈÇ ÊÁÔÁ ÔÇÍ ÂÎÄÛÄÇ", /">ISO_1>EXPORT REFUND NOT PAID", /"RESTITUTION À L'EXPORTATION NON PAYÉE", /"RESTITUZIONE ALL'ESPORTAZIONE NON CORRISPOSTA", /"GEEN UITVOERRESTITUTIE"

BETAALD", /"RESTITUIÇÕES À EXPORTAÇÃO NÃO PAGAS", /"EI MAKSETTU VIENTITUKEA", /"EXPORTSTÖD EJ UTBETALAT".

Article 27

Supporting documents

The documents referred to in Article 15(3) and Article 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 OCT or in the Community or in an ACP and fulfil the other requirements of this Annex 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 OCT, or in the Community or in an ACP State where these documents are used in accordance with domestic law;
- (c) documents proving the working or processing of materials in the OCT, in the Community, or in the ACP States, issued or made out in an OCT, in the Community or in an ACP State, 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 OCT, in the Community or in the ACP States and in accordance with this Annex.

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 OCT 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 Member States shall be reviewed by the Customs Code Committee (Origin Section) at the request of the Commission, a Member State or of the OCT. When carrying out this review, the Committee 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 Member State, the importing country shall recognise the amount notified by the Member State concerned.

TITLE V

ARRANGEMENTS FOR ADMINISTRATIVE COOPERATION

Article 31

Communication of stamps and addresses

The OCT 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 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.

Article 32

Verification of proofs of origin

1. In order to ensure the proper application of this Annex, the OCT, the Community and the ACP States shall assist each other, through the competent customs administrations, in checking the authenticity of the movement certificates EUR.1 or the invoice 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 OCT, Member States or ACP States concerned.

2. 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 Annex.

3. For the purposes of implementing the provisions of paragraph 2, 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 of origin is incorrect shall be forwarded in support of the request for verification.

4. 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.

5. 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.

6. 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 OCT, in the Community or in the ACP and fulfil the other requirements of this Annex.

7. 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.

8. Where the verification procedure or any other available information appears to indicate that the provisions of this Annex are being contravened, the OCT 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. The Commission may participate in the 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 country 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 Appendix 6. 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 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 Annex, they shall be submitted to the Customs Code Committee - Origin Section instituted by Regulation (EEC) No 2913/92.

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 OCT and the Member 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 Annex.

Article 37

Derogations

1. Derogations from this Annex may be adopted where the development of existing industries or the creation of new industries justifies them.

The Member State or, where appropriate, the OCT authorities concerned shall 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 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 of requests for derogation, the Member State or OCT making the request shall, by means of the form given in Appendix 7, 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.

3. The examination of requests shall in particular take into account:

- (a) the level of development or the geographical situation of the OCT concerned;
- (b) cases where the application of the existing rules of origin would significantly affect the ability of an existing industry in OCT 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 country or territory, 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 OCT 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 or least-developed countries, provided that satisfactory administrative cooperation 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 OCT 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. (a) The Council and the Commission shall take steps necessary to ensure that a decision is reached as quickly as possible and in any case not later than 75 working days after the request is received by the Chairman of the Customs Code Committee - Origin Section. In this context, Council Decision 2000/399/EC(1) shall apply *mutatis mutandis*.

(b) If a decision is not taken within the time limit referred to in subparagraph (a), the request shall be deemed to have been accepted.

9. (a) The derogation shall be valid for a period, generally of five years.

(b) The derogation decision may provide for renewals without a new decision of the Commission being necessary, provided that the Member State or OCT concerned submits, three months before the end of each period, proof that it is still unable to meet the conditions of this Annex which have been derogated from.

If any objection is made to the extension, the Commission shall examine it as soon as possible and decide whether to prolong the derogation. The Commission shall proceed as provided for in paragraph 8. 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 Community 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 Community 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 38

Special conditions

1. The term "Community" used in this Annex 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 Annex shall apply *mutatis mutandis* in determining whether products may be deemed as originating in the OCT when imported into Ceuta and Melilla.

3. Where products wholly obtained in Ceuta, Melilla, the ACP States or the Community undergo working and processing in the OCT, they shall be considered as having been wholly obtained in the OCT.

4. Working or processing carried out in Ceuta, Melilla, the ACP States or the Community shall be considered as having been carried out in the OCT, when materials undergo further working or processing in the OCT.

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 39

Revision of rules of origin

1. The Council shall examine whenever the relevant authorities of a country or territory or of the Community so request, the application of the provisions of this Annex and their economic effects with a view to making any necessary amendments or adaptations.

The Council 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.

2. Any technical amendments to this Annex shall be adopted in accordance with the regulatory procedure laid down in Article 5 of Council Decision 1999/468/EC of 28 June 1999. The Commission shall be assisted for such purpose by the Customs Code Committee referred to in Article 247a of Regulation (EEC) No 2913/92(2), and the period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months. The afore-mentioned procedure shall not apply to Article 6(4) and (5) of this Annex.

Article 40

Appendices

The Appendices to this Annex shall form an integral part thereof.

Article 41

Implementation of the Annex

The Community and the OCT shall each take the steps necessary to implement this Annex.

Article 42

Transitional period concerning the making out of forms EUR.2

1. Until 31 December 2002, the competent customs authorities of the Community shall accept as valid proof of origin within the meaning of this Annex EUR.2 forms issued within the context of this Decision.

2. Requests for subsequent verification of EUR.2 forms shall be accepted by the competent authorities of the exporting countries for a period of two years after the making out of the EUR.2 form concerned. These verifications shall be carried out in accordance with Title V of this Annex.

(1) Council Decision of 16 June 2000 on the procedure concerning derogations from the rules of origin set out in Protocol No 1 to the ACP-EC Partnership Agreement (OJ L 151, 24.6.2000, p. 16).

(2) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000 (OJ L 311, 12.12.2000, p. 17).

Appendix 1

Introductory notes to the list in Appendix 2

Note 1:

The list sets out the conditions required for all products to be considered as sufficiently worked or processed within the meaning of Article 4 of Appendix 2.

Note 2:

2.1. The first two columns in the list describe the product obtained. The first column gives the heading number or chapter number used in the Harmonized System and the second column gives the description of goods used in that system for that heading or chapter. For each entry in the first two columns a rule is specified in columns 3 or 4. Where, in some cases, the entry in

the first column is preceded by an "ex", this signifies that the rules in columns 3 or 4 apply only to the part of that heading as described in column 2.

2.2. Where several heading numbers are grouped together in column 1 or a chapter number is given and the description of products in column 2 is therefore given in general terms, the adjacent rules in columns 3 or 4 apply to all products which, under the Harmonized System, are classified in headings of the chapter or in any of the headings grouped together in column 1.

2.3. Where there are different rules in the list applying to different products within a heading, each indent contains the description of that part of the heading covered by the adjacent rules in columns 3 or 4.

2.4. Where, for an entry in the first two columns, a rule is specified in both columns 3 and 4, the exporter may opt, as an alternative, to apply either the rule set out in column 3 or that set out in column 4. If no origin rule is given in column 4, the rule set out in column 3 has to be applied.

Note 3:

3.1. The provisions of Article 4 of Annex III concerning products having acquired originating status which are used in the manufacture of other products apply regardless of whether this status has been acquired inside the factory where these products are used or in another factory in the Community or in the OCT.

Example:

An engine of heading No 8407, for which the rule states that the value of the non-originating materials which may be incorporated may not exceed 40 per cent of the ex-works price, is made from "other alloy steel roughly shaped by forging" of heading No ex 7224.

If this forging has been forged in the country concerned from a non-originating ingot, it has already acquired originating status by virtue of the rule for heading No ex 7224 in the list. The forging can then count as originating in the value calculation for the engine regardless of whether it was produced in the same factory or in another factory in the Community. The value of the non-originating ingot is thus not taken into account when adding up the value of the non-originating materials used.

3.2. The rule in the list represents the minimum amount of working or processing required and the carrying out of more working or processing also confers originating status; conversely, the carrying out of less working or processing cannot confer originating status. Thus if a rule provides that non-originating material at a certain level of manufacture may be used, the use of such material at an earlier stage of manufacture is allowed and the use of such material at a later stage is not.

3.3. Without prejudice to Note 3.2 where a rule states that "materials of any heading" may be used, materials of the same heading as the product may also be used, subject, however, to any specific limitations which may also be contained in the rule. However, the expression "manufacture from materials of any heading, including other materials of heading No..." means that only materials classified in the same heading as the product of a different description than that of the product as given in column 2 of the list may be used.

3.4. When a rule in the list specifies that a product may be manufactured from more than one material, this means that any one or more materials may be used. It does not require that all be used.

Example:

The rule for fabrics of heading Nos 5208 to 5212 provides that natural fibres may be used and that chemical materials, among other materials, may also be used. This does not mean that both have to be used; it is possible to use one or the other or both.

3.5. Where a rule in the list specifies that a product must be manufactured from a particular material, the condition obviously does not prevent the use of other materials which, because of their inherent nature, cannot satisfy the rule. (See also Note 6.2 and 6.3 below in relation to textiles).

Example:

The rule for prepared foods of heading No 1904 which specifically excludes the use of cereals and their derivatives does not prevent the use of mineral salts, chemicals and other additives which are not products from cereals.

However, this does not apply to products which, although they cannot be manufactured from the particular materials specified in the list, can be produced from a material of the same nature at an earlier stage of manufacture.

Example:

In the case of an article of apparel of ex Chapter 62 made from non-woven materials, if the use of only non-originating yarn is allowed for this class of article, it is not possible to start from non-woven cloth - even if non-woven cloths cannot normally be made from yarn. In such cases, the starting material would normally be at the stage before yarn - that is the fibre stage.

3.6. Where, in a rule in the list, two percentages are given for the maximum value of non-originating materials that can be used, then these percentages may not be added together. In other words, the maximum value of all the non-originating materials used may never exceed the highest of the percentages given. Furthermore, the individual percentages must not be exceeded in relation to the particular materials they apply to.

Note 4:

4.1. The term "natural fibres" is used in the list to refer to fibres other than artificial or synthetic fibres. It is restricted to the stages before spinning takes place, including waste, and, unless otherwise specified, includes fibres that have been carded, combed or otherwise processed but not spun.

4.2. The term "natural fibres" includes horsehair of heading No 0503, silk of heading Nos 5002 and 5003 as well as the wool fibres, fine or coarse animal hair of heading Nos 5101 to 5105, the cotton fibres of heading Nos 5201 to 5203 and the other vegetable fibres of heading Nos 5301 to 5305.

4.3. The terms "textile pulp", "chemical materials" and "paper-making materials" are used in the list to describe the materials not classified in Chapters 50 to 63, which can be used to manufacture artificial, synthetic or paper fibres or yarns.

4.4. The term "man-made staple fibres" is used in the list to refer to synthetic or artificial filament tow, staple fibres or waste, of heading Nos 5501 to 5507.

Note 5:

5.1. Where for a given product in the list a reference is made to this note, the conditions set out in column 3 shall not be applied to any basic textile materials, used in the manufacture of this product, which, taken together, represent 10 per cent or less of the total weight of all the basic textile materials used. (See also Notes 5.3 and 5.4 below).

5.2. However, the tolerance mentioned in Note 5.1 may only be applied to mixed products which have been made from two or more basic textile materials.

The following are the basic textile materials:

- silk,
- wool,
- coarse animal hair,
- fine animal hair,
- horsehair,

- cotton,
- paper-making materials and paper,
- flax,
- true hemp,
- jute and other textile bast fibres,
- sisal and other textile fibres of the genus Agave,
- coconut, abaca, ramie and other vegetable textile fibres,
- synthetic man-made filaments,
- artificial man-made filaments,
- current conducting filaments,
- synthetic man-made staple fibres of polypropylene,
- synthetic man-made staple fibres of polyester,
- synthetic man-made staple fibres of polyamide,
- synthetic man-made staple fibres of polyacrylonitrile,
- synthetic man-made staple fibres of polyimide,
- synthetic man-made staple fibres of polytetrafluoroethylene,
- synthetic man-made staple fibres of polyphenylene sulphide,
- synthetic man-made staple fibres of polyvinyl chloride,
- other synthetic man-made staple fibres,
- artificial man-made staple fibres of viscose,
- other artificial man-made staple fibres,
- yarn made of polyurethane segmented with flexible segments of polyether whether or not gimped,
- yarn made of polyurethane segmented with flexible segments of polyester whether or not gimped,
- products of heading No 5605 (metallized yarn) incorporating strip consisting of a core of aluminium foil or of a core of plastic film whether or not coated with aluminium powder, of a width not exceeding 5 mm, sandwiched by means of a transparent or coloured adhesive between two layers of plastic film,
- other products of heading No 5605.

Example:

A yarn of heading No 5205 made from cotton fibres of heading No 5203 and synthetic staple fibres of heading No 5506 is a mixed yarn. Therefore, non-originating synthetic staple fibres that do not satisfy the origin rules (which require manufacture from chemical materials or textile pulp) may be used up to a weight of 10 per cent of the yarn.

Example:

A woollen fabric of heading No 5112 made from woollen yarn of heading No 5107 and synthetic yarn of staple fibres of heading No 5509 is a mixed fabric. Therefore, synthetic yarn which does not satisfy the origin rules (which require manufacture from chemical materials or textile pulp) or woollen yarn that does not satisfy the origin rules (which require manufacture from natural fibres, not carded or combed or otherwise prepared for spinning) or a combination of the two may be used provided their total weight does not exceed 10 per cent of the weight of the fabric.

Example:

Tufted textile fabric of heading No 5802 made from cotton yarn of heading No 5205 and cotton fabric of heading No 5210 is only a mixed product if the cotton fabric is itself a mixed fabric being made from yarns classified in two separate headings or if the cotton yarns used are themselves mixtures.

Example:

If the tufted textile fabric concerned had been made from cotton yarn of heading No 5205 and synthetic fabric of heading No 5407, then, obviously, the yarns used are two separate basic textile materials and the tufted textile fabric is accordingly a mixed product.

5.3. In the case of products incorporating "yarn made of polyurethane segmented with flexible segments of polyether whether or not gimped" this tolerance is 20 per cent in respect of this yarn.

5.4. In the case of products incorporating "strip consisting of a core of aluminium foil or of a core of plastic film whether or not coated with aluminium powder, of a width not exceeding 5 mm, sandwiched by means of an adhesive between two layers of plastic film", this tolerance is 30 per cent in respect of this strip.

Note 6:

6.1. In the case of those textile products, which are marked in the list by a footnote referring to this Introductory Note, textile trimmings and accessories which do not satisfy the rule set out in the list in column 3 for the made up products concerned may be used provided that their weight does not exceed 10 % of the total weight of all the textile materials incorporated. Textile trimmings and accessories are those classified in Chapters 50 to 63. Linings and interlinings are not to be regarded as trimmings or accessories.

6.2. Any non-textile trimmings and accessories or other materials used which contain textiles do not have to satisfy the conditions set out in column 3 even though they fall outside the scope of Note 3.5.

6.3. In accordance with Note 3.5, any non-originating non-textile trimmings and accessories or other product, which do not contain any textiles, may, anyway, be used freely where they cannot be made from the materials listed in column 3.

For example if a rule in the list says that for a particular textile item, such as a blouse, yarn must be used, this does not prevent the use of metal items, such as buttons, because they cannot be made from textile materials.

6.4. Where a percentage rule applies, the value of trimmings and accessories must be taken into account when calculating the value of the non-originating materials incorporated.

Note 7:

7.1. For the purposes of heading Nos ex 2707, 2713 to 2715, ex 2901, ex 2902 and ex 3403, the "specific processes" are the following:

- (a) vacuum distillation;
- (b) redistillation by a very thorough fractionation process⁽¹⁾;
- (c) cracking;
- (d) reforming;
- (e) extraction by means of selective solvents;
- (f) the process comprising all the following operations: processing with concentrated sulphuric acid, oleum or sulphuric anhydride; neutralization with alkaline agents; decolorization and purification with naturally active earth, activated earth, activated charcoal or bauxite;
- (g) polymerization;
- (h) alkylation;
- (i) isomerization.

7.2. For the purposes of heading Nos 2710, 2711 and 2712, the "specific processes" are the following:

- (a) vacuum distillation;
- (b) redistillation by a very thorough fractionation process;
- (c) cracking;

- (d) reforming;
- (e) extraction by means of selective solvents;
- (f) the process comprising all the following operations: processing with concentrated sulphuric acid, oleum or sulphuric anhydride; neutralization with alkaline agents; decolorization and purification with naturally active earth, activated earth, activated charcoal or bauxite;
- (g) polymerization;
- (h) alkylation;
- ij) isomerization;
- (k) in respect of heavy oils falling within heading No ex 2710 only, desulphurization with hydrogen resulting in a reduction of at least 85 per cent of the sulphur content of the products processed (ASTM D 1266-59 T method);
- (l) in respect of products falling within heading No 2710 only, deparaffining by a process other than filtering;
- (m) in respect of heavy oils falling within heading No ex 2710 only, treatment with hydrogen at a pressure of more than 20 bar and a temperature of more than 250 °C with the use of a catalyst, other than to effect desulphurization, when the hydrogen constitutes an active element in a chemical reaction. The further treatment with hydrogen of lubricating oils of heading No ex 2710 (e.g. hydrofinishing or decolorization) in order, more especially, to improve colour or stability shall not, however, be deemed to be a specific process;
- (n) in respect of fuel oils falling within heading No ex 2710 only, atmospheric distillation, on condition that less than 30 per cent of these products distils, by volume, including losses, at 300 °C by the ASTM D 86 method;
- (o) in respect of heavy oils other than gas oils and fuel oils falling within heading No ex 2710 only, treatment by means of a high-frequency electrical brush-discharge.

7.3. For the purposes of heading Nos ex 2707, 2713 to 2715, ex 2901, ex 2902 and ex 3403, simple operations such as cleaning, decanting, desalting, water separation, filtering, colouring, marking, obtaining a sulphur content as a result of mixing products with different sulphur contents, any combination of these operations or like operations do not confer origin.

(1) See Additional Explanatory Note 4(b) to Chapter 27 of the Combined Nomenclature.

Appendix 2

List of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status(1)

(1) This Appendix will be published in the Official Journal as soon as possible.

Appendix 3

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Appendix 4

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Appendix 5 A

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Appendix 5 B

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Appendix 6

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Appendix 7

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ANNEX IV

CONDITIONS FOR ENTRY INTO THE COMMUNITY OF PRODUCTS NOT ORIGINATING IN THE OCT,
BUT WHICH ARE IN FREE CIRCULATION IN THE OCT, AND METHODS OF ADMINISTRATIVE
COOPERATION

Article 1

Direct transport

1. The arrangements provided for under the provisions of Article 36 of this Decision apply only to products, satisfying the requirements of this Annex, which are transported directly between the territory of the OCT and the Community without entering any other territory. However, products constituting one single consignment may be transported through territory other than that of the OCT with, should the occasion arise, transshipment or temporary warehousing in such territory, 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.

2. Evidence that the conditions set out in paragraph 1 have been fulfilled shall be supplied to the responsible customs authorities by the production of:

(a) a single transport document covering the passage from the exporting country or territory 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 2

Export Certificate EXP

1. Evidence of compliance with the provisions of Article 36 of this Decision shall be given by an Export Certificate EXP, a specimen of which appears in the Appendix.

2. An Export Certificate EXP shall be issued by the customs authorities of the exporting OCT on application having been made in writing by the exporter or, under the exporter's responsibility, by his authorised representative.

3. For this purpose, the exporter or his authorised representative shall fill out the Export Certificate EXP, a specimen of which appears in the Appendix. These forms shall be completed in accordance with the provisions of this Annex. If they are hand-written, 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.

Applications for Export Certificates EXP must be preserved for at least three years by customs authorities of the exporting country or territory.

4. The exporter applying for the issue of an Export Certificate EXP shall be prepared to submit at any time, at the request of the customs authorities of the exporting OCT where the Export

Certificate EXP is issued, all appropriate documents proving that the products to be exported are such as to qualify for the issue of an Export Certificate EXP.

Exporters are required to keep the supporting documents referred to in this paragraph for at least three years.

5. An Export Certificate EXP shall be issued by the customs authorities of the exporting OCT if the products concerned can be considered as having been in free circulation and fulfil the other provisions of Article 36 of this Decision.

6. The issuing customs authorities shall take any steps necessary to verify the correctness of the application. 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 form referred to in paragraph 3 is 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.

7. The date of issue of the Export Certificate EXP shall be indicated in Box 11 of the certificate.

8. An Export Certificate EXP shall be issued by the customs authorities and made available to the exporter as soon as actual exportation has been effected or ensured.

Article 3

Issue of a duplicate Export Certificate EXP

1. In the event of theft, loss or destruction of an Export Certificate EXP, 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: "DUPLICADO", "DUPLIKAT", ">ISO_7>ÁÍÔÉÃÑÄÖÏ", ">ISO_1>DUPLICATE", "DUPLICATA", "DUPLICATO", "DUPLICAAT", "SEGUNDA VIA", "KAKSOISKAPPALE".

3. The endorsement referred to in paragraph 2 shall be inserted in the "Remarks" box 7 of the duplicate Export Certificate EXP.

4. The duplicate, which must bear the date of issue of the original Export Certificate EXP, shall take effect as from that date.

Article 4

Validity of Export Certificates EXP

1. An Export Certificate EXP shall be valid for four months from the date of issue in the exporting OCT, and must be submitted within the said period to the customs authorities of the importing country.

2. Exports Certificate EXP 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 the arrangements, 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 Export Certificates EXP where the products have been submitted before the said final date.

Article 5

Submission of Export Certificates EXP

Export Certificates EXP 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 Export Certificates EXP 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 the Decision.

ARRANGEMENTS FOR ADMINISTRATIVE COOPERATION

Article 6

Mutual assistance

1. The OCT shall send to the Commission specimens of the stamps used together with the addresses of the customs authorities competent to issue Export Certificates EXP if they differ from those included in Article 31 of Annex III. The OCT shall carry out the subsequent verification of Export Certificates EXP.

Export Certificates EXP shall be accepted for the purpose of applying the arrangements provided for 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 Annex, the OCT and the Community shall assist each other, through the competent customs administrations, in checking the authenticity of the Export Certificates EXP and the correctness of the information given in these documents.

Article 7

Verification of Export Certificates EXP

1. Subsequent verifications of Export Certificates EXP 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 or the compliance with the provisions of Article 36 of this Decision.

2. For the purposes of implementing the provisions of paragraph 1, the customs authorities of the importing country shall return the Export Certificate EXP, the relevant commercial documents or a copy of these documents, to the customs authorities of the exporting OCT giving, where appropriate, the reasons for the enquiry. Any documents and information obtained suggesting that the information given on the Export Certificate EXP 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 OCT. 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 application of the arrangements 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 having fulfilled the provisions of Article 36 of this Decision.

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 that the products to be exported are such as to qualify for the issue of an Export Certificate EXP, the requesting customs authorities shall, except in exceptional circumstances, refuse application of the arrangements.

7. Where the verification procedure or any other available information appears to indicate that the provisions of this Annex are being contravened, the OCT on its own initiative or at the request of the Community shall carry out appropriate enquiries or arrange for such enquiries to be carried out with due urgency to identify and prevent such contraventions. The Commission may participate in the enquiries.

8. Where disputes arise in relation to the verification procedures 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 Annex, they shall be submitted to the Customs Code Committee set up by Council Regulation (EEC) No 2454/93.

9. 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 8

Penalties

Penalties shall be imposed on any person who draws up, or causes to be drawn up, a document which contains incorrect information to enable products to be accepted as eligible for the arrangements provided for.

Article 9

Free zones

The OCT and the Member States shall take all necessary steps to ensure that products traded under cover of an Export Certificate EXP 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.

Article 10

Annexes

The Appendix to this Annex shall form an integral part thereof.

Appendix

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ANNEX V

EURO-INFO CORRESPONDENCE CENTRES (EICC)

Tasks of the EICC

In respect of the OCTs the tasks of the Euro-info Correspondence Centres (EICC) shall be to:

- disseminate Community information to OCT firms,
- gather and transmit to the Euro-info Centres (EIC) information from the OCTs which may be of use to European small and medium-sized enterprises,
- answer general, legal, administrative and statistical questions from OCT firms about the European Union,
- answer general, legal, administrative and statistical questions from Community firms about the OCTs.

To achieve the greatest possible reciprocity in the exchange of information, the Commission shall ensure that Community firms have access to the same type of information and the same advisory/support services in relation to the OCTs as those offered by the Community to OCT firms.

Tools and services

The following tools and services shall be made available to or be acquired by the Correspondence Centres for the proper performance of their work:

- (a) documentation: a list of documents selected to form a basic library collection (to be acquired); terms and cost of acquisition;
- (b) a specific software program (to be acquired) for creating and managing dossiers on specific issues and conducting searches on previous dossiers and existing document and databases;

- (c) databases: list of databanks available (for which there is a charge); terms and cost of connection;
- (d) training: teach yourself courses (to be acquired), timetable of training sessions (specific Community matters, working of the EICs), fee-paying training sessions in database use, and annual conference of all EICs and EICCs (for all these activities, travel and accommodation expenses to be borne by the EICC);
- (e) access to information officers of the central administration for replies to requests for information on Community-related matters;
- (f) access to the capitalisation database via the VANS: this EIC-network database contains questions and answers on mainly Community matters;
- (g) electronic mail: the EICCs shall have access to the electronic mail system, in particular the EIC network's own environment.

Establishment procedures

1. A request for the establishment of a correspondence centre and the choice of host structure should be addressed to the Commission by the competent authorities of the country or territory through the channels provided for in Article 59 of this Decision.
2. An agreement providing for, inter alia, sufficient human, material and financial resources shall be concluded between the EICC and the Commission.

Criteria for selecting the host structure

The following criteria shall be used to select applicant host structures of the EICCs:

- experience of the applicant structure in assisting and advising businesses, a business-oriented attitude to small and medium-sized enterprises,
- representativeness in respect of the business sector in the applicant country or territory,
- knowledge of European issues,
- the will and the ability to ensure reciprocity of services to OCT and Community firms,
- the potential for financial independence,
- willingness to employ as staff for the Centre, people with a good command of English or French and experience of computers,
- provision of computer and communications equipment that complies with the specifications,
- an undertaking to serve all small and medium-sized enterprises equally without discrimination as to status or sector, where appropriate in liaison with other EICs or EICCs on the network.