New Departures in Multilateral Trade, Development and Cooperation: The Lome Convention and its Impact on the United States

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By Edward A. Laing*

On February 28, 1975, the European Economic Community (EEC) and 46 states of Africa, the Caribbean and the Pacific, signed the ACP-EEC Lomé Convention at Lomé, the capital of Togo.1 The Convention, which marks the culmination of a series of arrangements commencing in 1957 between the EEC and African territories on trade and aid relationships, has been hailed as a very significant and an unique instrument. It will now be discussed in the context of several general trends in multilateral trade, development and cooperation and an assessment of its impact on the United States will be made.

I. INTRODUCTION

A. The Problems Of Trade And Development Of Developing Countries

During the 1960's and 1970's economic problems of the developing countries have become a focal point of much international attention. Regional and universal organizations and other countries have devoted a considerable amount of time and energy to identifying the multifarious problems which lie in the way of the objective of making the best and most productive use of resources with a view of improving the lot of mankind. However, the solutions which have been suggested have either been too vague or have hardly been implemented — in view of the wide variety of specific manifestations of the problems and the vast number and diversity of developing countries.

In the specific area of trade and development, some of the many needs which have been identified are: to increase the receipts from export earnings;2 to eradicate the dependency in trade relations of particular develop-

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2. For example, through improving the terms of trade, developing equitable transportation schemes, and obtaining better prices for commodities or other products of the developing countries.
ing countries on particular developed countries and to terminate the economic strangulation of developing countries by the developed world; to diversify exports and to reform the production patterns of the countries which must, at the same time, obtain new markets and seek rapidly to assimilate a vast body of techniques and other experience which exist; to develop viable systems of financing of trade and developing through local and external channels; and to obtain unrestricted access to and participation in decision-making fora, particularly those which pass upon such matters as the terms of trade and its regulation. In fact, to a large extent, the problem is seen as being one of transferring the center of gravity in trade and development matters from the developed to the developing world, or at least to neutral or representative fora.¹

More recently, it has been recognized that many problems which were not hitherto recognized as economic problems do, in fact, have that nature and that most of the vast array of international problems are closely interrelated. Today there is a respectable body of opinion that disarmament should be rapidly accelerated and the resources released by this transferred to the alleviation of the problems of trade and development; that international monetary problems must be solved with an eye on the needs of the special problems of developing countries; that the new distribution in the use of resources should not exclude technology, the benefits of which should be more easily available to the developing world; that inappropriate environmental policies seriously affect these countries—arguably even more than developed countries, the main creators of ecological decay; that underdevelopment is to a large extent a product of past colonialism, which is perpetuated by forms of neo-colonialism and the residues of colonialism.⁵

Highly stimulative of much of this recognition and contribution to the articulation of many of these problems were the regional Economic Commissions of the United Nations. By 1961, the General Assembly was able to designate 1961-71 as the “United Nations Development Decade” in a resolution which, however, was largely hortatory and generally vague in specific detail.⁶ Spurred on by a growing ferment of activity in and discussions among the rapidly growing number of independent developing countries, the first United Nations Conference on Trade and Development was

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3. Usually, serious infrastructural development and social readjustment and improvement are also seemingly desirable or required. Technology, too, must be transferred, with all the well known problems this brings about.

4. Among the many less general needs and problems which have been identified are those relating to some countries’ demographic features and geographical problems. Also, certain classes of countries have been identified as having peculiar difficulties, e.g., landlocked countries and island nations. Some countries are now being regarded as being particularly worse off than all others — the “least developed countries.”

5. For example, the so called “dependency syndrome.”

held in Geneva in 1964. There, rhetoric might seem to have been more pervasive than immediately felt results. However, the needs and expectations of the developing countries were debated and exposed in a semi-institutional setting; and nascent programs of action and concrete solutions were formally articulated and, in part, adopted. Later that year, the General Assembly formally established the Conference (UNCTAD) as one of its organs. Since 1964, the Conference has met twice, in New Delhi in 1968 and in Santiago de Chile in 1972. The range of its discussions and the matters it passes upon have grown apace. A certain ambitiousness and quasi-politicism is clearly evident in its resolutions. But problems, such as those mentioned above, have been aired openly and extensively documented, and a wide range of sometimes overlapping solutions have been mapped out. In the light of UNCTAD and several influential meetings of the important “Group of 77” developing country members of UNCTAD, the General Assembly in 1970 designated the decade 1970-80 as the Second United Nations Development Decade, elaborating at the same time goals and objectives and several comprehensive policy measures most of which are identical to programs developed at UNCTAD. By 1973 the General Assembly had adopted a very depressing first biennial over all review and appraisal of progress in the implementation of the development strategy for the second decade. Subsequent General Assembly resolutions have shown that the economic problems of the vast majority of the world are growing at an amazing rate. Therefore, it will be suggested here that the 1975 ACP-EEC Lomé Convention is an attempt, in part, to actively implement some of the solutions recommended by UNCTAD and the General Assembly.

8. For a discussion of the work of the first two conferences and the now quite sophisticated administrative and technical machinery of UNCTAD, see B. Gosovic UNCTAD CONFLICT AND COMPROMISE: THE THIRD WORLD'S QUEST FOR AN EQUITABLE WORLD ECONOMIC ORDER THROUGH THE UNITED NATIONS (1972).
11. See, e.g., General Assembly Resolution 3201 (S-VI), 1 May 1974; and General Assembly Resolution 3202 (S-VI), 1 May 1974.
12. These included, among many others, the suggestions that (1) export earnings from primary commodities should be increased by price stabilization agreements, quota arrangements, buffer stock schemes, floor ceiling prices and price ranges, supplementary financing to mitigate certain difficulties arising from sudden shortfalls, etc.; (2) the manufactured and semi-manufactured goods of developing countries should more easily be made to compete in developed countries by, e.g., a system of generalized preferences; (3) the terms of aid and debt-servicing should be liberalized and specific minima should be annually invested from each developed countries' resources; (4) new principles to govern trade and development should be adopted; (5) discriminatory shipping policies should be abandoned and developed countries should assist in developing the merchant marines of the developing world. See generally Gosovic, supra note 8. Other suggestions have included (6) the necessity for in-
B. The EEC, Trade, And Development Of Developing Countries

Despite what has just been said about the new Lomé Convention, it must be pointed out that the EEC's record of activity in the developing countries stretches further back than the period just discussed. It commences with part IV of the 1957 Treaty of Rome in which the parties, at France's insistence, agreed to "associate" with the non-European territories which had special relationships with Belgium, France, Italy and the Netherlands, i.e., mostly overseas possessions. The details and procedure were, according to the Treaty, worked out by a Convention of Association dated 1957. The resulting system consisted of: (1) Trade arrangements, whereby the EEC members granted to the associates the same trade advantages as they accorded to each other by the Treaty of Rome and, additionally, accorded special tariff benefits for the associates' exports of certain key agricultural products. Existing arrangements, whereby certain members agreed to take minimum quotas of the associates' exports at fixed prices, were to be gradually increased and spread among the members. Otherwise, each associate was to accord to all of the members and to each other the same trading advantages as it accorded to the mother country; thus customs duties were to be gradually abolished. (2) Aid arrangements, in the form of the European Development Fund (FED) whereby each member pledged a sum of money and all agreed that specified amounts of the total would be made available for grants for the social and economic development of the associates. (3) Establishment provisions, whereby the EEC right of establishment of nationals and companies of one member in other members was to be gradually extended to the associates. In addition, the free movement of workers from the associates to the EEC was envisaged.

Starting with the Cameroons in 1960, several of the associate countries in Africa became independent. For formal reasons, therefore, a new treaty relationship appeared to be appropriate. Furthermore, with the negotiations by the United Kingdom for entry into the EEC it was perceived that the limited categories of associate states in part IV of the Treaty of Rome and the 1957 convention needed to be expanded to include independent Commonwealth countries and dependent British territories after British admission to the EEC. With the growing political independence of several of the countries, murmurs about imperialism and the preponderance of French influence (partly institutionalized in the Treaty and the Conven-
tion), along with the realization that there were several powerful non-
associate African states, strongly suggested the need for a new and more 
comprehensive relationship. Negotiations having commenced in 1961, a 
new convention of association was signed on July 20, 1963, at Yaoundé in 
the Cameroon.\(^5\) The new convention, between the EEC and 18 indepen-
dent African states, went into force on June 1, 1964. Basically, it dealt with 
the same range of matters as the earlier arrangement. Its trade provisions 
were essentially the same: tariff reductions were to continue, but some 
products were to be immediately duty-free; trade liberalization was to be 
more rapidly accelerated, e.g., quantitative restrictions being abolished by 
the associates within four years, no new ones being authorized to be intro-
duced; most-favored-nation trading treatment was to be accorded member 
states by the associates. Furthermore, customs unions or free trade areas 
among associated states or between any associated state or states and third 
states were authorized; and the EEC was to consult the associates in for-
mulating a common agricultural policy (CAP). In effect, the former special 
relations between EEC “mother countries” and former colonies had 
ceased. The FED was increased and made available both as grants and as 
soft loans. Extra loans by the European Investment Bank were also author-
ized.

The Convention specified, in addition to the previously authorized in-
frastructural uses of FED (so-called “economic and social purpose” uses) 
the following uses: investment (including technical assistance before and 
after investment), general technical cooperation (including personnel 
training), diversification of production, and new or existing schemes for 
the stabilization of prices and markets on an emergency basis. The Con-
vention also earmarked specific funds for specific types of products and 
countries. Also, very modest administrative functions by the associates 
were envisaged. The right of establishment was to be accelerated on a 
reciprocal basis. To the basic right was added that of freely supplying 
services other than wage-earning activities. Furthermore, all parties under-
took to liberalize payments, repayments and their free transfer. The new 
convention, following the 1961 EEC-Greece Association Agreement, also 
established a set of institutions. These were the Association Council,\(^6\) a 
quasi-executive organ assisted by the Association Committee; the Parlia-
mentary Conference,\(^7\) a deliberative and advisory organ; and the five-
member Court of Arbitration empowered to settle disputes (with binding

\(^5\) INT’L LEG. MAT’LS 971 (1963). The convention also earmarked specific funds for 
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associates were envisaged.

\(^6\) Comprised of associates’ governmental representatives and EEC (Council and Com-
misson) representatives and required to take action with common accord between the two 
sides, i.e., a bipolar decision-making structure.

\(^7\) Composed of equal numbers of members of the European Assembly and the Parlia-
ments of the Associates.
effects on the parties), relating to the interpretation or application of the Convention, which the Council was unable to settle or the parties unable to solve otherwise.18

Despite expectations, the Commonwealth African, Caribbean and other countries did not become parties to the Yaoundé Convention.19 In the five year period following the signing of Yaoundé, it became evident that the opposition of many of the non-associates to such relationships with the EEC had disappeared and that they were ready, as envisaged in the EEC Council Declaration of Intention of April, 1963, either to accede to Yaoundé, to negotiate trade agreements, or to enter into association agreements with reciprocal rights and obligations under article 238 of the Treaty of Rome.20 In fact, negotiations with Nigeria and with Tanganyika were already under way. In the case of Nigeria, these negotiations materialized into an agreement signed July 16, 1966. However, due to the Biafran Civil War the agreement never went into force. Nevertheless, since the Agreement contained several novel provisions in comparison with the other African-EEC agreements, and since it partially influenced the ACP-EEC Lomé Convention, it will be briefly summarized.21 A fairly widespread feeling among non-associates still remained: that “association” was a relationship of subservience and dependence and probably a form of neo-colonialism. Nigeria, in seeking for and obtaining a sui generis type of agreement, was probably bearing such considerations in mind. More importantly, however, despite her traditional avowal of free trade and her dislike, nurtured by the debates at UNCTAD and elsewhere, for preferential trading systems, she desired to maintain her traditional and important trading markets in Europe, to compete with her major competitors (several of them now beneficiaries under Yaoundé), and, as UNCTAD discussions and resolutions suggested, to insure that if preferences were not to be abolished, they should be made general for as many countries as possible. The Agreement, therefore, could be categorized as something between a trading agreement and an association agreement. In coverage, in fact, closely resembled the Yaoundé scheme with the major exception that it contained no provisions on aid. Its provisions on trade would liberalize trade reciprocally in all exports and imports. However, exports of cocoa


19. The Convention provided for accession (at EEC’s discretion after possible consultations in the Association Council) of states with economic structure and production comparable to that of the associates.


21. This is based on Weil, supra note 14, at 161-70; Okigbo, supra note 14, at 90-136, and Rivkin, supra note 21, at 58-69.
beans, peanut oil, palm oil and plywood were limited by quantitative
quota restrictions; beyond these limits the tariffs applicable to third
countries were to apply. Reciprocity was theoretically accorded in respect
treatment of EEC products by Nigeria's agreement to abolish all cus-
toms duties \textit{erga omnes} over a two year period and at the same time
agreeing to establish preferential treatment for 26 EEC products. Nigeria
was, on the other hand, permitted to maintain Commonwealth prefer-
ences. Its provisions on establishment and payments and capital move-
ments were also basically similar to Yaounde's, but they were slightly less
favorable to the EEC mainly due to the absence of aid provisions. Although
the possibility of parliamentary cooperation was envisaged, the only insti-
tutional provisions were a council of association and, unlike Yaounde, an
ad hoc arbitration scheme.

Meanwhile, negotiations had commenced in early 1963 with Kenya,
Uganda and Tanzania (as Tanganyika had become, after its union with
Zanzibar on April 26, 1964), the three states comprising the East African
Community. These dragged on over a long period of time because, al-
though the parties were apparently clear that what was needed was a \textit{sui
generis} type agreement not very different from Nigeria's, points of detail,
some political differences, and other factors proved to be difficult. Eventu-
ally, an agreement was signed at Arusha on July 26, 1968. However, this
agreement never entered into force, due to non-ratification by all the par-
ties. The ten associated states and the EEC now negotiated another con-
vention which was signed at Yaounde on July 29, 1969. This convention
(hereinafter referred to as Yaounde II), which came into force on January
1, 1971, after necessary ratifications, was quite similar to the first Yaounde
Convention (hereinafter referred to as Yaounde I). In three respects the
two instruments were more or less identical. These were provisions dealing
with: the right of establishment, services, payments and capital; the insti-
tutions, and the general final provisions. The provisions on financial and
technical cooperation in the main represented refinements of Yaounde I.
As for trade provisions, the movement commenced in 1957 almost reached
its logical conclusion: reciprocity and free trade were stressed. Customs

\begin{itemize}
\item 22. This was to preserve the advantages already gained by the 18 associates.
\item 23. These represented 9\% of EEC exports to Nigeria and 4\% of all of Nigeria's imports.
\item 24. The main reasons for such limited reciprocity were the absence of aid provisions and
the influence of UNCTAD and other developments.
\item 25. As indicative of a desire to synchronize relations with Africa, the agreement was to
expire on the same date as Yaounde — May 31, 1969.
\item 26. Like reciprocity and particular product protection.
\item 27. See \textit{Weil}, \textit{supra} note 14, at 170-72.
\item 30. As would be expected however, FED and other aid was increased, the range of permis-
sible projects was widened, and there were some refinements.
\end{itemize}
duties and similar charges were not to be imposed by either side on imports from the other. The only exceptions to this were (1) on the part of the EEC, those necessary due to the CAP and due to the existence of a common organization for the market in CAP-related products, and (2) on the part of the associated states, those “necessary to meet their development needs or . . . intended to contribute to their budgets.” Quantitative restrictions were now clearly proscribed, the only exceptions being (1) on the part of the EEC, those necessary due to the common organization, and (2) on the part of the associates, those necessary “to meet their development needs or in the event of difficulties in their balance of payments,” and (3) for any party signatory to a world agreement, the treatment that it accorded to any product under such an agreement. There were several other differences in the trade provisions of the two conventions. One which may be mentioned is protocol no. 4, whereby the parties, cognizant of the developments taking place in UNCTAD, agreed that the provisions of the Convention, particularly the associates’ obligation to accord favorable tariff treatment to EEC products, did “not conflict with the establishment of a general system of preferences” and did not prevent the associates from participating in such a system.

Expansion of this EEC-developing country regime continued. First, on September 24, 1969, the three East African Common Market countries and the EEC signed an agreement at last. Similar to the one they had earlier negotiated, it came into force at the same time as Yaoundé II and had the same expiration date — January 31, 1975. Then, after negotiations between the EEC and the United Kingdom about British entry resumed in 1970, Mauritius asked to accede to Yaoundé II. This took place on June 30, 1973. Britain’s negotiations and its final entry, along with Denmark, Ireland and Norway, on January 1, 1973, finally propelled the formerly uncertain African Commonwealth countries, the independent Commonwealth Caribbean countries, three independent Commonwealth Pacific countries and several other African countries into the new relationship with the EEC. Protocol no. 22 to the Act of Accession, as a part of the accession packet, formally set the stage. It provided that twenty indepen-

32. These restrictions could be imposed simultaneously with the exceptional tariff treatment mentioned above.
33. 2 INT’L LEG. MAT’LS at 991-92.
35. In actual fact, this movement commenced around 1969 when, following deposition of President Nkrumah in Ghana, that country (formerly along with Guinea, one of the original French colonial associate territories, in the vanguard of anti-association debate), made moves towards entering into association.
36. Of even date with the Accession Treaty, supra note 36.
dent Commonwealth countries (including the three East African countries already related to the EEC) should have the option of participating in a new association convention along with the 19 associates, one or more special reciprocal association conventions, or trade agreements. It stated that the EEC would have as its firm purpose the safeguarding of the interests of all the countries [whose economies depend to a considerable extent on the export of primary products, particularly sugar. The culmination of this gradual development in the relationship between the EEC and certain African and other developing countries was the ACP-EEC Lomé Convention of February 28, 1975.

II. THE ACP-EEC LOMÉ CONVENTION: BACKGROUND AND OUTLINE

A. RESULTS OF THE ASSOCIATION EXPERIENCE

On balance it seems that the Association experience was considered by most to be beneficial to the EEC, the associates and other countries. From the point of view of the 22 countries with relations with the EEC, it was apparent that as far as trade benefits were concerned the relationship was useful. The volume of trade increased, though not as much as might have been anticipated. However, the value of these benefits had been somewhat lessened because: only one-third of the associated states' exports were eligible for preferential treatment in the EEC; the CAP affected certain important products, namely vegetable oils, processed products (based on fruits and vegetables, cereals, rice, cocoa and manioc), rice, fishery products and certain other products such as beef and veal, cereals and tobacco. The EEC had introduced on July 1, 1971, the system of generalized preferences, whereby only the most developed of the developing countries were reportedly likely to benefit. Many of the associates and other states had insufficient expertise in marketing techniques and lacked the wherewithal to improve. Reverse preferences came under attack at UNCTAD and elsewhere, and were arguably considered to be frustrating the benefits otherwise derivable from the beneficial trading arrangements, and the non-tariff system was in need of refinement.

As far as financial and technical cooperation was concerned, it proved to be a valuable benefit. According to the EEC Commission, in some cases it represented one-fifth of public aid received by some countries from all sources. The amount available had risen from 581 million units of account

38. In any case the consultation system needed improvement.
39. This figure went over 30% in some cases. See Commission memorandum, supra note 37.
under the first FED to 828 million under Yaoundé II, 730 million having been earmarked under Yaoundé I.\(^4\) The financial instruments had been progressively refined, the range of eligible projects had grown and the aid was untied, at least nominally.\(^4\) Yet the need for much more financial aid was clearly articulated by the Africans who saw the need for better rules for participation in projects by local ventures and for the abolition of insistence by some EEC members for the approval of pet projects in pet countries or for the benefit of favored member country enterprises. However, one realistic admission was made: FED tended to perpetuate dependency and contribute to the vulnerability of the Africans in several ways.

Since the conclusion of Yaoundé II, two problems had loomed large, partly under the stimulation of UNCTAD. First, it was clear that no two countries had the same developmental needs or parity of disadvantages. That problem had been partially solved in the administration of FED. However, it had another dimension. It was now realized that several countries belonged to the group of "least developed" of the developing countries, which in all or most respects should be treated differently. Secondly, despite the efforts made in the last two FEDs, the fluctuations in commodity prices due to market factors and natural disasters were problems all the countries shared. The solution which began to emerge and was mentioned by the EEC Commission was creating a specific fund to fill in gaps created by serious fluctuations in the receipts from specific products. The Commission thought that includible crops might be sugar, ground nuts, ground nut oil, cocoa, coffee, bananas and copper.\(^4\)

Notwithstanding these and several other difficulties under the existing regimes, it seemed that the prospects for future EEC relations with the several countries were very good. The EEC was their main customer and supplier. The EEC was the nearest single large market for their traditional products and was the most likely customer for their industrial goods when substantial production of these would commence.\(^4\) Solidarity between Third World countries had grown apace during the 1960's and early 1970's at the United Nations, particularly at UNCTAD and the groups it helped to spawn.\(^4\) Among the countries which would now seek to begin or continue these special relationships with the EEC, Nigeria's position as a world

\(^{40}\) See text accompanying notes 94-135 infra.

\(^{41}\) From time to time, criticisms were made in some sectors in the EEC's African partners.

\(^{42}\) For discussions of these various difficulties under the pre-Lomé agreements, see Commission memorandum, supra note 37; WEIL, supra note 14, at 156-57; UNCTAD, Third Sess. Proceedings, Vol. 1 (Report and Annexes), para. 243-55 (1973).

\(^{43}\) This was true as a result of the EEC's ability to handle volume, if any, and its growing sympathy for the trading problems of this group of nations.

\(^{44}\) For example, the important "Group of 77" developing countries. See generally Gosovic, supra note 8.
power was potentially very beneficial in negotiations with the EEC. In any case, dealing with the EEC as a group during negotiations and the life of any agreement was evidently beneficial, as the Yaoundé experience seemed to indicate. And the larger the group the better as long as it was relatively cohesive. Though the mutual benefits to the EEC from an enlarged group and to the developing country group from an enlarged EEC were speculative, on balance the relationship seemed a good risk. Crucial to any relationship, however, would be a shift from the concept of association to one of cooperation.

B. Introduction To The Convention

The first concrete proposals for the new convention were made by the EEC Commission in a memorandum issued early in 1973 to the EEC Council "on the future relations between the Community, the present AASM states and the countries in Africa, the Caribbean, the Indian and Pacific Oceans referred to in Protocol 22 to the act of accession." This memorandum summarized the experience under the existing arrangements, particularly Yaoundé II, and made suggestions for a future relationship. Actually, the individual EEC members and council did not agree with several of the points in this memorandum and this contributed to several of the difficulties which arose as the negotiations progressed.

The negotiations commenced in earnest in November, 1973. In all, some five separate rounds of ambassadorial level meetings of various lengths were held. Throughout, the ACP countries actively consulted about the negotiations, meeting at several levels before and during the negotiations. At an early one of these meetings, the negotiating states, members of the OAU, agreed on the principle of a single spokesman. This principle, which was later adopted by the Caribbean and Pacific countries, was followed throughout the negotiations, the spokespersonship being rotated.

45. For instance, some thought that a continental trade block might counterbalance the difference in stages of the countries' development and the adverse effects of FED. See, e.g., Okigbo, supra note 14, at 164.
46. See, e.g., Okigbo, supra note 14, at 168; Commission memorandum, supra note 37. For discussions of the prospects for a new type of relationship, see Weil, supra note 14, at 157-60; Okigbo, supra note 14, at 158-68; Commission memorandum, supra note 37.
47. Commission memorandum, supra note 37.
48. Prior to that, two conferences of EEC and ACP ministers were held at Brussels in July and August, 1973.
49. The venue was mostly in Brussels. Meetings were also held in Kingston, Jamaica in July, 1974, when the EEC made two crucial concessions — not to seek reverse preferences and to set up a compensation fund to guarantee shortfalls in export prices ("Stabex"). Meetings were also held in Lomé.
50. See European Community, September, 1973, at 5; Bulletin of the European Communities, no. 7-8, pts. 1101-06 (1973); id., no. 10, pts. 2310-11 (1973); id., no. 11, pt. 2313
During the negotiations, as would be expected, there were several hurdles. One of the biggest was the lack of a clear position on several of the matters being negotiated by the EEC Council and members. The members' domestic difficulties were also very problematic; not the least of these was Britain's proposed renegotiation of the terms of its entry into the EEC and the protracted debate in that country leading up to the referendum in 1974 in which continued membership was affirmed. At times there were distractions, such as the call of the United Kingdom Minister of Overseas Development in mid-1974 for more EEC economic aid to Asia, her reaction to what seemed an excessive preoccupation with Africa. Substantive difficulties related to the different expectations of the ACP countries and the EEC. The ACPs' major negotiating points were articulated in July, 1973, by the OAU heads of state as follows. There should be:

- non-reciprocity for trade and tariff concessions given by the EEC;
- extension on a non-discriminatory basis towards third countries of the provisions on the right of establishment;
- revision of the rules of origin (of ACP products which wished to qualify for Agreement-treatment) to facilitate the ACP's industrial development;
- revision of the provisions concerning the movement of payments and capital to take account of the objective of monetary independence in ACP countries;
- dissociation of EEC financial and technical aid from any particular form of relationship with the EEC;
- free and assured access to EEC markets for all ACP products, including processed and semi-processed agricultural products, whether or not subject to CAP;
- a guarantee to the ACPs of stable, equitable, remunerative prices in EEC markets for their main products;
- no adverse effect on intra-ACP trade by any agreement with the EEC.

51. See West Africa, July 22, 1974, at 882.
52. This call led to an agreement in principle of EEC development ministers in July, 1974, that Asia should be treated as of equal importance to Africa; however, they stated that existing commitments should be honored and nothing much came of her filibuster. See West Africa, July 22, 1974, at 883.
53. See West Africa, July 23, 1973, at 991-92. Actually, the OAU Secretary-General had earlier laid down a ten-point negotiating program which in several respects was tougher than and different from the eight points in the text. See West Africa, July 16, 1973, at 943. Several of these were later disavowed by the Heads of State and the negotiators. Yet they certainly colored the entire negotiations; and several emerged in the Convention.
After the protracted and difficult negotiations, during which the remarkable cohesiveness of the ACP countries was very evident, the convention was signed at Lome on February 28, 1975. It will come into force the first day of the second month after deposit of ratification by the EEC members and at least two-thirds of the ACPs and notification of the conclusion of the Convention by the EEC.54 Pending the coming into force of the Convention, the Council of Ministers is to adopt any transitional measures that may be required.

The ACP signatories of the Lomé Convention are as follows:

- Madagascar, Mauritius and 17 African States—all Associates under Yaounde II: Burundi, Cameroon, Central African Republic, Chad, Congo (People's Republic), Dahomey, Gabon, Ivory Coast, Malagasy, Mali, Mauritania, Niger, Rwanda, Senegal, Somalia, Togo, Upper Volta, and Zaire;
- Twenty-two Commonwealth States:
  - in Africa; Kenya, Uganda and Tanzania (all former parties to the Arusha agreement); Botswana, Gambia, Ghana, Lesotho, Malawi, Nigeria, Sierra Leone, Swaziland and Zambia;
  - in the Carribean; Barbados, the Bahamas, Grenada, Guyana, Jamaica, and Trinidad and Tobago;
  - in the Pacific: Fiji, Tonga and Western Samoa;
- Six other African States: Ethiopia, Equatorial Guinea, Guinea, Guinea-Bissau, Liberia and Sudan.55

Of those states the 17 which are underlined have been designated among the “hard-core” least-developed countries by UNCTAD.56 In addition, the Lomé Convention lists these countries and seven others as necessitous with regard to certain special measures in connection with the Convention’s provisions on financial and technical cooperation. These seven are: Central African Republic, Gambia, Guinea-Bissau, Mauritania, Swaziland, Togo and Tonga.57 For non-signatories to become parties, the Convention makes a distinction between the territories of members of the EEC and states whose economic structure and production are comparable with those of the

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54. Article 87, 14 INT’L LEG. M’ALS at 621.
55. Of interest here is the participation of, Liberia (said to behave usually like a colony of the U.S., who was never really warm to association and such ideas); Ethiopia (formerly either hostile or disinterested); Sudan (often considering itself as an Arab state); Guinea (like Ghana, a long opponent of the “neo-colonialism” of the association relationship and quick to reject the relationship “imposed” in 1957) and, perhaps, Guinea-Bissau, fresh from a bitter struggle with its former imperialist overlord. See Weil, supra, note 14, at 163-66.
57. Article 48, 14 INT’L LEG. M’ALS at 615.
ACP states. In the first case they are entitled to accede upon the approval of the ACP-EEC Council of Ministers. In the second case, both the approval of the Council and the conclusion, in each case, of a separate agreement with the EEC are required.

C. The Purpose Of The Convention

Much of the rhetoric before and during the negotiations leading up to the Convention concerned the question of the desirability or otherwise of “association.” The EEC throughout regarded this as a possible form of relationship; indeed, much of the documentation through 1974 suggests that, despite the Arusha and Nigeria agreements, the Commission and the Council actually preferred this title. If anything, it would seem that they preferred to ignore or were not aware of the fact that “association” now connoted dependence and subservience for many of the “associable” states. Ultimately, however, the EEC got the message, hence the simple title to the Convention.

The Convention departs from its predecessors. For example, whereas Yaoundé I and II reaffirmed the desire of the associated states to maintain their association with the EEC and expressed their common desire to cooperate “on the basis of complete equality and friendly relations, observing the principles of the United Nations Charter” and, inter alia, their determination “to pursue their efforts together with a view to the economic, social and cultural progress of their countries,” the Lomé Convention, while repeating in its preamble goals basically identical to these, stresses the goals of economic development and cooperation.

In addition, cognizant of the worldwide movements in international economic and political fora and in the general realm of trade relations, the parties express their resolve

to establish a new model for relations between developed and developing States, compatible with the aspirations of the international community towards a more just and more balanced economic order;

and their desire to safeguard

the interests of the ACP States whose economies depend to a considerable extent on the exportation of commodities.

It is arguable that ideas such as these and that of increased dignity

58. See Weis, supra note 14, at 166-72.
59. Also stressed in the preamble is the goal of promoting trade and industrial development between ACP and EEC countries as well as trade cooperation among ACP states. 14 INT’L LEC. MAT’LS at 604.
60. See, e.g., articles 35 and 36, 14 INT’L LEC. MAT’LS at 613.
61. Id.
influenced the shape of the present institutions. The Court of Arbitration has been scrapped, its task being placed (at the sole discretion of disputants) in the hands of the Council of Ministers. Furthermore, so long as circumstances permit and the Council is informed, the parties can utilize “a good offices procedure” — a dispute settlement method not frequently articulated (almost to the exclusion of other methods) in major treaties.\(^{62}\) However, if the Council fails to settle the dispute “at its next meeting,” either party may appoint an arbitrator; upon which the other must appoint one “within two months,” the third arbitrator being selected by the Council. The Convention does not, however, indicate that is to happen where neither party first selects an arbitrator. The Parliamentary Conference has been replaced by a Consultative Assembly, which is given specific power to adopt resolutions “on matters concerning or covered by” the Convention and to set up ad hoc consultative committees to undertake such specific activities as the Assembly may determine.\(^{63}\) The Convention also establishes a Committee on Industrial Cooperation and ad hoc committees, working groups and other bodies are also envisaged.\(^{64}\) Otherwise, the institutions have little changed. The Council is largely the same in nature and function. However, it is no longer assisted by the Association Committee but by the Committee of Ambassadors which, in the Council’s decision, can perform any of the Council’s work.\(^{65}\)

D. The Convention Outlined

The convention consists of seven titles\(^{66}\) and seven protocols\(^{67}\) which, according to article 93,\(^{68}\) form an integral part of the Convention. In addition, there are an annex containing a joint declaration on fishing activities and 24 single or joint declarations concerning, \textit{inter alia}, individual or group interpretations of specific Convention or protocol provisions, or containing views on various policies and rules.\(^{69}\) In substance, the Convention is not dissimilar to the Yaoundé regime.

\(^{63}\) Article 80, \textit{14 Int’l. Leg. Mat’ls} at 620.
\(^{64}\) Article 74, \textit{14 Int’l. Leg. Mat’ls} at 619-20.
\(^{65}\) Article 75, \textit{14 Int’l. Leg. Mat’ls} at 620.
\(^{66}\) The topics dealt with in the titles are, in general, trade cooperation, export earnings from commodities (including Stabex and the special provisions on sugar), industrial cooperation, financial and technical cooperation, establishment, institutions and general and final provisions.
\(^{67}\) These protocols concern the definition of the concept of originating products and methods of administrative cooperation, the application of financial and technical cooperation, ACP sugar, the operating expenditure of the institutions, privileges and immunities, bananas and rum. See \textit{14 Int’l. Leg. Mat’ls} at 596.
\(^{68}\) \textit{14 Int’l. Leg. Mat’ls} at 622.
\(^{69}\) \textit{14 Int’l. Leg. Mat’ls} at 597-600.
Thus, there are provisions on (1) trade, (2) financial and technical cooperation, and (3) establishment, services, payments and capital movements. In addition, however, there are provisions on (4) stabilization of export earnings, (5) industrial cooperation, (6) a guaranteed price for sugar, (7) bananas and (8) rum. Of the many novel things about the new Convention, mention might be made at this point of the principle of consultation which it enshrines. For example, consultations between the EEC and the ACPs are required before the EEC takes action in the following cases:

— subjecting one or more ACP agricultural products otherwise eligible for favorable tariff treatment to the common organization of the market or to specific CAP-related rules (article 2);
— upon the request of the concerned ACP states, where certain EEC measures for the facilitation of the movement of goods are likely to affect the interests of one or more ACP states (article 5);
— where EEC existing rules or regulations of this nature or their interpretation, application or administration affect the interests of one or more ACP state (article 6);
— generally to ensure effective implementation of the trade cooperation provisions and specifically
  — where the concerned parties, envisaging that their interests may be affected by trade measures, request;
  — at the request of the ACP states, where the EEC envisages concluding a preferential trade agreement;
  — at the request of the concerned parties, where the EEC or one of its members takes safeguard measures due certain economic difficulties;
  — where the ACPs think that certain agricultural products call for special treatment (article 11);
— where the ACP state has requested funds from the export stabilization fund and “examination of the total exports of the requesting ACP state show a significant change,” so as to determine whether such change is likely to have an effect on the amount of the transfer (article 19(4)(b));
— between the competent EEC departments and the representatives of ACP state or states where on the latter’s financing proposals being submitted, a project has received the unfavorable opinion of the responsible EEC body (article 54).  

70. In addition to trade proper and trade liberalization, these also deal with trade promotion, a new departure.

71. In a few of these cases, a provision specifies that the consultation is to take place within the Council of Ministers. This is required in any case by article 74(8), and the Council is to make necessary general arrangements, rules and conditions.
In addition to these specific obligations to consult, the obligations of cooperation and giving information are specifically imposed at several points and generally pervade the Convention.

III. The Main Provisions of the Convention

A. Trade Cooperation

Title I of the Convention deals with trade cooperation. Article 1 clearly sets the pattern that the major purpose of these provisions is to liberalize ACP trade by making it easier for more ACP products to enter the EEC and to promote the growth in ACP exports to the EEC. It states that

In the field of trade co-operation, the object of this Convention is to promote trade between the Contracting Parties, taking account of their respective levels of development, and, in particular, of the need to secure additional benefits for the trade of ACP States, in order to accelerate the rate of growth of their trade and improve the conditions of access of their products to the market of the European Economic Community . . . so as to ensure a better balance in the trade of the Contracting Parties.72

Article 2, therefore, grants duty-free entry status to ACP non-agricultural products and to agricultural products not covered by a common organization of the market under the Treaty of Rome or subject, on importation into the EEC, to specific rules due to the implementation of the CAP.73 As regards these agricultural products, article 2 nevertheless ensures that ACPs will receive a favorable trading position in comparison with third countries.74 The value of this concession is quite considerable. The products which hereby obtain duty-free entry constitute 99.2% of all EEC imports originating in ACPs. Actually, the EEC for a long time during the negotiations had not been prepared to grant duty-free entry to more than just over 95% of imports from the ACPs. The ACP negotiators, hoping to develop new crops, stuck out for 100% free entry. It appears that the final figure was struck on the EEC's offer of a much smaller financial aid packet than insisted upon by the ACPs.75

On non-tariff barriers to trade, the Convention unequivocally prohibits the EEC from applying to imports quantitative restrictions or measures

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72. 14 INT'l LEG. MAT'LS at 607.
73. Id.
74. If, at time of importation, the only restrictive measure is customs duties, then there is duty-free entry. If other measures exist, then they will receive "as a general rule, more favourable treatment than the general treatment applicable to the same products originating in third countries to which the most-favored-nation clause applies.
75. See Africa, November 15, 1974, at 8; id., December 20, 1974, at 1; id., January 17, 1975, at 3; West Africa, July 23, 1973, at 992.
having equivalent effect. However, this provision is not to "prejudice the treatment that the Community applies to certain products in implementation of world commodity agreements to which the community and the ACP states concerned are signatory." 77

For such beneficial rules to work well and fairly, it has always been recognized that the concept of "originating products" must be regulated. This has always been done in EEC practice and under the previous association and other agreements. However, the ACP negotiators were quite adamant that the rules governing origin and proof of origin of their products were too rigid. However, until well into the negotiations, the EEC held out. For the ACPs it was nothing less than a matter of the honor of the Third World. The EEC eventually agreed to liberalize the rules. 78 Annexed to the Convention is protocol no. 1, setting out at length some detailed rules on such matters as: definition of "territory;" what type of goods will, in difficult cases, be generally regarded as there originating, e.g., fish and animal products; the extent to which products created in post-manufacture operations (where manufacture originally took place elsewhere) qualify; the necessary standard documentary evidence of origin (the "movement certificate"), its form, and manner and conditions of issue; good faith and honesty obligations; customs administration, and a consultation and collaboration system. 79

Complementing the trade provisions so far discussed are provisions elsewhere in the Convention on industrial promotion and financial and technical cooperation. In addition to these, title I contains a chapter on trade promotion. The parties agree to carry out "trade promotion activities which will be aimed at helping the ACP states to derive maximum benefit from" the trade cooperation provisions and the industrial cooperation provisions and "to participate under the most favorable conditions in the Community, regional and international markets." 80 These activities are to

76. Again, however, certain agricultural products might be affected as in article 2. See article 3, 14 INT'L. LEG. MAT'LS at 607.
77. Article 3, 14 INT'L. LEG. MAT'LS at 607. Both sets of trade measures can be derogated from by the EEC in specific circumstances. First, by article 4, prohibitions or restrictions can be imposed on grounds of public morality and the like and of fairly wide ranging "protective" reasons, including "the protection of industrial and commercial property." But these are not to constitute a means of arbitrary discrimination or a disguised restriction on trade. Second, in cases of very serious economic difficulty or threatened financial instability, safeguard measures may be taken (article 10). In the Final Act the EEC declared that it would try to seek such measures as would "least disturb the exports of ACPs." And such measures do not apply to the sugar import guarantee. See protocol no. 3, article 1, 14 INT'L. LEG. MAT'LS at 636.
79. 14 INT'L. LEG. MAT'LS at 622.
80. Title I, ch. 2, 14 INT'L. LEG. MAT'LS at 609.
be financed under the financial and technical cooperation provisions of the Convention. In addition to such expected activities as market research and marketing, they extend to basic and advanced vocational training and "improving the structure and working methods of organizations, departments or firms contributing to the development of the foreign trade of ACP states, or setting up such organizations, departments or firms."\(^8\)

At long last, the ideal of non-reciprocity, long sought after in such fora as UNCTAD and in the more recent negotiations between the EEC\(^3\) and its African and other partners, has been obtained. The obligation of the developing country as a condition of obtaining trade benefits of returning similar benefits has been attacked as being, e.g., "a contradiction in economic terms" in view of the inequality in economic strength,\(^4\) and "a reversion to the trade patterns of the imperial and colonial era."\(^5\) Now article 7 provides there is no requirement for reciprocal treatment of EEC originating products by the ACPs.\(^6\) However, they are not to "discriminate among the member states, and shall grant to the Community no less favourable than the most-favoured-nation treatment."\(^7\) But such treatment is not to apply in respect of trade or economic relations between ACP states and other developing countries.

**B. Financial and Technical Cooperation**

The Lomé Convention continues the pattern of the Yaoundé regime with regard to financial and technical cooperation. However, it goes into considerable more refinement and detail than before. The purpose of the provisions in title IV are stated to be

... to correct the structural imbalances in the various sectors of the ACP States' economies. The cooperation shall relate to the execution of projects and programmes which contribute essentially to the economic and social development of the said States.

2. Such development shall consist in particular in the greater well-being of the population, improvement of the economic situation of the State, local authorities and firms, and the introduction of structures and factors

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\(^81\) Title IV, 14 Int'l. Leg. Mat'ls at 614.
\(^82\) Article 13, 14 Int'l. Leg. Mat'ls at 609.
\(^83\) France and Belgium were the most recalcitrant of the EEC members. See Africa Report, July-August, 1974, at 7-9. In fact, even the ACPs were not always in accord. Thus, at one stage Senegal was saying that to deny reciprocity would deny the agreement's legal foundations and enable the EEC to break it unilaterally! See West Africa, August 6, 1973, at 1063.
\(^84\) S. Ramphal (Guyana). See European Community, September, 1973, at 5.
\(^85\) Sir Kamiese Mara (Fiji). Id. See also West Africa, July 23, 1973, at 992.
\(^86\) 14 Int'l. Leg. Mat'ls at 608.
\(^87\) Article 7, 14 Int'l. Leg. Mat'ls at 608.
whereby such improvement can be continued and extended by their own means.

3. This co-operation shall complement the efforts of the ACP States and shall be adapted to the characteristics of each of the said States. 88

Furthermore, the parties agree that the projects and programs must help ensure all or part of the following effects:

- growth of the national income of each ACP State;
- improvement of the standard of living and the socio-cultural levels of populations and of the most under-privileged in particular;
- the establishment of more balanced economic relations between the ACP States and other countries, their greater participation in world trade in general, including, in particular, trade in manufactured products;
- improvement and control of the conditions of development, in particular physical factors and technical know-how;
- diversification and integration of the structure of the economy, on both a sectoral and a geographical basis;
- regional cooperation between ACP States and, where appropriate, between ACP countries and other developing countries. 89

Whether these objectives are being attained is to be examined by the Council of Ministers in an annual stocktaking, during which general problems which have arisen are also to be considered. 90 Broadly, technical cooperation is of two kinds — measures linked with investments and measures of general technical cooperation. 91 The former consists of help in

- advance, concept, and long-term research and planning;
- preparing projects;
- executing, supervising and maintaining work, investments and installations;
- providing goods, and meeting the costs of temporary technicians.

The latter is to consist, among other things, of the following:

- information and documentation;
- conduct of various studies a macro and micro nature;
- aid in specific and general training and other educational schemes and the actual provision of certain courses;
- providing experts, instructors and others for specific missions on limited bases, at the request of the ACPs.

88. Article 40, 14 Int'l. Leg. Mat'ls at 614.
89. Protocol no. 2, article 1, 14 Int'l. Leg. Mat'ls at 629.
90. Article 41, 14 Int'l. Leg. Mat'ls at 614.
91. Both are also to be the subject of financial cooperation measures where necessary.
Under the first FED, the EEC provided a total of 581.25 million EEC units of account (hereinafter referred to as UA). This was increased to UA800 million under Yaoundé I. This was slightly increased under Yaoundé II to UA918 million. Now the Community has agreed to provide UA3,390 million. This is to be disbursed by FED and by the European Investment Bank in the following ways:

<table>
<thead>
<tr>
<th>Type of Financial Assistance</th>
<th>Amount under Lomé Convention (in millions)</th>
<th>Comparative Amount under Yaoundé II (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>FED</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grants</td>
<td>UA2,100</td>
<td>UA 748</td>
</tr>
<tr>
<td>Special loans</td>
<td>430</td>
<td>80 (&quot;loans&quot;)</td>
</tr>
<tr>
<td>Risk capital</td>
<td>95</td>
<td>—</td>
</tr>
<tr>
<td>Stabex fund</td>
<td>375</td>
<td>—</td>
</tr>
<tr>
<td>Eur. Inv. Bank loans</td>
<td>390</td>
<td>90</td>
</tr>
<tr>
<td>Total</td>
<td>3,390</td>
<td>918</td>
</tr>
</tbody>
</table>

This total represents over 50% less than the ACPs requested. As the table shows, financial assistance may take any of several forms. Grants are, of course, the most desirable form of aid and the Convention seems to make it quite clear that this and all forms of financial assistance are to be untied. Special loans, the total amount available for which is to be increased at the end of the five years by any residue of unutilized risk capital,

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92. Until 1975, the UA was the approximate equivalent of $1.00 in U.S. currency. The new UA is based on a formula calculated on the basis of the EEC members' GNPs and foreign trade capacities. The formula is expressed as an initial index of each member's currency. The UA is calculated by reckoning the formula against the nine daily market exchange rates. On March 5, 1975 (the closest date to February 28, 1975, on which figures were available), the UA's U.S. equivalent was $1.32.

93. Title II, 2 INT'L LEG. MAT'LS at 978.

94. Title II, 9 INT'L LEG. MAT'LS at 488.

95. See title IV, 14 INT'L LEG. MAT'LS at 614, and protocol no. 2, 14 INT'L LEG. MAT'LS at 629.

96. Compiled generally from Weil, supra note 14, ch. 7.

97. See article 16, 14 INT'L LEG. MAT'LS at 609.

98. They requested between UA6,000 and 8,000 million. See Africa, December 20, 1974, at 1; id., January 17, 1975, at 3. The EEC originally proposed "at least" UA2,000 million. West Africa, August 6, 1973, at 1063; id., September 2, 1974, at 1070.

99. Combinations of financing methods are also authorized, as well as co-financing with, e.g., credit and development agencies and institutions, firms, EEC members, ACPs, third countries or international finance organizations. Article 44, 14 INT'L LEG. MAT'LS at 614-15.

100. In addition, provision is made for "exceptional aid," which is non-reimbursable, to ACPs faced with serious difficulties resulting from natural disasters or comparable extraordinary circumstances. For this a special appropriation of UA50 million of FED is made initially. Over the five years not more than UA150 million must be appropriated. Article 59, 14 INT'L LEG. MAT'LS at 617-18. See also, annex III of the Final Act on the concept of serious difficulties. 14 INT'L LEG. MAT'LS at 598.
are available on very soft terms — forty years duration with a grace period of ten years at one percent interest per year.¹⁰¹ These terms are fully in accordance with the recommendations of UNCTAD and other bodies. Risk capital is intended

to assist the execution of industrial, mining and tourism projects of general interest to the economy of the ACP State or ACP States concerned.¹⁰²

This is "in order to step up the own [sic] resources or resources assimilated thereto, of those countries; firms."¹⁰³ It is available in two forms: (1) the acquisition by the EEC of temporary minority holdings "where appropriated" and which "as soon as appropriate" must be transferred to nationals or institutions of the ACP states, and (2) quasi-capital aid, available on a case-by-case basis, at interest rates not greater than those charged by the Bank, in the form of subordinated loans¹⁰⁴ or conditional loans.¹⁰⁵ In addition to the general uses for risk capital, quasi-capital aid can also be made available to "development financing institutions where the characteristics of their activities and management so permit"¹⁰⁶ and "to ACP States in order to enable them to acquire a holding in the capital of industrial, mining and tourism firms where such an operation comes under the financing of new productive investments and is supplemented by another financial intervention"¹⁰⁷ by the EEC. The terms of the Bank's loans are: duration depending on the economic and financial characteristics of the project but not to exceed 25 years at, apparently, the Bank's normal interest rate which, however, is to be reduced by a three percent interest rate subsidy to be adjusted in special cases so that the actual rate payable is between five percent and eight percent.¹⁰⁸

The Convention departs from its predecessors in its provisions on the range of potential beneficiaries.¹⁰⁹ These are: (1) Regional or interstate bodies to which the ACP states belong and which are authorized by such states.¹¹⁰ The types of projects envisaged are: transport and communica-

¹⁰¹. Protocol no. 2, article 3, 14 INT'L LEG. MAT'LS at 629.
¹⁰². Protocol no. 2, article 4, 14 INT'L LEG. MAT'LS at 629.
¹⁰³. Id.
¹⁰⁴. Payable only after European Investment Bank (EIB) loans have been settled. Id.
¹⁰⁵. Id. Redemption is due only after the satisfaction of the special conditions of the project financed.
¹⁰⁶. Protocol no. 2, article 4, 14 INT'L LEG. MAT'LS at 630.
¹⁰⁷. Id.
¹⁰⁸. See article 42, 14 INT'L LEG. MAT'LS at 614, and protocol no. 2, article 5, 14 INT'L LEG. MAT'LS at 630.
¹⁰⁹. See article 45, 14 INT'L LEG. MAT'LS at 615, article 47, 14 INT'L LEG. MAT'LS at 615; article 49, 14 INT'L LEG. MAT'LS at 615-16; and protocol no. 2, ch. 4-7, 14 INT'L LEG. MAT'LS at 629-31.
¹¹⁰. Article 49, 14 INT'L LEG. MAT'LS at 615-16.
tions; joint exploitation of natural resources and energy production; research and technology; education and training programs; and specific areas such as agriculture, industry, stockbreeding and tourism. Ten percent of all aid funds is available for these projects. (2) Joint bodies set up by the EEC and the ACPs and authorized by the ACPs “to attain certain specific objectives, notably in the field of industrial and trade cooperation.” (3) The ACP states, ACP local authorities and public and public development agencies. (4) Private bodies working in ACP states for economic and social development of the population. (5) Firms “carrying out their activities, in accordance with industrial and business management methods [sic].” (6) Groups of producers and where there are none, individual producers. (7) Scholarship holders and trainees “for training purposes.”

As this list of beneficiaries shows, the range of projects intended to be benefited is also very wide. It comprehensively covers trading and marketing, general agricultural and industrial and infrastructural development very widely conceived, assistance to schemes designed to help small and medium sized national firms and “microprojects for grassroots development, in particular in rural areas.” Up to UA20 million of grant funds may be utilized for such microprojects no single one of which can receive more than UA75,000. The projects must meet real local priorities and ensure the community’s active participation. The projects can include 

- dams, wells and water supply systems, silos and warehouses for storing provisions and crops, rural service tracks and bridges, animal vaccination pens and corridors, primary schools, dispensaries, maternity homes, social assistance centres, market buildings and facilities to encourage commercial and industrial activity...

The Convention specifies that the responsibility for executing the projects and for negotiating relevant contracts belongs to the appropriate states, or their authorized beneficiaries, which must manage and maintain the work. Although the states are now fully responsible for conceiving their

111. Id.
112. Id.
113. Id.
114. Id.
115. Id.
116. See article 43, 14 INT’L LEG. Mat’ls at 614, and article 46, 14 INT’L LEG. Mat’ls at 614.
117. Article 46, 14 INT’L LEG. Mat’ls at 615. Up to UA2 million per scheme in lines of credit are available. No single project can get more than UA200,000. Protocol no. 2, article 13, 14 INT’L LEG. Mat’ls at 632.
118. Protocol no. 2, article 15, 14 INT’L LEG. Mat’ls at 632. In principle, there must also be contributions by the ACP state and by the local community (in money or kind).
119. Id.
own projects and preparing proposals in the form of "dossiers," they do not have real responsibilities by way of disbursing the funds and actually administering them at the source level. Nevertheless, protocol no. 2 painstakingly seeks to further "untie" the aid by elaborating rules for competition and terms of preference for national firms and "[drawing up, negotiation and conclusion of technical cooperation contracts."

C. Establishment, Services, Payments And Capital Movements

These provisions do not differ radically from comparable provisions of Yaoundé. As would be expected, there are several escape provisions. Thus the establishment and services obligations can be departed from by either side if, for a given activity, a party is unable to provide the required non-discriminatory treatment. Foreign exchange protective measures can be imposed if justified by reasons relating to serious economic difficulties or severe balance of payments problems. Likewise, discriminatory measures or treatment may be taken if they are unavoidable and if they are maintained or introduced in accordance with international monetary rules and if every effort is made to minimize any adverse effects on the parties concerned.

D. Stabilization Of Export Earnings ("Stabex")

United Nations bodies and others have for several years now been discussing the problems posed by shortfalls in earnings of developing countries from exports of primary commodities. The reasons for such shortfalls include market factors, including changing demand patterns and the production of synthetics in the developed countries, natural catastrophies and political manipulation. Solutions suggested by UNCTAD and other bodies have included the adoption of a standstill principle, i.e., effectively to freeze development and expansion of competitive industries in synthetic products; this has been, of necessity, rather vague. Market intervention tends to be very problematic. Supplementary financing of normal and expanded production processes, including funds for the creation of buffer stocks, have also been mooted as suggestions. So have suggestions for the

120. This seems to have been one of the ACP states' demands. At least some spokesmen have so indicated. See West Africa, July 6, 1973, at 943. See also, id., March 4, 1974, at 279, and id., July 23, 1973, at 992.
121. Title to ch. 9, protocol no. 2, 14 INT'L LEG. MAT'LS at 634.
122. Article 62, 14 INT'L LEG. MAT'LS at 618.
123. Article 65, id.
124. Article 66, 14 INT'L LEG. MAT'LS at 619. However, the ACPs must in any case pay interest, commission and amortization on loans and quasi-capital aid and make available to the Bank the foreign exchange necessary for the transfer of all sums received by it in national currency which represent the net revenue and proceeds from transactions involving the EEC's acquisition of capital holdings.
stabilization, in a general way, of export earnings. These suggestions too
have, almost by necessity in the atmosphere of United Nations plenary
bodies, tended to be unspecific and generalized. And implementation of
even more specific schemes might appear to be hard to come by. The Lomé
Convention, remarkably, tries to fill the gap with its Stabex system estab-
lished in title II.

The aims of the Stabex system are:

remedying the harmful effects of the instability of export earnings and of
thereby enabling the ACP States to achieve the stability, profitability and
sustained growth of their economies. . . . \(^{125}\)

The focal point of the system is the UA375 million allocated to the
stabilization fund,\(^{126}\) which is entirely administered by the EEC through
the Commission. The money is divided into five equal installments, the
balance of which from any previous years is carried forward. From the
fund, transfers in the nature of loans are made to ACPs, where products
on which they are dependent have been affected by price and/or quantity
fluctuations. ACP states which have received such transfers

shall contribute, in the five years following the allocation of each transfer
towards the reconstitution of the resources made available for the system
by the Community.\(^{127}\)

These repayments are interest free. If at the end of the five year period,
however, the resources have not been fully reconstituted, the Council of
Ministers may decide that the sums outstanding are to be reconstituted
wholly or partially in one or more installments\(^ {128}\) or that the rights to
repayment should be waived.

There are 14 major products which qualify for this treatment: groundnut
products; cocoa products; coffee products; cotton products; coconut prod-
ucts; palm, palm nut and kernel products; raw hides, skins and leather;
wood products; fresh bananas; tea; raw sisal and iron ore.\(^ {129}\) With the
subproducts the Convention specifies, the total number of eligible prod-
ucts is twenty-nine.\(^ {130}\) For an ACP to seek to obtain the benefits of the fund,

\(^{125}\) Article 16, 14 INT’L LEG. MAT’LS at 609.

\(^{126}\) See articles 18 and 42, 14 INT’L LEG. MAT’LS at 610, 614.

\(^{127}\) Article 21, 14 INT’L LEG. MAT’LS at 611.

\(^{128}\) Id. Presumably on the part of any one recipient, to the extent of its transfer. The
least developed, landlocked and island states are not required to repay.

\(^{129}\) Article 17, 14 INT’L LEG. MAT’LS at 609.

\(^{130}\) The list grew during the negotiations. Originally the EEC Commission had pro-
posed only the first four main products plus fresh bananas. See Commission memorandum, supra
note 37. According to article 17(3), 14 INT’L LEG. MAT’LS at 610, the list can be increased, not
less than 12 months after the Convention comes into force, by decision of the Council of
Ministers. Sugar was included in the Commission’s proposals, but there are now specified
arrangements for this product in article 25, 14 INT’L LEG. MAT’LS at 611, and in protocol no.
3, 14 INT’L LEG. MAT’LS at 636.
its dependency on the product must be established by the application of a formula which specifies the minimum amount of dependency (the "dependence threshold"): during the year preceding the year of application, earnings from the product or products of all destinations must have represented at least 7.5% of the total earnings from merchandise exports. One other hurdle must be crossed before a state qualifies: for each ACP state a reference level must be calculated of the moving average of earnings from exports of each product to the EEC over the four years preceding the year of application. If earnings are decreased in that year by at least 7.5% the state qualifies. The difference between the reference level and actual earnings "shall constitute the basis of the transfer."

E. Industrial Cooperation

Title III of the Lomé Convention deals with this topic explicitly for the first time in the history of these EEC agreements. The title specifies a range of activities in which the EEC will cooperate with the ACPs. In so doing, the EEC is entitled to utilize the various funds available for financial and technical cooperation under title IV. The activities specified are in:

(1) The fields of industrial infrastructures and ventures, industrial training, technology, research, information and promotion and trade cooperation.

(2) The setting up and extension of the infrastructure necessary for industrial development.

(3) Setting up industries to process raw materials and to manufacture finished and semi-finished products.

(4) Training and financing the training of industry-related personnel and financing training facilities.

(5) The establishment, development and encouragement of small and medium-sized firms by financing them, creating necessary infrastructures and industrial estates, training and establish-
ing specialized advisory services and credit facilities.\textsuperscript{139}

(6) Carrying out industrial information and promotion schemes and securing and intensifying information exchanges and contacts with the EEC.\textsuperscript{140}

(7) Carrying out trade promotion schemes.\textsuperscript{141}

The Convention also states that the EEC "is prepared in particular" to help the ACPs in several specific ways to overcome obstacles which they encounter in getting access to and adapting technology.\textsuperscript{142} So as not to make this title a set of empty obligations, the Convention establishes a Committee on Industrial Cooperation, which is to be supervised by the Committee of Ambassadors. The Committee’s functions are, inter alia, to implement title III and to examine problems in this area and suggest appropriate solutions.\textsuperscript{143} Another function of the Committee is to guide, supervise and control the activities of the Center of Industrial Development which is to be established.\textsuperscript{144}

\textbf{F. Sugar And Certain Other Commodities}

One further major innovation of the Lomé Convention is the group of provisions on sugar, intended, like Stabex, to battle the problem of shortfalls from exports and to substitute for the preferences formerly enjoyed by Commonwealth sugar producers under the British preference system. It does so by guaranteeing purchases of specific quantities of cane sugar, raw or white, at specific minimum prices.\textsuperscript{145} The EEC has agreed to purchase a total amount of 1,400,000 tons of sugar each year from the 13 ACP sugar-producing states.\textsuperscript{146} Each of the states agrees to sell a specified amount to the EEC each year. If any state fails to deliver its annual quota\textsuperscript{147} in full for reasons other than force majeure, then its quota will be reduced by the undelivered quantity in each subsequent year.\textsuperscript{148} If, however, non-

\begin{itemize}
\item Article 32, 14\textsuperscript{th} INT'L LEG. MAT'LS at 612.
\item Article 33, 14\textsuperscript{th} INT'L LEG. MAT'LS at 613.
\item Article 34, 14\textsuperscript{th} INT'L LEG. MAT'LS at 613. See also title I, chapter 2, 14\textsuperscript{th} INT'L LEG. MAT'LS at 609, and text accompanying notes 80 through 82, supra.
\item Article 31, 14\textsuperscript{th} INT'L LEG. MAT'LS at 612.
\item Article 35, 14\textsuperscript{th} INT'L LEG. MAT'LS at 613.
\item Article 25, 14\textsuperscript{th} INT'L LEG. MAT'LS at 611. The ACPs can, however, sell at higher market prices, where these exist.
\item The figure includes the sugar-producing dependent territories. From the 13 alone the amount is 1,221,500 tons.
\item The year runs from July 1 to June 30.
\item Protocol no. 3, article 7(3), 14\textsuperscript{th} INT'L LEG. MAT'LS at 637. The Commission might decide to reallocate the undelivered quantity among the other states in subsequent periods. Id., article 7(4).
\end{itemize}
delivery is on account of force majeure, the EEC Commission, at the state’s request, shall allow the necessary additional period for delivery. The price is to be negotiated annually; it must, however, be expressed in units of account and is to be based on unpacked sugar, CIF European ports of the EEC. For the period of February 1, 1975, to June 30, 1976, the price agreed on is UA25.53 per 100 kilograms for raw sugar and UA31.72 per 100 kilograms for white sugar.

In light of the serious problems facing producers of primary products these provisions are to be regarded as very beneficial indeed. In three respects this is reinforced. First, the sugar protocol is to remain in force for an indefinite period after the expiration of the Convention. In the second place, it is provided that the safeguard clause of article 10 of the Convention shall not apply to the sugar agreement. Finally, although the sugar protocol is carried out within the framework of the management of the common organization of the sugar market, this is in no way to prejudice the commitment of the EEC.

On certain other products vital to some of the ACPs, the negotiators were unable to agree to proposals as far-reaching as the sugar agreement. However, some measure of accommodation was attempted. Thus, on bananas, in addition to the application to that product of Stabex, the protocol no. 6 the parties agree to take steps to implement the following objectives: (1) not placing any ACP state in a position less favorable than in the past or present regarding access to EEC markets and market advantages, and (2) joint endeavors to increase exports. There is also a protocol on rum.

G. Special Provisions Beneficial To Less-Advanced States

As mentioned earlier, UNCTAD and other bodies have been concerned about the special problems of certain types of developing countries whose lot is worse than that of the majority of developing countries. Again, the

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149. Id., article 5(4), 14 INT’L LEG. MAT’LS at 637.
150. This works out to about UA279.59 per metric ton.
151. This works out UA225.30 or £ 151.15 per metric ton. In fact, the parties have agreed to sell at £ 260 per long ton in 1975.
152. It can be denounced by any of the ACP beneficiaries or by the EEC “with respect to each [sic] ACP State” after two years’ notice. Protocol no. 3, article 10, 14 INT’L LEG. MAT’LS at 637. In annex XXII of the final act, 14 INT’L LEG. MAT’LS at 600, the EEC declares that the possibilities of denunciation are “for the purposes of juridical security and do not represent for the Community any qualification or limitation of the principles” set out in the protocol.
153. See note 79, supra.
155. Id.
156. E.g., by increasing production and consumption. Somalia’s needs are specially noted.
Convention goes far in advancing the discussion from the general to the specific. Thus, in connection with Stabex, the two thresholds are much lower for 34 least developed, landlocked or island states. Furthermore, they are not required to repay transfers they receive from the fund. Again, when the Council of Ministers makes its annual stocktaking of the financial and technical cooperation measures, it is to consider specifically the measures taken in favor of the least developed ACP states. In the implementation of these measures, furthermore, special attention is to be paid to the needs of the least developed ACPs “so as to reduce the specific obstacles which impede their development an prevent them from taking full advantage of the opportunities offered by financial and technical cooperation.” Finally, protocol no. 2, on the application of financial and technical cooperation, provides in chapter 5 for special measures in favor of the least developed states.

IV. IMPACT OF THE CONVENTION ON THE UNITED STATES

A. Introduction

The ACP-EEC Lomé Convention marks the culmination of a movement which commenced in 1957. The basic concern of the EEC has been to help its members with overseas territories to phase out their obligations as the Community takes steps toward further improving its economic well-being by regional integration and coordination. Those members have been concerned, too, with maintaining close ties with areas with an historical, albeit dependent, relationship and cultural, though derivative, affinity. In a divisive world this might well pay high dividends. From “association,” however, and the dependency which this tends to connote, the relationship has matured into one of more dignified cooperation. In other respects too, e.g., in the area of trade liberalization, the movement commenced in 1957 has been completed.

Other developments in the Convention such as the Stabex system, the special treatment of sugar and the stimulation of industrial development represent novel departures in the area of international economic relations and the implementation of several of the recommendations made by such agencies as UNCTAD. The growing cohesiveness of developing countries

158. These are listed in article 24, 14 INT’L LEG. MAT’LS at 611. See notes 131 and 132, supra.
159. Twenty-four of these are listed in article 48, 14 INT’L LEG. MAT’LS at 615. The Council of Ministers can amend the list.
160. Id.
161. This means, in effect, those listed in article 48, id.
162. See Weil, supra note 14.
163. Former criticisms of the ungeneralized and selective nature of the former agreements, as being incompatible with UNCTAD’s goals might now disappear or be muted in view of the vastly increased number of developing country beneficiaries under Lomé.
has, furthermore, now been practically implemented for these 46 states which have agreed to institutionalize their quests for increased benefits and synchronize some of their dealings with the developed world. It is too early to ascertain whether the multi-dimensionalism sometimes apparent within the Organization of African Unity is likely to continue. At any rate, it appears that with the present economic exigencies and the increasing distance from the colonial era, the Francophile-Commonwealth cleavage has largely dissipated, at least in this context. There is evidence of this in the fact that the 15 states which signed the Lagos Treaty of the Economic Community of West African States on May 28, 1975, are a mixture of French-speaking, English-speaking and Portuguese-speaking nations.

In fact, the Lomé Convention attempts to stimulate regional solutions to problems in several of its provisions. Thus, article 7(2)(b) states that the requirement of the ACPs to accord most-favored-nation treatment to the EEC is not to apply “in respect of trade or economic relations between ACP states or between one or more ACP states and other developing countries.” Furthermore, in title IV regional bodies are listed as eligible for financial and technical cooperation, and the Community is obliged, in the implementation of the title, to “provide effective assistance for attaining the objectives which the ACP states set themselves in the context of regional and interregional cooperation.” Annexed to the Convention too is a joint declaration that arrangements are to be made for the East African Community and the Caribbean Community to be represented in the Council of Ministers and the Committee of Ambassadors and that requests for arrangements in respect of other regional groupings between ACP states are to be examined on a case by case basis. The interesting speculation is whether, at least for some purposes, the 46 may begin to regard themselves or be regarded as an international region; it is well-known that geographical proximity is less and less regarded as a crucial criterion in identifying such a region.

164. See Okigbo, supra note 14, at 163.
166. 14 Int’l Leg. Mat’ls at 608.
167. Article 47, 14 Int’l Leg. Mat’ls at 615.
168. The treaty establishing this Community was signed on July 4, 1973. See 12 Int’l Leg. Mat’ls 1154 (1973). The East African Community has been in existence since 1917.
169. The other groupings are the effete West African Customs Union, the Union of African and Malagasy States (created in 1960 and most of whose members signed the new West African Community Treaty), the Equatorial Customs Union, and the Customs Union between Botswana, Lesotho, South Africa and Swaziland. See Okigbo, supra note 14 at 146-53.
B. Impact On The United States

It is clear that in several respects the Convention and all it brings with it will have a considerable impact on the United States. We will now outline the main areas in which this impact is likely to be felt.

1. International Relations Generally

The 46, as we have just seen, are a group with common problems and attainable goals which can be solved and attained if they act in coordination and with solidarity. This, plus the spirit of dignified cooperation we earlier identified and the possibly emerging notion of regionalism will not improbably conduce to toughened unified stances of these nations in international fora such as the United Nations. Much of this has now been evident for a number of years, though in the wider context of the Group of 77 developing country-members of UNCTAD.\textsuperscript{171} Much of the confrontation has been between the United States and the larger group. Now the smaller group of 46 might become more vocal and assertive, with their increased feeling of incipient economic activism. Whether this will transcend the level of political debate remains to be seen.

Closer home, the Convention cannot but conduce to the stimulation of Caribbean independence movements. One of the signatories of the Convention, Grenada, only just attained independence. Prior to that it was one of the six Commonwealth Caribbean states “in association”\textsuperscript{172} with the United Kingdom. It is well known that at least one of the remaining associate states, Antigua, is seriously considering independence. This feeling will doubtless spread to the four others and to the dozen or so other Commonwealth and other colonies and territories in or around the Caribbean. With their small populations, nearly all under 100,000 persons, and their potential susceptibility to political and ideological trends normally considered anathema to the powers that be in this country, increased expenditures by the United States in attempted surveillance, guidance and friendship cultivation is very likely, before and after independence.\textsuperscript{173}

\begin{itemize}
\item \textsuperscript{171} Illustrations are: (1) their solidarity in the debate which led to the adoption in December 1974 of the Charter of Economic Rights and Duties of States, General Assembly Resolution 3281 (XXIX) 9 December 1974; (2) the strongly worded draft outline for the preparation of an international code of conduct on transfer of technology by Brazil’s expert on behalf of the Group of 77’s experts. See 14 INT’L L. & LEG. MAT’LS at 1335. The Eastern European Socialist (Group D) experts disagreed with several important aspects of this draft. \textit{Id.} at 1344.
\item \textsuperscript{172} A slightly less dependent form of colonialism. See Brokerick, \textit{Associated Statehood—A New Form of Decolonization}, 17 INT’L & COMP. L.Q. 368 (1968).
\item \textsuperscript{173} U. S. foreign policy might at some stage consider it worth the while seeking to coordinate positions with this potentially large English-speaking bloc in the OAS, to which Barbados, Jamaica and Trinidad and Tobago already belong.
\end{itemize}
2. United States Exports and Imports

The overall picture of trading between the United States and 10 different areas of the world from 1972-75 was as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Canada</th>
<th>19 American Republics</th>
<th>Other Western Hemisphere</th>
<th>Western Europe</th>
<th>Near East</th>
<th>Japan</th>
<th>East and South Asia</th>
<th>Oceania</th>
<th>Africa</th>
<th>Socialist areas</th>
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<tr>
<td>1972</td>
<td></td>
<td>49,759</td>
<td>12,415</td>
<td>6,467</td>
<td>808</td>
<td>15,361</td>
<td>1,954</td>
<td>4,963</td>
<td>4,373</td>
<td>1,500</td>
<td>883</td>
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<td>55,583</td>
<td>14,927</td>
<td>5,772</td>
<td>1,231</td>
<td>15,423</td>
<td>773</td>
<td>9,064</td>
<td>5,264</td>
<td>1,578</td>
<td>334</td>
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<td>1973</td>
<td></td>
<td>71,339</td>
<td>15,104</td>
<td>8,921</td>
<td>1,008</td>
<td>21,359</td>
<td>3,040</td>
<td>8,313</td>
<td>6,600</td>
<td>2,081</td>
<td>883</td>
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<td>1974</td>
<td></td>
<td>98,506</td>
<td>19,932</td>
<td>14,504</td>
<td>1,309</td>
<td>28,639</td>
<td>5,557</td>
<td>8,313</td>
<td>6,600</td>
<td>2,081</td>
<td>883</td>
</tr>
</tbody>
</table>

| Includes military grants-in-aid, shipments under Agency for International Development (AID) and private relief shipments. |
These figures show that the United States suffered an adverse balance in 1972 and 1974. In all three years there was an adverse balance in trading with "other western hemisphere" (see chart above), which includes the Caribbean ACPs, and Africa. In trading with Western Europe there was an adverse balance only in 1972.

A more accurate picture of the trading picture between the United States and the EEC, Africa and the Caribbean ACPs will be obtained from the following table.

<table>
<thead>
<tr>
<th></th>
<th>Exports</th>
<th>Imports</th>
<th>Net Balance</th>
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</thead>
<tbody>
<tr>
<td>1972</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>EEC</td>
<td>11,900</td>
<td>12,489</td>
<td>-589</td>
</tr>
<tr>
<td>African ACP's</td>
<td>518</td>
<td>859</td>
<td>-341</td>
</tr>
<tr>
<td>Caribbean ACP's</td>
<td>545</td>
<td>731</td>
<td>-186</td>
</tr>
<tr>
<td>1973</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>EEC</td>
<td>16,745</td>
<td>15,605</td>
<td>+1,140</td>
</tr>
<tr>
<td>African ACP's</td>
<td>769</td>
<td>1,440</td>
<td>-671</td>
</tr>
<tr>
<td>Caribbean ACP's</td>
<td>687</td>
<td>935</td>
<td>-245$</td>
</tr>
<tr>
<td>1974</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>EEC</td>
<td>22,069</td>
<td>19,205</td>
<td>+2,864</td>
</tr>
<tr>
<td>African ACP's</td>
<td>1,142</td>
<td>4,301</td>
<td>-3,159</td>
</tr>
<tr>
<td>Caribbean</td>
<td>892</td>
<td>2,583</td>
<td>-1,691</td>
</tr>
</tbody>
</table>

The following table with the share of the United States in total exports and imports of 11 African ACPs and four Caribbean ACPs and the value of their exports and imports in the latest years for which figures were available will help explain the reason for the adverse balances shown in the preceding table. The table will in addition indicate the product areas covered by Stabex in which these countries export most heavily to the United States.

176. There was also an adverse balance (of $1,433M) in 1971.
177. Separate figures for Fiji and Tonga are not available, hence the Pacific ACP picture cannot be given.
178. Figures for trading with Guinea-Bissau and Upper Volta were not available.
179. Only an approximation of the figures for Grenada is given.
181. Products within the Stabex scheme have been selected for the purposes of the discussion in section C below.
## U.S. Percentage Share Of Total Exports And Imports of 11 African ACP's And 4 Caribbean ACP's

(Including value in millions of dollars of such exports and imports in the latest year between 1970 and 1975 in which figures available)\(^2\)

### Exports to the U.S. Imports from the U.S. Main Exports

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<tbody>
<tr>
<td>Cameroon</td>
<td>$218/1972</td>
<td>$299/1972</td>
<td>9</td>
<td>7</td>
<td>NA</td>
<td>11</td>
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<tr>
<td>Ethiopia</td>
<td>$124/1971</td>
<td>$188/1971</td>
<td>35</td>
<td>30</td>
<td>NA</td>
<td>9</td>
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<tr>
<td>Ghana</td>
<td>$488/1972</td>
<td>$373/1972</td>
<td>13</td>
<td>13</td>
<td>NA</td>
<td>18</td>
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<tr>
<td>Ivory Coast</td>
<td>$601/1972</td>
<td>$466/1972</td>
<td>14</td>
<td>11</td>
<td>NA</td>
<td>6</td>
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<tr>
<td>Liberia</td>
<td>$342/1972</td>
<td>$178/1972</td>
<td>21</td>
<td>NA</td>
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<tr>
<td>Nigeria</td>
<td>$3400/1973</td>
<td>$1900/1973</td>
<td>21</td>
<td>24</td>
<td>NA</td>
<td>10</td>
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<tr>
<td>Tanzania</td>
<td>$318.7/1972</td>
<td>$410/1972</td>
<td>6</td>
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<tr>
<td>Uganda</td>
<td>$280.6/1972</td>
<td>$113.8/1972</td>
<td>20</td>
<td>20</td>
<td>24</td>
<td>3</td>
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<tr>
<td>Zambia</td>
<td>$692/1972</td>
<td>$638/1972</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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<tr>
<td>Jamaica</td>
<td>$343/1971</td>
<td>$550.4/1971</td>
<td>44</td>
<td>41</td>
<td>NA</td>
<td>37</td>
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<td></td>
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<td>39</td>
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182. Based on U. S. DEP'T OF COMMERCE, Overseas Business Reports (April, 1975; February, 1973; April, 1973). These countries are the main ACP trading partners of the USA.
It should be carefully noted that in several other important product areas these countries trade extensively with the United States but that the Stabex products have been chosen as those in respect of which retaliatory action by the United States, plausibly authorized under current legislation discussed below,\textsuperscript{183} is not impossible. What is immediately noticeable in fact is that in the case of nearly every country the volume of trade is quite low. Further information\textsuperscript{184} reveals that in those cases where the United States' share of exports was greater than its share of imports, there were usually explanations which suggested that the picture was not really harmful to United States trade. Thus, Nigeria's and Trinidad and Tobago's figures are largely due to crucial petroleum exports. And Jamaica and the Bahamas both export light manufactured goods from industries with United States investments. In addition, the Bahamas exports refined petroleum and petroleum products and Jamaica exports bauxite and aluminum. In both cases the enterprises are American owned. The overall adverse ACP-United States trading picture, therefore, should give no cause for alarm. It is also believed that this conclusion is not affected by the following table of total United States exports and imports for 1972-74 in selected "Stabex products" and sugar, aluminum and bauxite, copper and petroleum.

<table>
<thead>
<tr>
<th>U.S. Overall Exports And Imports In &quot;Stabex Products&quot;</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>And Certain Other Products 1972 - 1975\textsuperscript{183}</td>
<td></td>
</tr>
<tr>
<td>(In millions of dollars)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1972</th>
<th>Exports</th>
<th>Imports</th>
<th>Net Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cocoa products</td>
<td>151</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>Coffee products</td>
<td>1,182</td>
<td>1,182</td>
<td></td>
</tr>
<tr>
<td>Coconuts</td>
<td>66</td>
<td>66</td>
<td></td>
</tr>
<tr>
<td>Hides, etc.</td>
<td>293</td>
<td>65</td>
<td>228</td>
</tr>
<tr>
<td>Bananas</td>
<td>186</td>
<td>186</td>
<td></td>
</tr>
<tr>
<td>Teas</td>
<td>63</td>
<td>63</td>
<td></td>
</tr>
<tr>
<td>Iron ore</td>
<td>27</td>
<td>416</td>
<td>389</td>
</tr>
<tr>
<td>Sugars</td>
<td>832</td>
<td>832</td>
<td></td>
</tr>
<tr>
<td>Aluminum and bauxite</td>
<td>181</td>
<td>181</td>
<td></td>
</tr>
<tr>
<td>Copper</td>
<td>79</td>
<td>67</td>
<td>12</td>
</tr>
<tr>
<td>Petroleum</td>
<td>2,607</td>
<td>-2,163</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1973</th>
<th>Exports</th>
<th>Imports</th>
<th>Net Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cocoa products</td>
<td>212</td>
<td>212</td>
<td></td>
</tr>
<tr>
<td>Coffee products</td>
<td>1,570</td>
<td>1,570</td>
<td></td>
</tr>
<tr>
<td>Coconuts</td>
<td>84</td>
<td>84</td>
<td></td>
</tr>
<tr>
<td>Hides, etc.</td>
<td>377</td>
<td>85</td>
<td>292</td>
</tr>
<tr>
<td>Bananas</td>
<td>193</td>
<td>193</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{183} Section C, infra.  
\textsuperscript{184} See supra note 182.
Immediately before the Convention, therefore, the United States enjoyed a favorable balance of trade with the EEC. On the other hand, it seemed to enjoy an adverse balance with the majority of the ACPs. However, there were sound explanations for this giving no cause for alarm. And there was no case where it could be said that, at least in the primary commodities covered by the Stabex scheme, any of the ACPs came anywhere near to dominating the United States market.

The question now is whether the trading picture is likely to be adversely affected by the Convention. At the moment it is difficult to make any predictions. If it be assumed, however, that EEC imports of ACP aluminum and bauxite, copper, iron ore and petroleum will increase significantly as a result of the Convention, then there are chances that the EEC's competitive trading position will improve.

As far as the ACPs are concerned, it may be that one of the effects of the Convention will be to induce them to divert to the EEC certain products which otherwise would be exported to the United States. The most important of these would be Nigerian oil, Jamaican aluminum and bauxite investments and is actively seeking new customers. Jamaica has imposed a very heavy levy on the production of bauxite (which is under American control), and ultimately divestment is not unlikely.

186. Guyana has nationalized American bauxite investments and is actively seeking new customers. Jamaica has imposed a very heavy levy on the production of bauxite (which is under American control), and ultimately divestment is not unlikely.
187. Of all of these minerals only iron ore (UA275,890,000) was reportedly imported into the EEC from the ACPs in 1973. See EEC Commission, Lomé Dossier 28(1975); The Courier, No. 31 (Special Issue) March, 1975.
188. The cost of the EEC’s increased financial cooperation commitment, including Stabex, and of the removal of its tariffs and other trade restrictions would have to be considered, however.
and possibly, Zairian and Zambian copper. Furthermore, one of the indirect effects of Stabex might be that, with the general stabilization of the production in the agricultural sectors which the system covers, shortfalls from previous bad years (since they are compensated) will not prevent the ACPs from increasing production and more effectively competing in United States markets. This competition could be stimulated further by EEC financial aid. Rational regionalization, if it comes about, might also help.

In most cases competition would be with other foreign producers of primary products, and this might not be considered a blow to United States interests, unless increased American assistance to Latin America is necessitated due to resultant trading losses. And at the moment it seems rather unlikely that the Convention and the slowly growing developed-country commitment to the Generalized System of Preferences (GSP) for the manufactured goods of developing countries will in the near future so significantly increase imports into the United States of ACP manufacturers and semi-manufacturers. One unlikely impact of the Convention might be in respect of United States imports not affected by Stabex or GSP, e.g., imports of iron ore from Liberia and copper from Zaire and Zambia. To the extent that increased, cheaper, or more efficient production is stimulated by the provisions of the Convention and such increase does not all go to the EEC, there might be increased exports to the United States—to the possible consternation of United States iron ore and copper producers.

C. Possible Retaliation From The United States

On balance, it would not seem that the United States as a whole will be seriously affected by the Convention. However, sectional interests in this country might conceive that they are injured by it. Furthermore, the current domestic economic problems of this country and the general uncertainty in the international economic order has provoked forms of fairly extreme protectionism in United States regulation of and response to foreign trade developments. In this section we will briefly examine several possible responses to allegations of injury to United States interests resulting from the Convention.

Treaties of Amity and Economic Relations

The United States has not been successful in its policy of negotiating with African countries treaties dealing with friendship, commerce and nav-

189. See supra notes 186 and 187.
190. With the possible exception of United States banana producers in Latin America.
igation, or amity and economic relations, as some of the more recent treaties are called. At the moment there are treaties only with Ethiopia and Togo. Both of these treaties contain provisions on trade and commerce. As far as the EEC members are concerned, the United States has such treaties with provisions on trade and commerce only with Denmark, Germany, Ireland, Italy and the Netherlands. Its treaties with Belgium, France and Luxemburg have no such provisions. And it has no such treaty with the United Kingdom. Typical of the provisions on trade and commerce are the following provisions in the 1966 Treaty with Togo.

**ARTICLE IX**

1. Each Party shall accord to products of the other Party, from whatever place and by whatever type of carrier arriving, and to products destined for exportation to the territories of such other Party, by whatever route and by whatever type of carrier, treatment no less favorable than that accorded like products of or destined for exportation to any third country, in all matters relating to (a) customs duties, as well as other charges regulations and formalities, on or in connection with importation and exportation; and (b) internal taxation, sale, distribution, storage and use . . . .

2. Neither Party shall impose restrictions or prohibitions on the importation of any product of the other Party, or on the importation of any product to the territories of the other Party unless the importation of the like product of, or the exportation of the like product to, all third countries is similarly restricted or prohibited.

. . . .

6. Each Party reserves the right to accord special advantages: (a) by virtue of a customs union or free trade area of which it, after informing the other Party of its plans, may become a member, or (b) to adjacent countries in order to facilitate frontier traffic. Each Party, moreover, reserves the rights and obligations it may have under the General Agreement on Tariffs and Trade, and special advantages it may accord pursuant thereto.

As far as American imports into the ACP countries are concerned, the Lomé Convention does not create any difficulty, since it merely accords to the EEC most-favored-nation treatment. Furthermore, as far as imports into the EEC are concerned, there are virtually no American products exported to EEC countries which compete with ACP products. In any case paragraph six above, provides an escape mechanism, if it is correct to

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194. See supra note 192.
regard the new regime created by Lomé as a customs union or a free trade area.195

As far as exports of Denmark, Ethiopia, Germany, Ireland, Italy, the Netherlands and Togo to the United States are concerned, provisions such as those of the Togo-United States Treaty might conduce to easy entry of products benefitting from the Convention into the United States. In that case, the treaty provisions hardly provide this country with viable escape mechanisms. However, common provisions like paragraph (3) of the Togo-United States Treaty envisage the possibility of quantitative restrictions.

If either Party imposes quantitative restrictions on the importation or exportation of any product in which the other Party has an important interest:

(a) It shall as a general rule, give prior public notice of the total amount of the product, by quantity or value, that may be imported or exported during a specified period, and of any change in such amount or period, and

(b) If it makes allotments to any third country, it shall afford such other Party a share proportionate to the amount of the product, by quantity or value, supplied by or to it during a previous representative period, due consideration being given to any special factors affecting the trade in such product.196

Trade Act of 1974

This Act197 is a continuation and extension of previous legislative developments which formerly reached their peak in the Trade Expansion Act of 1962.198 Among its provisions are those in title II199 which deal with import relief and adjustment assistance for workers, firms and communi-

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(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories so that (i) duties and other restrictive regulations of commerce . . . are eliminated with respect to substantially all the trade . . . , and, (ii) . . . substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union; (b) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce . . . are eliminated on substantially all the trade between the constituent territories in products originating in such territories.


197. See supra note 193.


ties. According to section 203, import relief may consist of the following types of Presidential action:

- proclamation of an increase in or imposition of a duty on an import, a tariff-rate quota on such article or a modification or imposition of quantitative restrictions on specified imports;
- negotiation of orderly marketing agreements with foreign countries limiting their exports to and imports into the United States of specified products;
- taking a combination of such actions.

Petitions for import relief may be filed by entities, including trade associations, firms, unions, groups of workers, in each case representative of an industry. In making his determination, the President is advised by the International Trade Commission, which must take certain economic factors into account. In addition to such considerations as he deems relevant, the President must bear in mind, before taking his largely discretionary action, several listed factors including:

1. the effect of import relief on consumers . . . and on competition in the domestic markets for such articles;
2. the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

Adjustment assistance for workers is unavailable unless the Secretary of Labor has certified, in respect of a specified group of workers,

1. that a significant number of proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or threatened to become totally or partially separated, sales or production, or both, of such firm or subdivision have decreased absolutely, and
3. that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision

200. In no case to exceed five years in duration.
201. Not to exceed 50% of existing rates.
204. These are set out in section 201(2) of the Act, 22 U.S.C.A. §2251 (Supp. I, Feb., 1975), and cover, inter alia, impact on productivity and on firms, impact on industry workers and comparative competitive position of domestic and foreign products of the same type.
206. Which can consist of limited payments of trade readjustment allowances to certain qualifying workers; employment counseling, placement and other services; limited grants to facilitate retraining and to facilitate job search and relocation. Trade Act sections 232, 235-238, 19 U.S.C.A. §§2292, 2296-98 (Supp. I, Feb., 1975).
thereof contributed to such total or partial separation, or threat thereof,
and to such decline in sales or production.\textsuperscript{207}

As to whether the import relief and worker adjustment assistance provi-
sions will become relevant, it is difficult to estimate at this time. It should
be pointed out, however, that comparable provisions under the Trade Ex-
pansion Act of 1962 were not regarded as very far-reaching in concept or
administration.\textsuperscript{208}

Adjustment assistance is also available to firms and communities. A
firm is only entitled to assistance if the Secretary of Commerce certifies
the same things that the Secretary of Labor has to certify in the case of
assistance to workers.\textsuperscript{209} On certain conditions set out in section 252 of
the Act, a firm may receive technical assistance\textsuperscript{210} or financial assistance in the
form of a soft SBA-type loan.\textsuperscript{211}

On the Secretary of Commerce's certification that an area is a "trade
impacted area"\textsuperscript{212} after an appropriate petition, adjustment assistance
benefits are to be made available in the nature of such assistance, other
than loan guarantees, as is provided to a redevelopment area under the
Public Works and Economic Development Act of 1965, and the guarantee
of loans for working capital and, \textit{inter alia}, for acquiring, constructing and
expanding buildings, machinery and the like.\textsuperscript{213}

It is unclear at this time whether these two provisions of the Trade Act
will need to be invoked as a result of the Convention. With the uncertain
economic situation however, it is not impossible that they might be raised
at some time in the future. Another set of provisions in the Act are those
of title III, dealing with relief from unfair trade practices.\textsuperscript{214} The Act pro-
vides in section 301 that the President can take all appropriate and feasible
steps to eliminate certain restrictive or subsidization practices and, in
particular, that he can (1) suspend, withdraw, or prevent the application
of or refrain from proclaiming the benefits of trade agreement concessions;
or (2) impose duties or other import restrictions on products of foreign

\textsuperscript{208} See Note, \textit{Adjustment Assistance Under the Trade Expansion Act: A Critique of
Recent Tariff Commission Decisions}, 6 \textit{Texas Int'l L. F} 166 (1970); Comment, \textit{The Trade
\textsuperscript{212} The criteria are identical to those mentioned in section 222 of the Trade Act, 19
1975).
\textsuperscript{213} Trade Act, section 273(d), 19 U.S.C.A. §2373(d) (Supp. I, Feb., 1975). There were
no provisions for such assistance to communities in the 1962 Act.
countries or instrumentalities. These actions of the President may be taken on a determination of discriminatory tariffs or import restrictions, discrimination which burdens or restricts United States commerce, or, inter alia, the existence of

subsidies (or other incentives having the effect of subsidies) on its exports of one or more products to the United States or to other foreign markets which have the effect of substantially reducing sales of competitive United States product or products in the United States or in those foreign markets.

As we indicated above, Stabex and other measures such as the guaranteed sugar purchase are not likely to have a direct impact on the United States. However, the Trade Act at this point is so widely drawn that the argument might well be made that Stabex and the sugar purchase guarantee in effect constitute a "subsidy" or other incentive. The main problem is, of course, that the payment or guarantee is not made in any case by any ACP state. Nevertheless, it is not unlikely that this draconian provision might be interpreted in a retaliatory and discriminatory fashion, if economic conditions in this country appreciably worsen. Indeed, the other preconditions for Presidential action might be easily manipulated adversely to the ACPs.

The intense protectiveness of the Trade Act of 1974 is underscored by the lukewarm and highly discretionary agreement of the United States, expressed therein, to participate in the Generalized System of Preferences. According to title V, the President may designate a country as a "beneficiary developing country" and, in respect of "eligible articles" which are to be listed from time to time, provide duty-free treatment. Several countries however, do not qualify to begin with. These include communist countries, countries which have nationalized or taken certain other action without compensation against property owned by United States citizens, countries which do not take adequate cooperative steps to prevent drug trafficking, countries which do not recognize as binding or enforce arbitral decisions in favor of United States citizens, countries which afford such preferential treatment to developed country products as is likely to have a


217. In so doing, the President is to have regard for (1) the effect of such action on furthering the economic development of developing countries, (2) the extent to which other developed countries undertake comparable efforts and (3) the anticipated impact of such action on U.S. producers of like or directly competitive products. Trade Act, section 501, 19 U.S.C.A. §2461 (Supp. I, Feb., 1975).

significant adverse effect on United States commerce and countries members of OPEC or

any other arrangement of foreign countries [sic], and such country participates in any action pursuant to such arrangement the effect of which is to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level and to cause serious disruption of the world economy . . . 219

As far as the Lomé Convention is concerned, it does not as such disqualify any party from GSP treatment.220 It will be remembered that Lomé abolishes the requirement for the ACPs to give reverse preferences to the EEC. In one respect, however, the GSP provisions of the 1974 Act might disentitle some of the ACPs from qualifying. The Act provides that among the reasons for revoking an order designating a country as a beneficiary country are Presidential determinations that (1) the country has exported during a calendar year "an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding year, bears to the gross national of the United States for the calendar year 1974" or (2) the country has exported during any calendar year "a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States."221

As the preceding section will have demonstrated, none of the ACPs presently appears to be such a major supplier to this country. Nevertheless, the 50% rule is highly undesirable, due to the fact that many developing countries are essentially mono-product countries. The GNP formula, however, is even more reprehensible in view of the extreme uncertainty of the times. With its flexibility it in effect constitutes a harsh, arbitrary and inequitable penalty against certain countries, some of which might be the beneficiaries of the Stabex, the sugar guarantee or the trade liberalization provisions of the Convention.

Countervailing Duties: Tariff Act 1930

Section 303 of the Tariff Act222 authorizes the levy and obliges the payment of a duty, the countervailing duty, to be assessed by Secretary of the Treasury in the following circumstances:

Whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or cor-

220. Of course, Nigeria is an important member of OPEC and therefore would tend to run afoul of the provision.
poration, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, upon the importation of such article or merchandise into the United States, whether the same shall be imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise . . . .

The duty is payable by the importer and consists of "the net amount of such bounty or grant, however the same be paid or bestowed." Despite the fact that this provision has not been frequently used in the past, it is significant that, in a time of economic hardship and intense protectiveness, the section has been recently amended by the Trade Act of 1974. What is interesting is that the Congress at that time declined to tighten up the section in one of its weakest places: its omission clearly to impose a criterion of injury for the duty to be exigible. In fact, the amendment now makes it clear that domestic injury is unnecessary in most cases, since it introduces the imposition of duties in cases where the article or merchandise is duty free. But there must be an affirmative determination by the International Trade Commission that "an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States . . . ." Because of the somewhat loose wording of the section, it is not unlikely that it might be argued that the Stabex and sugar guarantee provisions of the Convention constitute bounties or grants. In an early case, the Supreme Court defined these words as follows:

If the word "bounty" has a limited sense the word "grant" has not. A word of broader significance than "grant" could not have been used. Like its synonyms "give" and "bestow," it expresses a concession, the conferring of something by one person upon another. And if the something be conferred by a country "upon the exportation of any article or merchandise" a countervailing duty is required.

The cases and authoritative discussions to date suggest that, inter alia, the section is or might be applicable in such situations: currency retention...

223. The words in italics were added by section 331 of the 1974 Trade Act.
224. In other words, it is intended to be the exact amount by which the article or merchandise benefited abroad. This usually is a very difficult matter to determine.
225. The Act actually adds a similar, harsher provision, discussed in the text, supra at note 216.
schemes involving a bonus on exports, provision by governments of direct subsidies to exporters (including export loss indemnification), excessive duty remissions, certain trading by state trading enterprises, tax benefits accorded to export industries, export financing and export insurance schemes, production subsidies (at least where exporting of the products is envisaged) and tax rebates on exportation.\textsuperscript{228}

These applications and suggested applications suggest that the words are capable of having a very far-reaching meaning. In that event, it might well be that a protectionist minded Secretary could take in effect seriously retaliatory action in the situations we are here discussing. Of course, it is evident that the Stabex money is not paid by any single EEC country, and, if the EEC is considered a "person, partnership, association, cartel or corporation," it is not making the payment upon manufacture, production or export "in such country," to use the slightly confusing language of the section. Besides, Stabex payments are not, strictly speaking, made "upon" production or export. Furthermore, the same strictures largely apply to such an assault on the sugar guarantee scheme, especially since the price often might be below the world market price. Nevertheless, the expansive interpretation which has been given at times to the provision must be borne in mind\textsuperscript{229} and it has been stated that

There is no reason why subsidies granted by the EEC or other supra-national entities should not be subject to the countervailing duty law upon the import of goods from one of the member states, even though the government of that state does not itself directly provide the subsidy. It may be that the law as written is broad enough to cover such circumstances.\ldots\textsuperscript{230}

It is hoped that the basic principle of free trade, which has hitherto been thought to underlie United States international economic relations, will not be subverted by fantastic, or even occasionally faithful, interpretations and applications of domestic legislation.\textsuperscript{231}


\textsuperscript{229.} See Butler, supra note 228.

\textsuperscript{230.} Feller, \textit{supra} note 228 at 65-66. An interesting question is whether re-exports (whether or not further reworked within the EEC) would arguably come within section 303.
