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An Overview of EEC Trade with Non-Community Countries and the Law Governing These External Agreements

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William Rawlinson

Abstract

This Article examines the authority of the EEC Treaty and various trade agreements concluded between the Community and non-Community countries pursuant to these provisions by presenting an overview of certain noteworthy agreements and the law providing for them.

AN OVERVIEW OF EEC TRADE WITH NON-COMMUNITY COUNTRIES AND THE LAW GOVERNING THESE EXTERNAL AGREEMENTS†

William Rawlinson *

INTRODUCTION

The Treaty establishing the European Economic Community (the "Treaty" or the "EEC Treaty")[1] envisages the European Economic Community (the "Community" or the "EEC") being a party to foreign trade agreements and conventions, entering negotiations, and forming association agreements with non-Community countries.

The authority to enter into such agreements stems from provisions of the EEC Treaty[2] and from numerous measures adopted by the Community.[3] This Article will examine this authority and various trade agreements concluded between the Community and non-Community countries pursuant to these provisions. This Article will not provide a comprehensive listing of all external agreements between the Community and non-EEC countries but rather an overview of certain noteworthy agreements and the law providing for them.

I. *CERTAIN RELEVANT TREATY PROVISIONS*

A. *Article 210*

Article 210 of the EEC Treaty provides that the Community shall have legal personality.[4] This provision gives the Community the capacity to establish contractual links with

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† This Article is based on extracts from the forthcoming book European Community Law, written by the author and M. P. Cornwell-Kelly, to be published by Waterlow Publishers early in 1990.

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1. Treaty Establishing the European Economic Community, Mar. 25, 1957, 1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-II), 298 U.N.T.S. 11 [hereinafter EEC Treaty].

2. *See id.*, arts. 113-14, 210, 238, 1973 Gr. Brit. T.S. No. 1, at 42-43, 68, 74, 298 U.N.T.S. at 60, 86, 92.

3. *See* Commission v. Council ("AETR"), Case 22/70, 1971 E.C.R. 263, 274, ¶ 16, Common Mkt. Rep. (CCH) ¶ 8134, at 7525.

4. EEC Treaty, *supra* note 1, art. 210, 1973 Gr. Brit. T.S. No. 1, at 68, 298 U.N.T.S. at 86; *see* Commission v. Council, 1971 E.C.R. at 274, ¶ 13, Common Mkt. Rep. (CCH) ¶ 8134, at 7524.

non-Community countries in varying areas of activity that form the subject matters of the Treaty.[5] The Court of Justice of the European Communities (the "Court of Justice" or the "Court") held in the 1971 case of *Commission v. Council* (*"AETR"*) that this authority was provided to the Community because Article 210 supplements earlier provisions of the Treaty defining the Community's objectives.[6] Accordingly, the substantive provisions of the Treaty and its whole scheme dictate where the Community may exercise its authority to enter agreements with non-Community countries.[7] The Court further noted that where the Community in its efforts to adopt a common policy enacts certain provisions laying down common rules, the Member States may not enter agreements with non-EEC countries that affect those rules.[8]

B. *Article 113*

Article 113 of the Treaty provides express authority for the Community to enter certain external agreements.[9] Article 113, which concerns the common commercial policy of the

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5. *See* Commission v. Council, 1971 E.C.R. at 274, ¶ 14, Common Mkt. Rep. (CCH) ¶ 8134, at 7524-7525 (noting objectives enumerated in EEC Treaty, *supra* note 1, arts. 1-7, 1973 Gr. Brit. T.S. No. 1, at 3-4, 298 U.N.T.S. at 15-17).

6. Commission v. Council, 1971 E.C.R. at 274, ¶ 14, Common Mkt. Rep. (CCH) ¶ 8134, at 7524-7525.

7. *See id.* ¶ 15, Common Mkt. Rep. (CCH) ¶ 8134, at 7525.

8. *Id.* ¶ 17, Common Mkt. Rep. (CCH) ¶ 8134, at 7525.

9. EEC Treaty, *supra* note 1, art. 113, 1973 Gr. Brit. T.S. No. 1, at 42-43, 298 U.N.T.S. at 60. Article 113 states:

> 1. After the transitional period has ended, the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.
>
> 2. The Commission shall submit proposals to the Council for implementing the common commercial policy.
>
> 3. When agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.
>
> The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.
>
> 4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

Id.

Community,[10] provides that the policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy, and measures to protect trade such as those to be taken in case of dumping or subsidies.[11]

To provide for a common internal approach to trade with non-Member States, the Community has adopted certain measures. For example, the Community adopted measures under Article 113 in connection with the administration of the common customs tariff in the field of valuation of goods and rules of origin of goods.[12] Similarly, the Community adopted regulations to provide protection against unfair trade practices by non-Community countries by providing for the imposition of an antidumping duty on any dumped product that causes injury to a Community industry and by providing remedies against improper commercial practices.[13]

Article 113 further provides that where agreements with non-Community countries need to be negotiated, the Commission of the European Communities (the "Commission") shall make recommendations to the Council of Ministers of the European Communities (the "Council"), which shall authorize the Commission to open the necessary negotiations.[14] Article 113 states that the Commission shall conduct negotiations in consultation with a special committee appointed by the Council.[15] The negotiations must also take place within the framework of directives issued by the Council.[16]

The Community has entered into a large number of agreements concerning the common commercial policy pursuant to

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10. *Id.*

11. *Id.*

12. Council Regulation No. 1224/80, O.J. L 134/1 (1980) (concerning valuation of goods); Council Regulation No. 802/68, O.J. L 148/1 (1968) (concerning definition of origin of goods).

13. Council Regulation No. 2423/88, O.J. L 209/1 (1988) (concerning antidumping proceedings); Council Regulation No. 2641/84, O.J. L 252/1 (1984) (concerning improper commercial practices).

14. EEC Treaty, *supra* note 1, art. 113, 1973 Gr. Brit. T.S. No. 1, at 42-43, 298 U.N.T.S. at 60.

15. *Id.*

16. *Id.* The Commission may conduct exploratory talks, although it may not negotiate in the absence of an authorizing mandate. A. PARRY & J. DINNAGE, PARRY & HARDY: EEC LAW 429 (2d ed. 1981) [hereinafter EEC LAW].

Article 113,[17] and by virtue of *International Fruit Company v. Produktschap voor Groenten en Fruit*,[18] it is clear that the Community through Article 113 is bound by the original General Agreement on Tariffs and Trade ("GATT").[19] In that case, the Court held that the EEC Treaty did not affect the Member States' obligations under GATT.[20] The Court reasoned that because the Community assumed the powers previously exercised by Member States in the area governed by GATT with regard to tariff and trade policy the Community is bound by the original GATT.[21]

C. *Article 238*

Article 238 of the EEC Treaty forms the basis for a vital part of the commercial policy of the Community by providing authority for the Community to enter association agreements with a non-Community country or a group of non-Community countries.[22] Unlike Article 113, however, which allows for

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17. In a 1976 opinion, the Court of Justice ruled that the Community may enter such agreements where there is internal power to act, whether or not it has been exercised. Opinion Given Pursuant to Article 228(1) of the EEC Treaty ("Laying-up Fund Opinion"), Opinion 1/76, 1977 E.C.R. 741, Common Mkt. Rep. (CCH) ¶ 8405.

18. Joined Cases 21 to 24/72, 1972 E.C.R. 1219, Common Mkt. Rep. (CCH) ¶ 8194.

19. *Id.* See General Agreement on Tariffs and Trade, 61 Stat. (pt. 5) A3, T.I.A.S. No. 1700, 55 U.N.T.S. 188 [hereinafter GATT] for the text of the original GATT.

20. *International Fruit Company*, 1972 E.C.R. at 1226, ¶¶ 10-12, Common Mkt. Rep. (CCH) ¶ 8194, at 8615.

21. *Id.* at 1277, ¶¶ 14, 18, Common Mkt. Rep. (CCH) ¶ 8194, at 8615. GATT has since been amended and supplemented with the Community participating in the negotiations. *See* EEC LAW, *supra* note 16, at 482.

22. EEC Treaty, *supra* note 1, art. 238, 1973 Gr. Brit. T.S. No. 1, 74, 298 U.N.T.S. at 92. Article 238 states:

> The Community may conclude with a third State, a union of States or an international organisation agreements establishing an association involving reciprocal rights and obligations, common action and special procedures.
>
> These agreements shall be concluded by the Council, acting unanimously after consulting the Assembly.
>
> When such agreements call for amendments to this Treaty, these amendments shall first be adopted in accordance with the procedure laid down in Article 236.

Id. The second paragraph of Article 238 was amended by the Single European Act in 1987 to read: "These agreements shall be concluded by the Council, acting unanimously and after receiving the assent of the European Parliament which shall act by an absolute majority of its component members." Single European Act, art. 9, O.J. L

agreements concerning the common commercial policy, Article 238 envisages agreements in a more general sense.[23] Article 238 provides that the Community may conclude with a non-Community state, union of states, or an international organization agreements establishing an association involving reciprocal rights and obligations, common action, and special procedures.[24] In a 1975 opinion, the Court ruled that an agreement under Article 238 may be "any undertaking entered into by entities subject to international law which has binding force whatever its formal designation."[25] A number of agreements concluded under Article 238 authority now replace many provisions originally included in the EEC Treaty dealing with special relations that the original Members States had with territories either dependent or newly independent.[26]

Although the Community itself is a customs union with a common commercial policy towards non-Community countries and the concept of association involves the extension of a customs union to the associated state, a member of an association does not transfer sovereign powers to a common institution. Thus, the principle of association—the extending of a customs union to the associated states—avoids contravening GATT.[27] The long-term objective of association agreements is the raising of living standards and economic levels of the associated parties and the establishment of a system of reciprocal rights and obligations aimed at promoting the political and social development of the associated state rather than creating strict

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169/1, at 6 (1987), Common Mkt. Rep. (CCH) ¶ 21,000, ¶ 21,070, at 9,642. Article 228 of the EEC Treaty provides authority for the Community to conclude agreements with international organizations and should be distinguished from Article 238, which provides for the conclusion of association agreements. *See* EEC Treaty, *supra* note 1, arts. 228, 238, 1973 Gr. Brit. T.S. No. 1, at 71-72, 74, 298 U.N.T.S. at 90, 92.

23. *See* Opinion of the Court given Pursuant to Article 228(1) of the EEC Treaty ("Export Credits Opinion"), Opinion 1/75, 1975 E.C.R. 1355, 1359-63, Common Mkt. Rep. (CCH) ¶ 8365, at 7641; *see also* EEC LAW, *supra* note 16, at 430.

24. EEC Treaty, *supra* note 1, art. 238, 1973 Gr. Brit. T.S. No. 1, at 74, 298 U.N.T.S. at 92.

25. *Export Credits Opinion*, 1975 E.C.R. at 1360, Common Mkt. Rep. (CCH) ¶ 8365, at 7641.

26. *See* EEC Treaty, *supra* note 1, arts. 131-36, 1973 Gr. Brit. T.S. No. 1, at 48-49, 298 U.N.T.S. at 65-67; *infra* notes 124-98 and accompanying text (discussing agreements with former colonies).

27. *See* GATT, *supra* note 19, art. XXIV, 61 Stat. (pt. 5) A3, A66-68, T.I.A.S. No. 1700, 62-64, 55 U.N.T.S. 188, 268-77.

equality of obligations between the contracting parties.[28] Article 238 provides that these agreements shall be concluded by the Council, acting unanimously and after receiving the assent of the European Parliament which shall act by an absolute majority of its component members.[29]

Because Article 238 mandates that an association is to involve its partners in common action and special procedures,[30] association agreements create an institutional framework along the lines of the Community model itself. Typically, an agreement will establish a cooperation council composed of members of the Council and the Commission and members of the government of the associated party.[31] A cooperation council is responsible for the management and development of the agreement.[32] It is assisted by a cooperation committee, composed of one representative of each Member State, one representative of the Commission, and a representative of the government of the associated party.[33] Further provisions concern dispute resolution procedures.[34]

As part of Community law, association agreements take precedence over conflicting provisions of domestic law in a Member State.[35] The Community is competent to enter into any association agreement whose subject matter falls within the scope of the EEC Treaty,[36] although Article 238 also envisages agreements falling outside this scope. This is evident from the reference in Article 238 to Article 236, which sets out the procedures for amending the EEC Treaty.[37]

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28. Bresciani v. Amministrazione Italiana Delle Finanze, Case 87/75, 1976 E.C.R. 129, 141, ¶ 22, Common Mkt. Rep. (CCH) ¶ 8347, at 7311.

29. EEC Treaty, *supra* note 1, art. 238, 1973 Gr. Brit. T.S. No. 1, at 74, 298 U.N.T.S. at 92, *amended by* Single European Act, art. 9, O.J. L 169/1, at 6 (1987), Common Mkt. Rep. (CCH) ¶ 21,000, ¶21,070, at 9642.

30. *See id.*

31. *See, e.g.*, Council Regulation No. 2212/78, art. 43, O.J. L 265/1, at 20 (1978) (implementing agreement with Tunisia) [hereinafter Agreement with Tunisia].

32. *See, e.g., id.*

33. *See, e.g., id.* art. 46, at 21.

34. *See, e.g., id.* art. 51, at 21.

35. Pabst & Richarz v. Hauptzollamt Oldenburg, Case 17/81, 1982 E.C.R. 1331, 1350, ¶ 27, Common Mkt. Rep. (CCH) ¶ 8828, at 7794.

36. *See* Opinion Given Pursuant to Article 228(1) of the EEC Treaty ("Laying-up Fund Opinion"), Opinion 1/76, 1977 E.C.R. 741, 755, ¶ 3, Common Mkt. Rep. (CCH) ¶ 8405, at 7301.

37. *See* EEC Treaty, *supra* note 1, arts. 236, 238, 1973 Gr. Brit. T.S. No. 1, at 73-74, 298 U.N.T.S. at 91-92.

II. *MIXED AGREEMENTS AND INTERNAL IMPLEMENTATION AGREEMENTS*

Where the division of competence between Member States, on the one hand, and the Community, on the other, is not clearly demarcated, the Member States and the Community have concluded what are known as mixed agreements. With such agreements, both individual Member States and the Community are signatories, so that the agreements are valid between the non-Community party and the twelve Member States, if not between the non-Community party and the Community. In a 1977 opinion, the Court held that mixed agreements were only authorized so long as they did not infringe upon the allocation of competence between the Community and the Member States[38] and, thus, the participation of the Member States was necessary for the realization of the agreement.[39]

As an alternative to mixed agreements, the Member States have entered into internal implementation agreements, which are also designed to safeguard national competence and to produce a common Community position.[40] For example, the Community and the Member States entered into such an agreement in relation to the Third Lomé Convention that provides for the common position to be supported by the representatives of the Community in the council of ministers established under the Convention.[41] Similarly, the establishment of the European Development Fund called for an internal agreement between the Member States where the financial assistance agreed upon is borne by the Member States.[42] The Community is independently competent to agree upon financial assistance in its own right so long as the assistance forms part of the Community budget.[43]

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38. *Laying-up Fund Opinion*, 1977 E.C.R. at 757-59, ¶¶ 10-14, Common Mkt. Rep. (CCH) ¶ 8405, at 7302-7303.

39. *Id.* at 756, ¶ 7, Common Mkt. Rep. (CCH) ¶ 8405, at 7302.

40. *See, e.g.*, Internal Agreement on the measures and procedures required for implementation of the Third ACP-EEC Convention, O.J. L 86/221 (1986).

41. *Id.* art. 1, at 221.

42. *See* EEC Treaty, *supra* note 1, Implementing Convention on the Association of the Overseas Countries and Territories with the Community, 1973 Gr. Brit. T.S. No. 1, at 151, 298 U.N.T.S. at 157.

43. Opinion Pursuant to Article 228 of the EEC Treaty ("Natural Rubber Opin-

III. *REVIEW OF SELECTED AGREEMENTS*

A. *Agreements with the States of the EFTA*

Under authority granted by Article 113, the Community has negotiated an important set of agreements with the states of the European Free Trade Association (the "EFTA").[44] The EFTA is comprised of certain European countries that did not join the Community. Today, the EFTA countries include Austria, Finland, Iceland, Norway, Sweden, and Switzerland (collectively, the "EFTA States"). The goals of each agreement are noted in their respective preambles. Preambles of each of the agreements between the Community and Austria,[45] Iceland,[46] Norway,[47] Sweden,[48] and Switzerland,[49] state an intent to consolidate and to extend upon the enlargement of the Community and the economic relations between the Community and these states.[50] The preamble of the agreement with Finland,[51] however, notes that this agreement was intended to provide appropriate solutions to the economic problems facing Finland as a result of the enlargement of the Community.[52] Despite this difference, the aim of all the agreements is the har-

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ion"), Opinion 1/78, 1979 E.C.R. 2871, 2917-18, ¶¶ 58-59, Common Mkt. Rep. (CCH) ¶ 8600, at 8783.

44. *See* F. NICHOLSON & R. EAST, FROM THE SIX TO TWELVE: THE ENLARGEMENT OF THE EUROPEAN COMMUNITIES 148 (1987) (noting that agreements were based on Article 113 of the EEC Treaty and Article XXIV of GATT); EEC LAW, *supra* note 16, at 468 (noting that "basic provisions of the EFTA agreements are identical").

45. Accord entre la Communauté économique européenne et la république d'Autriche, 15 J.O. L 300/2 (1972) (implementing agreement with Austria). On July 17, 1989, Austria filed a formal request for membership in the EEC. *See* AGENCE EUROPE No. 5059 (New Series), at 1, 7, July 17-18, 1989.

46. Accord entre la Communauté économique européenne et la république d'Islande, 15 J.O. L 301/2 (1972) (implementing agreement with Iceland) [hereinafter Agreement with Iceland].

47. Agreement between the European Economic Community and the Kingdom of Norway, O.J. L 171/2 (1973) (implementing agreement with Norway) [hereinafter Agreement with Norway].

48. Accord entre la Communauté économique européenne et le royaume de Suède, 15 J.O. L 300/97 (1972) (implementing agreement with Sweden).

49. Accord entre la Communauté économique européene et la Confédération suisse, 15 J.O. L 300/189 (1972) (implementing agreement with Switzerland).

50. *See, e.g.*, Agreement with Norway, *supra* note 47, preamble, O.J. L 171/2, at 2 (noting goals of the agreement).

51. Agreement between the European Economic Community and the Republic of Finland, O.J. L 328/2 (1973) (implementing agreement with Finland) [hereinafter Agreement with Finland].

52. *Id.* preamble, at 2 (noting goals of the agreement).

monious development of economic relations leading to an improvement in living and employment conditions throughout the Community and its non-EEC partner,[53] fair conditions of competition,[54] and liberalization of world trade.[55]

The main instrument in achieving these goals was the creation of a free trade zone between the parties to each agreement. This was achieved through the removal of certain tariff barriers in relation to certain industrial products originating in either the Community or the contracting state;[56] hence, rules governing the free movement of goods constitute an important part of each agreement.[57] Arrangements for the dismantlement of customs duties prohibit the introduction of new customs duties, charges having the equivalent effect of customs duties, and charges and equivalent measures on exports between the parties.[58] The agreements with the various EFTA States also prohibit the introduction of quantitative restrictions on imports or measures having equivalent effect, combined with additional provisions for the abolition of existing ones.[59]

Although the agreements do not apply to agricultural products,[60] the contracting parties grant each other a number of agricultural concessions, particularly in the case of Ice-

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53. *See, e.g.*, Agreement with Norway, *supra* note 47, art. 1(a), O.J. L 171/2, at 2.

54. *See, e.g.*, *id.* art. 1(b), at 2.

55. *See, e.g.*, *id.* art. 1(c), at 2. In 1987, the Community and the EFTA States concluded a convention providing for the use of a single administrative document to simplify trade between the contracting parties and " 'with the aim of creating a dynamic European economic space of benefit to their countries.' " Council Decision No. 87/267, preamble, O.J. L 134/1 (1987).

56. *See, e.g.*, Agreement with Norway, *supra* note 47, arts. 2-9, O.J. L 171/1, at 2-3.

57. *See, e.g.*, *id.* art. 13, at 4.

58. *See, e.g.*, *id.* arts. 9-12, at 3-4. Removal of customs duties has been completed. *See id.*

59. *See, e.g.*, Agreement with Norway, *supra* note 47, art. 13, O.J. L 171/2, at 4. Article 13 states:

> 1. No new quantitative restriction on imports or measures having equivalent effect shall be introduced in trade between the Community and Norway.
>
> 2. Quantitative restrictions on imports shall be abolished on the date of entry into force of the Agreement and any measures having an effect equivalent to quantitative restrictions on imports shall be abolished not later than 1 January 1975.

Id.

60. *See, e.g.*, *id.* art. 2, protocol 2, at 2, 31 (noting that agreement does not cover agricultural products).

land,[61] one-half of whose exports to the Community are from fisheries. To determine whether or not products are covered by the provisions of the main agreements, protocol 3 to all the agreements sets out detailed rules of origin.[62] Modifications and derogations were codified in 1984, replacing and repealing the original protocol 3 by an exchange of letters.[63] Further adjustments were made in 1986.[64] The last agreement dealing with protocol 3 concerning the definition of the concept of "originating product" and methods of administrative cooperation was concluded in 1988.[65]

The contracting parties also addressed fiscal policy. For example, internal fiscal measures that may directly or indirectly discriminate between products of one party and like products originating in the territory of the other are proscribed,[66] as are restrictions on payments relating to trade in goods and on commercial credit in which a Community or an EFTA resident

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61. *See* Agreement with Iceland, *supra* note 46, art. 7(2), 15 J.O. L 301/2, at 4.

62. *See, e.g., id.* protocol 3, at 45-54.

63. *See* Council Regulation No. 3386/84, O.J. L 323/1 (1984) (concerning text of protocol 3 to agreement with Austria); Council Regulation No. 3387/84, O.J. L 232/64 (1984) (concerning text of protocol 3 to agreement with Finland); Council Regulation No. 3388/84, O.J. L 323/126 (1984) (concerning text of protocol 3 to agreement with Norway); Council Regulation No. 3390/84, O.J. L 323/250 (1984) (concerning text of protocol 3 to agreement with Sweden); Council Regulation No. 3391/84, O.J. L 323/312 (1984) (concerning text of protocol 3 to agreement with Switzerland); Council Regulation No. 3392/84, O.J. L 323/374 (1984) (concerning text of protocol 3 to agreement with Iceland).

64. *See* Council Regulation No. 1443/86, O.J. L 134/1 (1986) (concerning changes to agreement with Austria); Council Regulation No. 1444/86, O.J. L 134/6 (1986) (concerning changes to agreement with Finland); Council Regulation No. 1445/86, O.J. L 134/11 (1986) (concerning changes to agreement with Iceland); Council Regulation No. 1446/86, O.J. L 134/16 (1986) (concerning changes to agreement with Norway); Council Regulation No. 1447/86, O.J. L 134/21 (1986) (concerning changes to agreement with Sweden); Council Regulation No. 1448/86, O.J. L 134/26 (1986) (concerning changes to agreement with Switzerland); *see also* Council Regulation No. 387/86, O.J. L 47/1 (1986) (concerning changes to agreement with Austria); Council Regulation No. 388/86, O.J. L 47/10 (1986) (concerning changes to agreement with Finland); Council Regulation No. 389/86, O.J. L 47/19 (1986) (concerning changes to agreement with Iceland); Council Regulation No. 390/86, O.J. L 47/28 (1986) (concerning changes to agreement with Norway); Council Regulation No. 391/86, O.J. L 47/37 (1986) (concerning changes to agreement with Sweden).

65. *See, e.g.*, Decision No. 1/88 of the EEC-Finland Joint Committee, O.J. L 149/72 (1988) (amending text of protocol 3 to conform with international harmonization of nomenclature for trade).

66. *See, e.g.*, Agreement with Norway, *supra* note 47, art. 18, O.J. L 171/2, at 5.

participated.[67] Derogations from the free movement of goods provisions, if permitted, must not amount to "means of arbitrary discrimination or a disguised restriction on trade."[68]

The agreements contain a number of safeguard clauses concerned with security interests or defense.[69] There are also safeguard provisions relating to competition,[70] dumping,[71] or serious deterioration in a regional economy,[72] to be invoked in accordance with procedures prescribed in the agreement.[73]

The agreements established a joint committee responsible for the administration of the agreement, which convenes at least once a year.[74] In addition, all the agreements contain a "denunciation clause."[75] With the exception of the Finnish agreement, the agreements shall cease to be in force twelve months after notification to the other party,[76] while the agreement with Finland shall terminate three months after notification.[77] Additional protocols to the agreements with the EFTA States were concluded on the accession of Spain and Portugal to the Community.[78]

Although the agreements between the Community and the EFTA States contain rules approximating those of the EEC Treaty concerning the free movement of goods and free competition,[79] the interpretation and application of these similar

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67. *See, e.g., id.* art. 19, at 5.
68. *E.g., id.* art. 20, at 5.
69. *See, e.g., id.* art. 21, at 5.
70. *See, e.g., id.* art. 23, at 5.
71. *See, e.g., id.* art. 25, at 6.
72. *See, e.g., id.* art. 26, at 6.
73. *See, e.g., id.* art. 27, at 6-7.
74. *See, e.g., id.* arts. 29-31, at 7.
75. *E.g., id.* art. 34, at 7.
76. *See, e.g., id.*
77. Agreement with Finland, *supra* note 51, art. 33, O.J. L 328/2, at 7.
78. *See* Council Decision No. 86/571, O.J. L 337/1 (1986) (protocol added to Agreement with Norway); Council Decision No. 86/572, O.J. L 337/59 (1986) (protocol added to Agreement with Sweden); Council Decision No. 86/573, O.J. L 337/120 (1986) (protocol added to Agreement with Switzerland); Council Decision No. 86/541, O.J. L 321/1 (1986) (protocol added to Agreement with Austria); Council Decision No. 86/542, O.J. L 321/63 (1986) (protocol added to Agreement with Finland); Council Decision No. 86/543, O.J. L 321/121 (1986) (protocol added to Agreement with Iceland).
79. *See* EEC Treaty, *supra* note 1, arts. 85-86, 91, 1973 Gr. Brit. T.S. No. 1, at 32-35 (Cmd. 5179-II), 298 U.N.T.S. at 47-51; Agreement with Norway, *supra* note 47, arts. 23, 25, O.J. L 171/2, at 5-6.

provisions may differ. In *Polydor v. Harlequin Record Shops*,[80] for example, the owner of a particular copyright on music by "The Bee Gees" sought protection under British law for the infringement of his copyright by other British undertakings who offered the music for sale in Great Britain.[81] The importer, who had purchased the recordings from properly licensed Portuguese companies, prior to the accession of Portugal to the Community, maintained that under an agreement between the Community and Portugal such a restriction on the importation of goods was prohibited.[82] The importer compared language in the agreement with similar language in the EEC Treaty prohibiting such a restriction on trade between Member States.[83] The Court rejected the importer's argument, reasoning that because the basis of the agreement was not the EEC Treaty itself, with its principles and objectives, the interpretation of a similarly worded provision need not correspond.[84]

B. *Agreements with Countries Anticipating an Eventual Customs Union with the Community*

1. Turkey

The association agreement with Turkey, which entered into force in 1964, contemplated three stages for the achievement of a customs union and the harmonization of measures in various fields.[85] During the first stage, preferential duties were applied by the Community to specified exports from Turkey.[86] The Community also provided loans through the European Investment Bank.[87] During the second stage, which began in 1973, reciprocal trade concessions were provided to industrial and agricultural products.[88] The third

80. Case 270/80, 1982 E.C.R. 329, Common Mkt. Rep. (CCH) ¶ 8806.

81. *Id.* at 344, ¶¶ 2-3, Common Mkt. Rep. (CCH) ¶ 8806, at 7591.

82. *Id.* at 345, ¶ 5, Common Mkt. Rep. (CCH) ¶ 8806, at 7591.

83. *Id.*

84. *Id.* at 348-49, ¶¶ 14-20, Common Mkt. Rep. (CCH) ¶ 8806, at 7593.

85. Accord créant une association entre la communauté économique européenne et la turquie, 7 J.O. L 3687/64 (1964) [hereinafter Agreement with Turkey].

86. *Id.* art. 3, protocol 1, at 3689, 3694-3695.

87. *Id.* art. 4, protocol 2, at 3695-3696.

88. *Id.* arts. 10-11, at 3690. Council Regulation No. 562/81, O.J. L 65/1 (1981), *amended by* Council Regulation No. 3825/81, O.J. L 388/3 (1981) (providing for the

stage[89] has not yet been reached as originally contemplated for a variety of political and economic reasons. The original agreement has since been supplemented by an additional agreement.[90]

2. Malta

The association agreement with Malta provides for two stages over a five year period with the objective of attaining a customs union.[91] The agreement provides for a reduction of duties in the industrial sector of 70% by the Community and 35% by Malta, and a reduction of 35% by Malta only in the agricultural sector.[92] A separate protocol in 1986 addresses financial and technical cooperation.[93]

3. Cyprus

The association of Cyprus with the Community originated in 1973.[94] The original agreement introduced a mutual reduction of import duties of 35% over five years.[95] The conditions and procedures for the implementation of the second stage of the agreement are governed by a December 1987 decision.[96] An earlier protocol in 1986 provided for financial and technical cooperation.[97] As a consequence of the 1986 accession of Spain and Portugal to the Community, the contracting parties concluded a separate protocol in 1987 to govern the relationship between Cyprus and the enlarged Community.[98]

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reduction or elimination of customs duties on agricultural products imported by the Community).

89. Agreement with Turkey, *supra* note 85, art. 5, J.O. L 3687/64, at 3689/64.

90. Supplementary Protocol, O.J. L 53/91 (1986).

91. Council Regulation No. 492/71, 14 J.O. L 61/2 (1971) (implementing agreement with Malta). This Agreement has been amended by four Council regulations. *See* Council Regulation No. 3681/85, O.J. L 351/81 (1985); Council Regulation 3670/81, O.J. L 367/2 (1981); Council Regulation No. 1853/81, O.J. L 185/1 (1981); Council Regulation No. 3508/80, O.J. L 367/86 (1980).

92. Council Regulation No. 492/71, 14 J.O. L 61/2, at 3.

93. *See* Council Regulation No. 3973/86, O.J. L 370/5 (1986).

94. Council Regulation No. 1247/73, O.J. L 133/87 (1973) (implementing agreement in the form of an exchange of letters with Cyprus).

95. *Id.*

96. Council Regulation No. 87/607, O.J. L 393/1 (1987).

97. *See* Council Regulation No. 3973/86, O.J. L 370/5 (1986).

98. Council Decision No. 87/608, O.J. L 393/36 (1987).

C. *Cooperation Agreements with Mediterranean Countries*

1. The Maghreb: Algeria, Morocco, and Tunisia

The agreements, known as cooperation agreements, with the three Maghreb countries, Algeria,[99] Morocco,[100] Tunisia,[101] are similar. They replaced agreements based on Article 113 and are instead based on Article 238.[102] These agreements came into effect on November 1, 1978[103] and are supplemented by various protocols, particularly on financial and technical cooperation.[104] The trade provisions of each agreement allow for free access to the Community from the respective country except for certain agricultural products listed in Annex II of the EEC Treaty.[105] These agricultural products can receive access to the Community in certain circumstances but are subject to restrictions.[106] There are also provisions relating to social security and family allowances of workers from the Maghreb countries working in the Community,[107] but the agreements do not guarantee freer access to workers from the Maghreb countries to the Community.

2. The Mashrek: Egypt, Jordan, Lebanon, and Syria

There are similar agreements with the Mashrek countries. Cooperation agreements based on Article 238 were concluded

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99. *See* Council Regulation No. 2210/78, O.J. L 263/1 (1978) (implementing agreement with Algeria) [hereinafter Agreement with Algeria].

100. *See* Council Regulation No. 2211/78, O.J. L 262/1 (1978) (implementing agreement with Morocco).

101. *See* Agreement with Tunisia, *supra* note 31.

102. *Compare id.* preamble, O.J. L 265/1, at 1 (noting agreememt based on art. 238) *with* Council Regulation No. 471/76, preamble, O.J. L 58/5 (1976) (noting agreement based on art. 113).

103. *See, e.g.*, Agreement with Tunisia, *supra* note 31, art. 59, O.J. L 265/1, at 22 (establishing effective date).

104. *See* Council Decision No. 88/34, O.J. L 22/33 (1988) (concerning Tunisia); Council Decision No. 88/30, O.J. L 22/1 (1988) (concerning Algeria); Council Decision No. 88/4562, O.J. L 452/17 (1988) (concerning Morocco); Council Decision No. 88/453, O.J. L 452/32 (1988) (concerning Morocco); Council Regulation No. 3973/86, O.J. L 370/5 (1986) (concerning application of financial technical cooperation protocols generally).

105. *See, e.g.*, Agreement with Tunisia, *supra* note 31, art. 9, O.J. L 265/1, at 5.

106. *See id.* art. 24, at 17.

107. *See id.* art. 40, at 20.

with Egypt,[108] Jordan,[109] Lebanon,[110] and Syria.[111] These agreements resemble the agreements with the Maghreb countries as to trade arrangements and machinery, although there are no provisions relating to social security. The Maghreb and Mashrek agreements focus on industrial cooperation, the diversification of the economic structure, and the promotion of investment.[112] The Community and the Mashrek countries also concluded protocols on financial and technical cooperation.[113]

3. Israel

Israel is another Mediterranean country with which the Community has signed cooperation agreements. In this case, the Community has concluded separate agreements under both Articles 113 and 238. Under authority provided by Article 238, the parties created a cooperation council[114] and provided development aid to Israel in the form of regular European Investment Bank loans.[115] These protocols form a supplement to a trade agreement with Israel that was concluded in 1975 under Article 113 providing for free trade.[116] These instruments taken together represent an association agreement as usually effected. A third protocol of December 18, 1984, entered under Article 113, provided for the abolition of customs duties by January 1, 1989.[117] In 1987, the parties

108. *See* Council Regulation No. 2213/78, O.J. L 266/1 (1978) (implementing agreement with Egypt).

109. *See* Council Regulation No. 2215/78, O.J. L 268/1 (1978) (implementing agreement with Jordan).

110. *See* Council Regulation No. 2214/78, O.J. L 267/1 (1978) (implementing agreement with Lebanon) [hereinafter Agreement with Lebanon].

111. *See* Council Regulation No. 2216/78, O.J. L 289/1 (1978) (implementing agreement with Syria).

112. *See, e.g.*, Agreement with Lebanon, *supra* note 110, art. 4, O.J. L 267/1, at 4.

113. *See* Council Decision No. 88/31, O.J. L 22/9 (1988) (implementing additional protocol concerning Egypt); Council Decision No. 88/32, O.J. L 22/17 (1988) (implementing additional protocol concerning Jordan); Council Decision No. 88/33, O.J. L 22/25 (1988) (implementing additional protocol concerning Lebanon); Council Decision No. 88/598, O.J. L 327/57 (1988) (implementing additional protocol concerning Syria); Council Regulation No. 86/3973, O.J. L 370/5 (1986) (concerning application of financial and technical cooperation protocols generally).

114. *See* Council Regulation No. 2217/78, O.J. L 270/1 (1978).

115. *See id.* arts. 1-13, at 10-11.

116. Council Regulation No. 1274/75, O.J. L 136/1 (1975).

117. Council Regulation No. 3565/84, O.J. L 332/1 (1984).

reached agreement on the definition of "originating products" in light of the 1975 cooperation agreement.[118] Important additional protocols were concluded in 1988.[119]

In 1986, the 1975 agreement between Israel and the Community was considered by the Court of Justice in *Bulk Oil v. Sun International Ltd.*[120] In this case, the free trade agreement was interpreted as not prohibiting a quantitative restriction on exports from the United Kingdom to Israel.[121] In *Bulk Oil*, the United Kingdom imposed quantitative restrictions on the export of crude oil to non-member countries.[122] The Court noted that the agreement prohibited any new quantitative restrictions on the importation of goods into the Community or measures having equivalent effect and the agreement prohibited the introduction of new customs duties or charges having equivalent effect, but it did not prohibit measures related to the exportation of goods from the Community.[123]

D. *The Lomé Conventions*

An association between the Community and non-self-governing territories outside Europe was originally contemplated in the EEC Treaty.[124] After these territories, which were primarily former French colonies, obtained independence, they joined in a formal agreement with the Community represented by the Yaoundé Convention of 1964.[125] This Convention was later replaced by the Second Yaoundé Convention of 1969.[126] Kenya, Uganda, and Tanzania sought a comparable agreement resulting in the Arusha Convention of 1968, later renewed in 1969.[127] While the Second Arusha Agreement of 1969, which was essentially limited to trade matters, was based on Article

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118. Council Regulation No. 4163/87, O.J. L 397/1 (1987).

119. *See* Council Decision No. 88/597, O.J. L 327/51 (1988); Council Decision No. 88/596, O.J. L 327/35 (1988).

120. Case 174/84, 1986 E.C.R. 559, Common Mkt. Rep. (CCH) ¶ 14,288.

121. *Id.* at 583, ¶ 15, Common Mkt. Rep. (CCH) ¶ 14,288, at 16,806-16,807.

122. *Id.* at 577, ¶ 1, Common Mkt. Rep. (CCH) ¶ 14,288, at 16,804.

123. *Id.* at 583, ¶ 15, Common Mkt. Rep. (CCH) ¶ 14,288, at 16,806-16,807.

124. *See* EEC Treaty, *supra* note 1, arts. 131-36, 1973 Gr. Brit. T.S. No. 1, at 48-49 (Cmd. 5179-II), 298 U.N.T.S. at 65-67.

125. Conférence parlementaire de l'association entre la communauté économique européenne et les états africains et malgache, 7 J.O. 3709/64 (1964), *reprinted in* 2 I.L.M. 971.

126. Council Decision No. 70/539, J.O. L 282/1 (1970), *reprinted in* 9 I.L.M. 485.

127. Décision du Conseil No. 545/70, 13 J.O. L 282/54 (1970).

238 as expressly noted by the Council decision accompanying the agreement,[128] the Second Yaoundé Convention, which covered trade matters in addition to providing for Community assistance, also appears to have been based on Article 238.[129]

In 1972, in conjunction with the accession of Denmark, Great Britain, and Ireland to the Community, the independent Commonwealth countries took up the option of joining a comprehensive agreement with the Community.[130] The Community extended the same offer to members of the Second Yaoundé Convention and to other previously non-associated states.[131] The parties to the Second Yaoundé Convention and to the Second Arusha Agreement, Mauritius, independent Commonwealth countries, and African countries unconnected with the Member States, became collectively known as the African, Caribbean, and Pacific States (the "ACP States").[132] The ACP States, after long negotiations, joined a comprehensive convention, signed at Lomé, Togo on February 28, 1975 (the "Lomé Convention").[133]

The Community's legal instrument concluding the Convention refers to Article 238.[134] Although the Convention does not refer to "association," it is viewed as such an agreement.[135] The Lomé Convention endeavors to continue the principles of free trade and development assistance.[136] The Lomé Convention covers trade and commercial cooperation,[137] financial and technical cooperation,[138] and industrial

128. *See id.*

129. *See* H. SMIT & P. HERZOG, 6 THE LAW OF THE EUROPEAN ECONOMIC COMMUNITY 6-425 to 6-426 (1989).

130. Protocol No. 22, annexed to the EEC Treaty, provided 20 Commonwealth countries of Africa, the Caribbean, and the Pacific with the opportunity to negotiate trade agreements or associations with the Community. E FREY-WOUTERS, THE EUROPEAN COMMUNITY AND THE THIRD WORLD 16 (1980).

131. J. MOSS, THE LOME CONVENTIONS AND THEIR IMPLICATIONS FOR THE UNITED STATES 15 (1982).

132. *See id.* 161-62 (noting each ACP State's former relationship to the Member States of the Community).

133. Council Regulation No. 199/76, O.J. L 25/1 (1976) (implementing the first Lomé Convention) [hereinafter Lomé I]. A list of the ACP States is reprinted in Appendix A to this Article, *infra* p. 231.

134. Lomé I, *supra* note 133.

135. *See supra* notes 22-37 and accompanying text (discussing the concept of association agreements).

136. Lomé I, *supra* note 133, O.J. L 25/1, at 4-5.

137. *Id.* arts. 1-15, at 1-14.

cooperation.[139] The provisions of the trade arrangements are non-reciprocal and exports from ACP States are admitted to the Community free of import duties and quantitative restrictions.[140]

An important element of the Lomé Convention is a system for the stabilization of export earnings,[141] referred to as Stabex. Under the Stabex system, payments are made to the economies of ACP States to compensate for any decrease in export earnings that normally would have come from the market.[142]

Certain agricultural exports, although small in number, are subject to certain restrictions.[143] Annexed to the Lomé Convention is a protocol on sugar.[144] This protocol is contractual in nature, involving a commitment on the part of the Community to purchase annually, at a guaranteed price, agreed quantities of cane sugar from ACP producer countries, and a reciprocal commitment on the part of the ACP States to supply the Community with those quantities.[145] The protocol was concluded for an indefinite period,[146] and although it has been annexed to successive Lomé Conventions, it exists independently from them.[147] The protocol does provide a denunciation clause at the end of five years, subject to two years notice.[148]

The Second Lomé Convention ("Lomé II") signed at Lomé on October 31, 1979,[149] extends Stabex to agricultural products[150] and, to a limited degree, to some minerals under a

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138. *Id.* arts. 40-61, at 20-26.

139. *Id.* arts. 26-39 at 17-19.

140. *Id.* arts. 2(1), 3, 7, at 11-12.

141. *Id.* arts. 16-24, at 14-17.

142. *Id.*

143. *Id.* art. 2(2), at 11.

144. *See id.* protocol 3, at 114-15.

145. *See id.*

146. *Id.* protocol 3, art. 10, at 115.

147. *See* Council and Commission Decision on the Conclusion of the Third ACP-EEC Convention, protocol 7, O.J. L 86/1, at 164 (1986), *amended by* Council Regulation No. 1825/87, O.J. L 173/6 (1987) [hereinafter Lomé III]; Council Regulation No. 3225/80, O.J. L 347/1, protocol 7, at 147 (1980) [hereinafter Lomé II].

148. Lomé I, *supra* note 133, protocol 3, art. 10, O.J. L 25/1, at 115 (citing *id.* art. 91, at 30).

149. Lomé II, *supra* note 147. See EEC LAW, *supra* note 16, at 474-78 for a more detailed comparison of Lomé I and Lomé II.

150. Lomé II, *supra* note 147, art. 25, O.J. L 25/1, at 17.

system referred to as Sysmin.[151] Sysmin is a system of aid designed to help those ACP States whose economies depend on mining products by maintaining production capacity at viable levels.[152] Lomé II also increases allocation to the European Development Fund which distributes aid under the Convention.[153]

The Third Lomé Convention ("Lomé III"), signed at Lomé on December 8, 1984,[154] entered into force for five years on March 1, 1985.[155] Lomé III was an effort to create a model for relations between developed and developing countries.[156] Most notable of the stated principles is article 4, which stresses the concepts of self-development, social and cultural values, ideas of human potential and capacity, recognition of the role of women, and respect for the desires of the individual.[157] The Community, however, was unsuccessful in its efforts to incorporate legally binding obligations regarding human rights into this Convention in spite of a reference in the preamble.[158]

Lomé III incorporates other areas of cooperation designed to further development of the ACP States, including the rehabilitation of existing industrial capacity[159] through the promotion of small and medium-sized businesses,[160] development of mining and energy,[161] transport and communications,[162] and trade and services.[163] Provisions related to trade and services emphasize the development of a coherent trade policy,[164] tourism,[165] and the establishment of export credit

151. *Id.* arts. 49-56, at 22-24.
152. *See id.* art. 49, at 22.
153. *See id.* art. 95, at 34.
154. Lomé III, *supra* note 147, at 3. See Huber, *From Lomé II to Lomé III: Improvements and new features in the third ACP-EEC Convention signed on 8 December 1984*, LEGAL ISSUES IN EUR. INTEGRATION 1 (1985) for a discussion of the differences between Lomé II and Lomé III.
155. Lomé III, *supra* note 147, art. 291, O.J. L 86/1, at 83.
156. *See id.* art. 1, at 16.
157. *Id.* art. 4, at 16; *see id.* arts. 114-28, at 39-41.
158. *Id.* preamble, at 8.
159. *Id.* art. 63, at 29.
160. *Id.* arts. 67, 98, at 29, 36.
161. *Id.* arts. 75-83, at 32-34.
162. *Id.* arts. 84-94, at 34-35.
163. *Id.* arts. 95-100, at 35-36.
164. *Id.* art. 96(2), at 35.
165. *Id.* arts. 96-98, at 35-36.

and insurance houses in ACP States.[166] The Third Lomé Convention also introduces a "prior consultation" clause[167] before safeguard measures are adopted or extended.[168] This Convention also simplifies and relaxes the rules of origin,[169] thereby enabling products with a slightly higher "non-ACP" content from ACP States to enjoy the consequent freedom from custom duties and charges of equivalent effect and, in many cases, from quantitative restrictions.[170]

As the ACP States have found themselves increasingly reliant on food imports, agricultural and rural development is now given top priority.[171] Control of drought and desertification is emphasized in conjunction with the need to raise living standards of rural populations.[172] Lomé III states that successful rural development requires the development of storage facilities,[173] processing of agricultural products, as well as market conditions.[174] The Technical Centre for Agricultural and Rural Cooperation, established by the Convention, provides the ACP States with information, research facilities, education and advice.[175] The Lomé III Convention improves access for agricultural products from ACP States by facilitating procedures for dealing with requests for preferential access to the Community.[176]

Annexed to the Convention are two protocols dealing with exports of bananas and rum from the ACP States to the Community. The protocol on bananas maintains access to the markets and the advantages acquired by each ACP State that exports bananas to the Community and provides for a joint effort to enable the ACP States to establish themselves in new markets in the Community.[177] The protocol on rum allows for duty free import into the Community subject to an annual

166. *Id.* art. 99, at 36.
167. *Id.* art. 140, at 44.
168. *Id.* art. 139, at 44.
169. *Id.* art. 138, protocol 1, at 43-44, 99.
170. *Id.*
171. *See id.* arts. 26-49, at 20-26.
172. *See id.* arts. 26, 30, at 20-22.
173. *See id.* arts. 29-38, at 21-24.
174. *See id.* arts. 26, 29, 32(2), 35(1)(b), 36, at 20-23.
175. *Id.* art. 37, at 23-24.
176. *Id.* art. 130, at 42-43.
177. *Id.* protocol 4, at 160.

quota.[178]

The Third Lomé Convention also emphasizes fishery resources.[179] In light of the Third United Nations Conference on the Law of the Sea,[180] Lomé III deals with two aspects of cooperation: (1) encouraging development and exploitation of ACP States' fishery resources, and (2) fishery agreements between the ACP States and the Community.[181]

In the field of financial cooperation, Lomé III provides for very favorable terms for loans to the ACP States[182] and sets forth methods of financing.[183] The Third Lomé Convention also marks a shift in emphasis away from public sector investment and instead toward private funding as the motivating force behind ACP State development.[184] The Convention further provides favorable arrangements for the least developed, landlocked, and island ACP States.[185]

Lomé III increased funding to Stabex,[186] requiring, for the first time, a degree of ACP State accountability to the Community for the use of the Stabex transfers.[187] Similarly, funding for Sysmin was also increased,[188] and some procedural alterations were also introduced.[189]

Lomé III also sets up an institutional arrangement composed of three bodies.[190] First, the Convention is managed by a Council of Ministers.[191] This Council consists of members of the Council of Ministers of the European Communities, members of the Commission of the European Communities, and a

178. *Id.* protocol 5, at 161.

179. *Id.* arts. 50-59, at 26-28.

180. *See id.* art. 50, at 26 (citing Third United Nations Convention of the Law of the Sea, 1982, U.N. Doc. A/CONF.62/122, *reprinted in* 21 I.L.M. 1261 (1982)).

181. Lomé III, *supra* note 147, arts. 50-59, O.J. L 86/1, at 26-28.

182. *Id.* art. 196, at 57-58.

183. *Id.* arts. 196-200, at 57-60.

184. *Id.* arts. 240-47, at 74-76.

185. *Id.* art. 255-64, at 77-79. A list of these countries is reprinted in Appendix B to this Article, *infra* pp. 232-33.

186. *Id.* art. 152, at 46. *See infra* notes 141-142, 150 and accompanying text for information on Stabex in Lomé I and Lomé II.

187. Lomé III, *supra* note 147, art. 157, O.J. L 86/1, at 47.

188. *Id.* art. 178, at 51-52.

189. *See* arts. 176-84, at 51-53.

190. *Id.* arts. 22-25, at 19-20; *see id.* arts. 265-81, at 79-81 (concerning operations of the institutions).

191. *See id.* art. 23, at 19.

minister of each ACP State.[192] Second, the Convention establishes a Committee of Ambassadors, composed of the permanent representative of each Member State to the Community, a representative of the Commission of the European Communities, and the head of each ACP State mission to the Community.[193] This Committee aids the Lomé Convention Council of Ministers in carrying out its duties and monitors the implementation of the Convention.[194] Finally, the Joint Assembly, consisting of members of the European Parliament and representatives of ACP States,[195] operates as a consultative assembly.[196]

In October 1988, the sixty-six ACP States and the Member States opened negotiations for the renewal of the ACP-EEC Convention.[197] Negotiations were concluded on December 15, 1989 with the signing of the Fourth Lomé Convention. The new convention covers the same areas as Lomé III,[198] although certain provisions particularly in the financial field reflect changed circumstances.

E. *Cooperation Agreement with Association of South-East Asian Nations*

Within the past decade, the Community has also entered into agreements relating to the economic development of the South-East Asian nations. In 1980, the Community signed a cooperation agreement with the Association of South-East Asian Nations ("ASEAN").[199] This agreement, based on Arti-

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192. *Id.*

193. *Id.* art. 24(1), at 20.

194. *Id.* art. 24(2), at 20.

195. *Id.* art. 25(1), at 20.

196. *Id.* art. 25(2), at 20.

197. *"Inventing the Future:" Opening of the Negotiations for the Renewal of the ACP-EEC Convention*, 112 THE COURIER (Nov.-Dec. 1988), at I.

198. ACP-EEC: The Lome 4 Convention is Signed, ACP States' Concern Remains, AGENCE EUROPE No. 5155 (New Series), at 5, Dec. 16, 1989. Since Lomé III, the Dominican Republic and Haiti have joined the ACP States, and both countries are party to Lomé IV. European Community News, No. 44/89, at 1, Dec. 14, 1989. Namibia is expected to sign the agreement early next year. *Id.*

199. *See* Council Regulation No. 1440/80, O.J. L 144/1 (1980). The Association of South-East Asian Nations consists of Indonesia, Malaysia, the Philippines, Singapore, and Thailand. In 1985, the agreement was extended to include Brunei-Darussalam. *See* Council Regulation No. 743/85, O.J. L 81/1 (1985).

cles 113 and 235 of the EEC Treaty,[200] provides that the Community and ASEAN grant each other most favored nation status,[201] agree to study means of promoting trade,[202] and foster investment and technological cooperation.[203] The agreement addresses development policy of both the ASEAN countries and the region as a whole.[204] The agreement specifically provides for cooperation on projects related to food production, development of the rural sector, education and training, and other similar projects promoting economic development.[205]

The Community's agreement with ASEAN also establishes a joint cooperation committee to promote and to review the activities authorized by the agreement[206] and to supervise any sectoral agreement.[207]

The contracting parties provided that the agreement would remain in force for an initial period of five years, and thereafter for periods of two years, subject to the right of either party to terminate the agreement six months before the expiration of any such two year period.[208]

F. *State Trading Countries*

Past agreements with Hungary, Poland, and Romania were limited in scope and nature, and now bilateral trade and economic cooperation agreements have been signed between the Community and Czechoslovakia, Hungary, and Poland. The agreement on Trade and Commercial and Economic Cooperation with the Soviet Union signed on December 18, 1989 covers an area of wide cooperation,[209] but reportedly does not affect the level of customs.[210] The Community has also signed an agreement with Yugoslavia, which contains aid features akin

200. *See* Council Regulation No. 743/85, O.J. L 81/1; Council Regulation No. 1440/80, O.J. L 144/1.

201. *See* Council Regulation No. 1440/80, art. 1, O.J. L 144/1, at 3.

202. *Id.* art. 2, at 3.

203. *Id.* art. 3(2), at 3.

204. *Id.* art. 4, at 4.

205. *Id.* art. 4(3), at 4.

206. *Id.* art. 5, at 4.

207. EEC LAW, *supra* note 16, at 478.

208. Council Regulation No. 1440/80, art. 8, O.J. L 144/1, 4.

209. New York Times, Dec. 19, 1989, at D1, col. 6.

210. The official text of the agreement was not available at the time this Article was published.

to the agreements with Maghreb countries under Article 238.[211] New trade arrangements were introduced in 1987 by an additional protocol to the cooperation agreements.[212] A second protocol on financial cooperation was also adopted in 1987.[213]

G. *Commodity Agreements*

Agreements with the less developed countries are numerous, often granting preferential tariff treatment and often dealing with individual products. Such commodity agreements relate to coffee, cocoa, jute, rubber, tin, and wheat. They are intended to stabilize prices and supplies. The Community has also entered into commodity agreements with developed nations. In addition, the Community is a party to the Multi-Fibre Arrangement designed to prevent the decline of traditional textile industries by stabilizing imports.[214] The Multi-Fibre Arrangement has been implemented by bilateral agreements.

H. *Agreements with North America*

Although the agreements between the Community and North American countries seem to be limited in number and scope, the Community has negotiated agreements with the United States under Articles XXVIII and XXIV of GATT. These agreements, dating back to 1967, relate to olive oil residues,[215] certain types of manufactured tobacco,[216] and certain petroleum products.[217] In addition, the Community and the United States concluded arrangements in the form of an exchange of letters. These instruments concern trade in certain steel products[218] and fisheries off the coast of the United

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211. Council Regulation No. 314/83, O.J. L 41/1 (1983); *see supra* notes 99-107 and accompanying text.

212. *See* Council Decision No. 87/605, O.J. L 389/72 (1987) (implementing additional protocol with new trade arrangements).

213. *See* Council Decision No. 87/604, O.J. L 389/65 (1987) (implementing protocol on financial cooperation).

214. Arrangement Regarding International Trade in Textiles, Dec. 20, 1973, 25 U.S.T. 1001, T.I.A.S. No. 7840.

215. Décision du Conseil No. 67/729, annexe, 10 J.O. 292/44, 47 (1967).

216. Décision du Conseil No. 68/250, annexe I, 11 J.O. 131/14, 15 (1968).

217. *Id.*

218. *See* Commission Decision No. 86/455, O.J. L 262/28 (1986) (amending October 21, 1982 arrangement in the form of exchange of letters); Arrangement, O.J. L

States.[219]

Canada has also negotiated with the Community certain agreements under GATT.[220] In addition, Canada has entered into other agreements for commercial and economic cooperation with the Community governed by a joint committee.[221] There are specific agreements covering trade for such products as alcoholic beverages,[222] women's and girls' footwear[223] and boneless manufacturing beef,[224] and fisheries.[225] In the field of atomic energy, Canada and the European Community are involved in cooperation in several sectors.

CONCLUSION

Looking at the whole of the Community legislation in force it might be suggested that there are agreements with most of the sovereign countries in the world, some more limited than others, but all the same enabling the Community to develop closer trade links should the opportunity arise. An example is the Cooperation Agreement with the Cooperation Council of the Arab States of the Gulf.[226] Such opportunities have flourished in recent months and, as late as the time this

355/2 (1985) (extending and modifying terms of October 21, 1982 agreement concerning certain steel products in the form of an exchange of letters); Arrangement, O.J. L 355/28 (1985) (extending terms of January 7, 1985 agreements in form of an exchange of letters concerning steel pipes); Arrangement, O.J. L 9/2 (1985) (specifying terms of arrangement concerning steel pipes); Council Regulation No. 2189/83, O.J. L 215/1 (1983) (implementing provisions amending appendix B of October 21, 1982 arrangement).

219. *See* Agreement, O.J. L 63/23 (1989) (extending and amending agreement concerning fisheries in the form of an exchange of notes); Agreement, O.J. L 272/3 (1984) (specifying terms of agreement concerning fisheries).

220. Décision du Conseil No. 70/179, 13 J.O. L 54/16 (1970); Décision du Conseil No. 70/177, 13 J.O. L 54/4 (1970); Décision du Conseil No. 67/729, annexe, 10 J.O. 292/44, 46 (1967).

221. *See* Framework Agreement, art. 4, O.J. L 260/2-3 (1976) (specifying terms of commercial and economic cooperation).

222. *See* Council Decision No. 89/189, O.J. L 71/41 (1989) (implementing agreement concerning alcoholic beverages).

223. Agreement, O.J. L 100/27 (1986) (specifying terms of agreement concerning women's and girls' footwear).

224. *See* Council Decision No. 86/101, O.J. L 87/33 (1986) (implementing terms of agreement concerning boneless manufacturing beef in the form of an exchange of letters).

225. *See* Council Decision No. 81/1053, O.J. L 379/53 (1981) (approving terms of agreement concerning fisheries).

226. Council Decision No. 89/147/EEC, O.J. L 54/1 (1989).

Article went to press, with the numerous political changes that continue to transpire in Eastern Europe. In light of such changes, the Community took a leading part in coordinating a program of economic assistance to Poland and Hungary by twenty-four industrialized states ("Operation PHARE"),[227] in which five priority sectors were chosen for action.

227. AGENCE EUROPE No. 5153 (New Series), at 7-8, Dec. 14, 1989. Poland and Hungary: Assistance for Economic Restructuring ("Operation PHARE") identified the following five priority sectors: agriculture, access to markets, investment, vocational training, and the environment. *Id.*; AGENCE EUROPE No. 5170 (New Series), at 11, Jan. 12, 1990.

APPENDIX A

LIST OF ACP STATES (66) *

AFRICA

Benin	Ghana	Rwanda
Botswana	Guinea	São Tomé & Principe
Burkina Faso	Guinea-Bissau	Senegal
Burundi	Ivory Coast	Seychelles
Cameroon	Kenya	Sierra Leone
Cape Verde	Lesotho	Somalia
Central African Republic	Liberia	Sudan
Chad	Madagascar	Swaziland
Comoros	Malawi	Tanzania
Congo	Mali	Togo
Djibouti	Mauritania	Uganda
Equatorial Guinea	Mauritius	Zaire
Ethiopia	Mozambique	Zambia
Gabon	Niger	Zimbabwe
Gambia	Nigeria	

CARIBBEAN

Antigua & Barbuda	Dominica	St. Christopher & Nevis
Bahamas	Grenada	St. Lucia
Barbados	Guyana	St. Vincent & The Grenadines
Belize	Jamaica	Surinam
		Trinidad & Tobago

PACIFIC

Fiji	Tonga
Kiribati	Tuvalu
Papua New Guinea	Vanuatu
Solomon Islands	Western Samoa

* This list reflects those ACP States that signed Lomé III.

APPENDIX B

THE LEAST-DEVELOPED, LANDLOCKED, AND ISLAND ACP STATES

Title V of Part Three of Lomé III specifies which ACP States are regarded as the least-developed, landlocked, and island ACP States.

These countries are eligible for more favorable arrangements in the following areas of the Convention:

(a) agricultural and food co-operation
(b) industrial development
(c) transport and communication
(d) development of trade and services
(e) regional co-operation
(f) general trade arrangements
(g) Stabex and Sysmin
(h) financial and technical cooperation
(i) investment
(j) rules of origin.

The Least-Developed ACP States (art. 257)

Antigua & Barbuda
Belize
Benin
Botswana
Burkina Faso
Burundi
Cape Verde
Central African Republic
Chad
Comoros
Djibouti
Dominica
Equatorial Guinea
Ethiopia
Gambia
Grenada
Guinea
Guinea-Bissau
Kiribati
Lesotho
Malawi
Mali
Mauritania
Mozambique
Niger
Rwanda
St. Christopher & Nevis
St. Lucia
St. Vincent & The Grenadines
São Tomé & Principe
Seychelles
Sierra Leone
Solomon Islands
Somalia
Sudan
Swaziland
Tanzania
Togo
Tonga
Tuvalu
Uganda
Vanuatu
Western Samoa

Landlocked ACP States (art. 260)

Botswana	Lesotho	Swaziland
Burkina Faso	Malawi	Uganda
Burundi	Mali	Zambia
Central African Republic	Niger	Zimbabwe
Chad	Rwanda	

Island ACP States (art. 263)

Antigua & Barbuda	Jamaica	São Tomé & Principe
Bahamas	Kiribati	Seychelles
Barbados	Madagascar	Solomon Islands
Cape Verde	Mauritius	Tonga
Comoros	Papua New Guinea	Trinidad & Tobago
Dominica	St. Christopher & Nevis	Tuvalu
Fiji	St. Lucia	Vanuatu
Grenada	St. Vincent & The Grenadines	Western Samoa