

UNCTAD/DITE/3(Vol. VIII)

United Nations Conference on Trade and Development

International Investment Instruments: A Compendium

Volume VIII

PART ONE
Interregional and Regional Instruments



United Nations
New York and Geneva, 2002

PROTOCOL A/P1/11/84 RELATING TO COMMUNITY ENTERPRISES *

(ECONOMIC COMMUNITY OF WEST AFRICAN STATES)

The Protocol A/P1/11/84 Relating to Community Enterprises was signed by the Member States of Economic Community of West African States, namely Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo on 23 November 1984.

THE HIGH CONTRACTING PARTIES

Recalling the provisions of Articles 2 and 32 of the Treaty of the Economic Community of West African States relating to the integration and development of the economies of Member States of the Community;

Recalling the provision of the Protocol relating to the definition of the concept of products originating from Member States of ECOWAS;

Recalling Resolution ECW/CM/VI/RES.26 of November 1979 of the Council of Ministers relating to the formulation of ECOWAS Regional Industrial Policy and Programme;

Recalling Decision A/DEC.1/5/85 dated 30th May, 1983 of the Authority relating to the adoption and the implementation of a single Trade Liberalisation Scheme for industrial Products originating from Member States and the classification of the Member States contained in Article 4 thereof;

Mindful of the fact that the responsibility for the economic development of the West African region rests with the Member States themselves;

Considering that in furtherance of the objectives of the Treaty, Community enterprises can be vital agents for the promotion of more rapid integration of the economies of the Member States through the provision of additional avenues for joint endeavours under a Community framework;

HAVE AGREED AS FOLLOWS;

* *Source:* Economic Community of West African States (1984). Protocol A/P1/11/84 Relating to Community Enterprises "; available on the Internet (<http://www.ecowas.int/>). [Note added by the editor.]

Article 1

DEFINITIONS

"Treaty" means the Treaty of the Economic Community of West African States signed in Lagos on the 28th May, 1975;

"Community" means the Economic Community of West African States established by Article 1 of the Treaty;

"Member State" means a Member State of the Community;

"Third Country" means a country other than a Member State of the Community;

"Authority" means the Authority of Heads of State and Government of the Community established by Article 5 of the Treaty;

"Council" means the Council of Ministers of the Community established by Article 6 of the Treaty;

"Executive Secretariat" and "Executive Secretary" means the Executive Secretariat and Executive Secretary of the Community as provided for under Article 8 of the Treaty;

"The Fund" means the Fund for Co-operation, Compensation and Development established by Article 50 of the Treaty;

"Selection Panel" means the Panel established by Article 11 of this Protocol;

"Community Enterprise" means an enterprise admitted to the status of a Community Enterprise under this Protocol and enjoying the benefits and guarantees granted thereunder;

"National Enterprises" means an enterprise that is registered in a Member State and operating under the national laws of the Member States;

"Inter-governmental enterprise" means an enterprise whose equity capital is owned entirely by two or more Member States;

"Citizen of the Community" means a citizen of the Community as defined in the Protocol relating to the definition of Community Citizen;

"National of a Member State" means a national of a Member State who is otherwise not qualified as a citizen of the Community;

"Unit of Account" means the unit of account specified in paragraph 3 of Article 6 of the Protocol relating to the Fund;

"Value Added" means value added as defined by Article 1 of the Protocol relating to the definition of the concept of products originating from Member States;

"Legal Persons of Member States" means institutions or companies in which Member States or their nationals own not less than 51% of the equity capital;

"Processing" shall have the same meaning ascribed to it in the Protocol relating to the definition of the concept of products originating from Member States.

Article 2

OWNERSHIP AND FORM OF COMMUNITY ENTERPRISES

1. Subject to the provisions of this Protocol, an enterprise may be admitted to the status of Community Enterprise under this Protocol if its equity capital is owned by:
 - a. two or more Member States, or
 - b. two or more Member States and citizens or institutions of the Community or nationals or legal persons of a Member State or nationals or legal persons of third countries.
2. Any enterprise in respect of which an application is made of admission to the status of a Community Enterprise, shall first have been incorporated as a public limited liability company or established as an inter-governmental enterprise in a Member State.

Article 3

CONDITIONS FOR THE APPROVAL OF A COMMUNITY ENTERPRISE

1. No enterprise shall be admitted to the status of a Community Enterprise unless it complies with the provisions of Article 2 of this Protocol and in addition it satisfies the following conditions:
 - a.
 - i. In respect of an enterprise referred to in sub-paragraph (a) of paragraph 1 of Article 2 of this Protocol, its entire equity capital is vested in two or more Member States, or
 - ii. In respect of an enterprise referred to in sub-paragraph (b) of paragraph 1 of Article 2 of this Protocol, not less than 51% of its equity capital is vested in two or more Member States and citizens or institutions of the Community or nationals or legal persons of a Member State or nationals or legal persons of third countries; and
 - b. in accordance with Article 4 of Decision A/DEC.1/5/83 of the Authority.
 - i. in respect of Cape Verde, the Gambia, Guinea Bissau, Burkina Faso, Mali, Mauritania or Niger its equity capital is not less than 1.5 million units of accounts with an intended investment of not less than 6 million units of accounts, or

- ii. in respect of Benin, Guinea, Liberia, Sierra Leone or Togo, its equity capital is not less than 2 million units of account with an intended investment of not less than 8 million units of account,
 - iii. in respect of Ivory Coast, Ghana, Nigeria or Senegal, its equity capital is not less than 2.5 million units of account with an intended investment of not less than 8 million units of account,
 - c. its Chairman and the majority of the members of its Board of Directors are citizens of the Community; and
 - d. its activities extend to two or more Member States with the objective of promoting through complementarity the economic integration of the Community; and
 - e. its Headquarters is in a Member State; and
 - f. its objectives are in accordance with the development policies and programmes of the Community as may be determined from time to time by the Council; and
 - g. its operations will not harm the interest of National Enterprises of Member States; and
 - h. all its shares are registered and confer the same rights; and
 - i. with respect to a manufacturing enterprise, its products originate within the Member States in accordance with the provisions of the Protocol relating to the definition of the concept of products origination from Member States of the Economic Community of West African States other than those relating to indigenous ownership and participation.
2. Notwithstanding the provisions of this Protocol, an enterprise may be admitted to the status of a Community Enterprise if it is or will be engaged solely in the purchase or sale of goods without undergoing any processing.

Article 4

ADDITIONAL CRITERIA FOR APPROVAL OF COMMUNITY ENTERPRISES

In addition to the conditions stipulated in Article 3 of this Protocol, the Selection Panel shall before recommending the admission of an enterprise to the status of a Community Enterprise and depending on the nature of the activities of the enterprise have regard to its ability to contribute to the following objectives:

- a. the development of the Community in general and in particular, the industrially less-developed Member States;
 - b. the promotion of diversification in the economic activities of the Community;
 - c. the rational use of the resources of the Member States and their economic potential;
-

- d. the creation and the expansion of employment within the Community for nationals of the Member States;
- e. improved access of the Member States to international capital markets;
- f. the provision of satisfactory arrangements for the training of nationals of the Member States in administrative, technical, managerial and other skills with a view to securing the benefit of their knowledge and experience in the conduct of the enterprises;
- g. the promotion and development of indigenous technology and the transfer adaptation of imported one;
- h. the improvement of the balance of payments of Member States through significant savings on import from third countries and increase of trade within the Community and exports to third countries;
- i. the provision of sufficient and adequate environmental pollution controls and the restoration of the environment to its original state.

Article 5

APPLICATION FOR APPROVAL

- 1. All applications for the admission of an enterprise to the status of a Community Enterprise shall be in writing and shall first be submitted to the Member State in which the enterprise is located or will be located for its sponsorship with a copy to the Executive Secretariat for information.
- 2. On receipt of an application, the Member State shall acknowledge receipt and make its decision known to the applicant and the Executive Secretariat within three months of the receipt of such application.
- 3. An Enterprise sponsored by a Member State shall submit through such Member State thirty copies in French and twenty in English of its application to the Executive Secretariat which shall acknowledge receipt both to the member States and the Enterprises concerned.

Article 6

INFORMATION REQUIRED FOR APPROVAL OF APPLICATION

- 1. All applications for the admission of an enterprise to the status of a Community Enterprise shall be accompanied by a detailed description of the nature of the enterprise and a copy of its Memorandum and Articles of Association or equivalent documents.
- 2. The particulars required under paragraph 1 of this Article shall where applicable include the following:
 - a. the name and address of the enterprise to be approved;

- b. a copy of its instrument of incorporation and a certificate showing the number of shares held by each shareholder;
- c. list and nationalities of shareholders;
- d. the names and nationalities of members of the Board of Directors;
- e. the goods produced or to be produced or services offered or to be offered;
- f. the actual or projected amount on investment and financing plan showing the amount to be invested in local and external currencies;
- g. date of commencement of construction;
- h. the day on which the enterprise is expected to commence operation or production in marketable quantities of the products specified;
- i. the locality or localities in which it is proposed to establish the enterprise;
- j. a detailed feasibility study on the enterprise which shall where applicable include
 - a
 - i. detailed estimate and description and analysis of the projected markets, capital and production factors, required and size of the labour force, especially the size of personnel required from third countries;
 - ii. a production scheme indicating the annual volume and value of production and possibilities of expansions;
 - iii. a detailed inventory of the volume, value and origin of plant machinery, spare parts and all other equipment necessary for the establishment and operation of the enterprise after its admission and their expected sources of supply and the price structure for products to be manufactured and the estimated trading account figures for a ten-year period and cash flow;
 - iv. the projected scale of export to third countries;
 - v. the projected effect on trade within the Community;
 - vi. a detailed inventory in volume and value and origin of annual imports of raw materials and semi-processed goods essential to the operations of the enterprise after its admission.
 - vii. a programme of recruitment and training for workers who are citizens of the Community that would enable them to acquire the requisite skills. Such programme shall provide for a period at the end of which citizens of the Community shall replace personnel from third countries.

Article 7

1. Upon the receipt of the application referred to in paragraph 3 of Article 5 of this Protocol, the Executive Secretariat shall:
 - a. acknowledge receipt and state the period required for an evaluation of the application which shall not exceed six months. The Executive Secretariat may during the evaluation of such application request the applicant for supplementary information and may determine a time limit in any case not exceeding six months, for the communication of such information;
 - b. forward a copy thereof to all Member States;
 - c. publish an extract of the application in the Official Journal of the Community and cause it to be published in the Official Gazettes of the Member States.
2. The Member States shall acknowledge receipt and within four months from the date of the publication of an application in the Official Journal of the Community submit their observations thereon to the Executive Secretariat.
3. Three months after the publication of an application in the Official Journal of the Community, the Executive Secretariat shall transmit the application together with all the relevant documents and observations received from the Member States to the Selection Panel for its consideration and recommendations.
4. The Executive Secretariat shall forward the recommendations of the Selection Panel to the next meeting of the Council for its decision.
5. The decision of the Council shall be published in the Official Journal of the Community and transmitted forthwith to the Member States which shall cause it to be published in their Official Gazettes.

Article 8

OBJECTION PROCEDURE

1. Any Member State wishing to object to the admission of an enterprise to the status of a Community Enterprise shall within a period of three months from the date the application is published in the Official Journal of the Community forward to the Executive Secretariat in writing the reasons and justification for its objection.
2. Any legal or natural person established or domiciled in a Member State wishing to object to the admission of an enterprise to the status of a Community Enterprise shall within the period specified in paragraph 1 of this Article submit in writing the reasons and justification for his objection to that Member State for transmission to the Executive Secretariat.
3. Upon the receipt of an objection the Executive Secretariat shall investigate the matter and submit its findings to the Selection Panel for its recommendations and transmit them to the Council for its decision.

Article 9

APPROVAL AGREEMENT

1. As soon as enterprise has been approved for admission to the status of a Community Enterprise by the Council the Executive Secretary shall on behalf of the Community enter into an agreement (hereinafter referred to as "the Approval Agreement") with the enterprise in the form annexed to this Protocol.
2. The duration of the Approval Agreement shall be fixed by the Council on the recommendation of the Selection Panel bearing in mind the size and nature of the enterprise.
3. The Approval Agreement shall be governed by the provisions of this Protocol.

Article 10

ROLE OF THE EXECUTIVE SECRETARIAT

The Executive Secretariat shall:

- a. receive and evaluate all applications for the admission of enterprises to the status of Community Enterprises, submit them to the Selection Panel for its recommendations and to the Council for its decision;
 - b. keep a register of Community Enterprises and levy and collect from Community Enterprises such registration fees as may be determined by the Council;
 - c. Monitor in co-operation with the Member States the implementation of training schemes instituted in pursuance with item (vii) of sub-paragraph (j) of paragraph 2 of Article 6 of this Protocol;
 - d. monitor in co-operation with the Member States the results of benefits granted to Community Enterprise under this Protocol and advise the Council on the performance of such Community Enterprises;
 - e. inform the Council of any change in the composition of the Board of Directors or in the control of a Community Enterprise;
 - f. examine as early as possible any complaints or objections received affecting an Approval Agreement or the performance and conduct of a Community Enterprise after commencement of operations and submit them to the Selection Panel;
 - g. supervise the execution of the Approval Agreement and the implementation of this Protocol generally;
 - h. help Community Enterprise in their negotiations with Member States with a view to obtaining the most favourable fiscal regime, incentives and privileges in force in the Member States concerned.
-

Article 11

SELECTION PANEL

1. There is hereby established a Selection Panel which shall consist of one representative from each Member State who may be assisted by advisers.
2. It shall be the responsibility of the Selection Panel:
 - a. to examine all applications for the admission of enterprises to the status of Community Enterprises submitted to it by the Executive Secretariat and make recommendations thereon to the Council;
 - b. to deal with any complaints or objections affecting an Approval Agreement or the performance and conduct of a Community Enterprise.

Article 12

ROLE OF THE COUNCIL

The Council shall:

- a. admit enterprises to the status of Community Enterprises in accordance with the provisions of this Protocol;
- b. determine the basis and the rate for calculating the Community Levy as provided for in paragraph 1 of Article 14 of this Protocol;
- c. approve the use of the proceeds of the Community Levy as provided for in paragraph 3 of Article 14 of this Protocol;
- d. cause the suspension or cancellation of an Approval Agreement where a Community Enterprise has been fraudulent or acts contrary to the provisions of this Protocol;
- e. determine registration fees to be paid by Community Enterprises as provided for in paragraph (b) of Article 10 of this Protocol;

Article 13

DUTIES OF A COMMUNITY ENTERPRISE

1. All enterprises which have been admitted to the status of Community Enterprises in accordance with the provisions of this Protocol shall:
 - a. submit progress reports, annual balance sheets and audited accounts to the relevant authorities of the Member States involved in the project with copies to the Executive Secretariat;

- b. furnish the Member States and the Executive Secretariat with information relating to the fulfilment of the conditions of any permit and the extent to which benefits and permits have been utilised;
 - c. offer services or manufacture products within the Community of acceptable quality at competitive prices and in sufficient quantities;
 - d. inform the Executive Secretariat of any intended deviations from or difficulties in the implementation of the terms of an Approval Agreement, so as to enable any necessary re-assessment to be made between the parties to the Approval Agreement;
 - e. comply with such audit as may be requested by the Executive Secretariat in collaboration with the relevant authorities of the Member State where they are located in order to ascertain compliance with the terms of the Approval Agreement;
 - f. comply with such other conditions as may be imposed by the Council;
 - g. for all other necessary purposes, co-operate fully with the representative of the Executive Secretariat and the Member States;
 - h. not fix or alter the prices of its product or services without prior consultation with the Executive Secretariat and the competent authorities of the Member States where they are located.
2. All shareholders of a Community Enterprise shall be entitled to a vote and to be informed about the activities of the enterprise.
3. No dealings in the shares of a Community Enterprise shall take place without the approval of its Board of Directors and in no case shall such dealings lead to a reduction of the equity capital of nationals, legal persons or governments of the Member States below the level prescribed in items (i) and (ii) of sub-paragraph (a) of paragraph 1 of Article 3 of this Protocol. All valid dealings in its shares shall be notified to the Executive Secretariat.
4. Any decision relating to the alteration of the instrument of incorporation, increase and reduction in the capital and dissolution of a Community Enterprise, appointment and removal of members of the Board of Directors and change of location of the headquarters of a Community Enterprise shall previously be notified to the Executive Secretariat.
5. All changes in the structure of a Community Enterprise that may reduce the effective control of citizens of the Community or nationals of the Member States in the day to day administration of that enterprise shall not be permitted.

Article 14

COMMUNITY LEVY

1. In addition to such national taxes as a Community Enterprise may be subject to in a Member State where its headquarters is or where it has autonomous branches, subsidiaries or
-

affiliates a Community enterprise shall pay directly to the Community an annual Community Levy the basis and rate of which shall be determined by the Council, taking into consideration the level of development of the different Member States in accordance with the provisions of Article 4 of Decision A/DEC.1/5/83 of the Authority.

2. Notwithstanding the provisions of paragraph 1 of this Article, the Council may exempt a Community Enterprise from the payment of Community Levy for such period and in respect of such activities as it may determine.

3. The Community Levy paid in pursuance of the provisions of paragraph 1 of this Article shall be kept in a Special Facility of the Fund and the use of such Special Facility shall be determined by Council.

4. Regulations relating to the application of the provisions of this Article including the computation of Community Levy, exemption from or deferment of payment of Community Levy and other allowances shall be made by the Council.

Article 15

DUTIES OF THE MEMBER STATES

1. Each Member State shall:
 - a. receive, study and evaluate all applications for the admission of an enterprise to the status of a Community Enterprise and forward such applications sponsored by them within three months to the Executive Secretariat for processing;
 - b. take such steps as are necessary to give effect to the provisions of this Protocol and ensure that effect is given to the provisions of an Approval Agreement and any matters required to be done thereunder;
 - c. not take such discriminatory or unreasonable measures as would adversely affect the management, maintenance, use, enjoyment, expansion, sale, liquidation or other disposition of the investment of Community Enterprises;
 - d. assist Community Enterprise by taking all necessary steps to promote their objectives and operations and facilitate the realisation of those objectives including the granting of the necessary export and import licences;
 - e. determine and approve the quota of employees who are nationals of third countries required from time to time by Community Enterprises and take measures to facilitate the granting of the necessary visas and entry, resident and work permits;
 - f. transmit as soon as possible to the Executive Secretariat any complaint or objection by any interested party in respect of an application for approval, or the performance or conduct of a Community Enterprise after commencement of its activities;
-

- g. pay fair compensation to any Community Enterprise which sustains a loss as a result of the expropriation or nationalisation by it of the assets or shares of the Community Enterprises;
 - h. refuse to grant import licence or import duties exemption for the import of products from third countries where in the opinion of the Council, the same or similar products produced by Community Enterprises or by other enterprises manufacturing the same or similar products in the Member States are available in sufficient quantity or quantities within the Community to meet the demand for such products or similar products at competitive prices.
2. All shareholders shall be enabled by the Member States to exercise in a reasonable manner, all their rights, particularly with respect to their attendance at meetings of the organs of a Community Enterprise.

Article 16

GENERAL BENEFITS, GUARANTEES AND PRIVILEGES OF COMMUNITY ENTERPRISES

1. No enterprise admitted to the status of a Community Enterprise shall be nationalised or expropriated by the government of any Member State except for valid reasons of public interest and whereupon fair and adequate compensation shall be promptly said.
2. Subject to the provisions of this Article, no person who owns shares in a Community Enterprise shall be compelled by law while the Community Enterprise continues to enjoy the benefits, guarantees and privileges granted under this Protocol, to cede in whole or in part his interest in the Community Enterprise.
3. Benefits granted to a Community Enterprise under this Protocol and particularly under the terms of an Approval Agreement shall not, except as provided under Article 21, be altered subsequently to its disadvantage.
4. Community Enterprises shall have legal personality in all Member States and shall enjoy the rights and privileges and favourable treatment with regard to industrial, financial and other incentives or advantages granted as a result of their negotiations with relevant authorities and in accordance with the laws of the Member States concerned.
5. Subject to legislation in force and economic conditions prevailing in the Member States the following privileges and benefits may be obtained for a Community Enterprise through negotiations with the Member State concerned.
 - i. the remittance of funds for payment of normal commercial transactions;
 - ii. the remittance of capital, including interests and dividends to the country of origin of shareholders and creditors in the event of sale or the liquidation of a Community Enterprise;
 - iii. the transfer of profits at the rate fixed in accordance with the terms of the negotiations carried out with the Member State concerned out of the country in

which the headquarters of a Community Enterprise is located after adequate provision has been made for re-investment, maintenance and replacement of assets and after payment of any tax due in respect of the Community Enterprise;

- iv. the transfer of payment in respect of principal, interest and other financial charges where a loan has been granted to a Community Enterprise by a non-resident in accordance with the terms of the contract of the said loan;
- v. the transfer of fees and other charges incurred by a Community Enterprise in the ordinary course of business outside the country of its principal place of business;
- vi. the entry into the Member State of the requisite foreign managerial and technical personnel for employment or engagement in a Community Enterprise, if the requisite skills are not available within the Community.

6. Reasonable facilities shall be provided by the monetary authorities of the Member States concerned to personnel employed or engaged in a Community Enterprise for making remittances abroad in respect of maintenance of their families and other contractual obligations such as insurance premiums and all contributions to provident and pension funds.

7. Dividends paid to natural or legal persons who are shareholders of Community Enterprises may be exempted from withholding tax whether such shareholders are residents or non-residents of the Member States where such enterprises are established.

Article 17

SPECIAL ADDITIONAL PRIVILEGES

1. The provisions of this Article shall apply only to the Community Enterprises referred to in sub-paragraph (a) and (b) of paragraph 1 of Article 2 of this Protocol.

2. An Approval Agreement may, without prejudice to the right of products which otherwise enjoy Community tariff treatment, provide exceptionally that no other Approval Agreement under this Protocol may be entered into in respect of the same industrial or economic activity.

3. Where a Community Enterprise enjoys the benefits provided for in paragraph 2 of this Article:

- a. the products of the enterprise shall not be subject to any form of tariff or non-tariff restrictions or barriers except as provided for under Article 26 of the Treaty;
- b. products which are the same or similar to the products of that enterprise may be imported exceptionally into the Community or exempted from import duties where in the opinion of the Council the products of that enterprise are insufficient in quantity or quality to meet the demand for those products or similar products at a competitive price.

4. The provisions of paragraph 2 and sub-paragraph (b) of paragraph 3 of this Article are exceptional and can only be applied for a specified period and for a region defined by the Council and for a Community Enterprise operating in a priority sector or introducing a new

industrial or economic activity within the Community without undue distortion to the economic equilibrium of the Community.

Article 18

COMPENSATION

1. For the purpose of paying compensation in pursuance of the provisions of sub-paragraph (g) of paragraph 1 of Article 15 of this Protocol, the assets and liabilities of Community Enterprise shall be valued in accordance with regulations that are in force in the Member States concerned.
2. Compensation shall forthwith be paid to the Community Enterprise in the currency of the original investment or convertible currency as soon as the amount of compensation has been determined in accordance with the provisions of this Article.
3. Any disagreement as to the amount of compensation payable or the method of valuation used or as to any aspect of compensation shall be settled in accordance with the provisions of Article 22 of this Protocol.
4. No provision of this Article shall be construed as empowering a Community Enterprise to increase or minimize the loss or losses sustained.

Article 19

APPLICATION FOR COMPENSATION

1. A Community Enterprise whose assets are nationalised or expropriated or shareholders whose shares have been expropriated shall apply to the Member State concerned for compensation and transmit a copy of such application to the Executive Secretariat. Such application shall be in thirty copies in French and twenty in English, and shall contain:
 - a. details of the circumstances of the expropriation or nationalisation;
 - b. a valuation certificate of the investment expropriated or nationalised;
 - c. relevant documents relating to the expropriation or nationalisation.
 2. The Executive Secretariat shall transmit without delay to all the Member States copies of an application for compensation.
 3. The Executive Secretariat shall within three months from the date on which the copies of an application for compensation are received by him, contact the relevant authorities of the Member State concerned with a view to reaching an amicable settlement on the matter.
 4. If after the expiration of six months the issue has not been amicably settled, the Executive Secretary shall refer the matter to the Council.
 5. An award for compensation shall be expressed and paid in the same currency in which the investment was made or in convertible currency.
-

Article 20

NON-ASSIGNMENT OF APPROVAL AGREEMENT

An Approval Agreement concluded under the provision of this Protocol shall not be assignable.,

Article 21

DEFAULT, REVOCATION, SUSPENSION, CANCELLATION AND TERMINATION OF THE APPROVAL AGREEMENT

1. The Council may without prior notice revoke its decisions to admit an enterprise to the status of a Community enterprise or cause the immediate suspension or cancellation of an Approval Agreement if any of the provisions of this Protocol or an Approval Agreement are not complied with. The revocation or cancellation shall take effect from the date of the decision which admitted an enterprise to the status of a Community Enterprise.
2. The Council shall take any of the actions specified in paragraph 1 of this Article for any of the following reasons:
 - a. that the Community Enterprise has committed fraud, misrepresentation or other illegal act or has failed either deliberately or through negligence to disclose some material fact or facts prior to the enterprise being admitted to the status of a Community Enterprise;
 - b. that the Community Enterprise has failed to carry out its activities on a scale to justify being admitted to the status of a Community Enterprise;
 - c. that the Community Enterprise has abused the exemptions from import duties granted to it;
 - d. that the Community Enterprise has committed such other act or omission as to constitute a breach of its Approval Agreement.
3. For the purpose of this Article the term "material fact" in sub-paragraph (a) of paragraph 2 of this Article shall mean any fact the knowledge of which would have caused the Community not to have entered into an Approval Agreement, or to enter into an Approval Agreement substantially different from that which is in fact entered into.
4. Either party to an Approval Agreement wishing to terminate it shall give to the other one year's notice in writing of its intention to do so.
5. The termination of an Approval Agreement shall not affect on-going actions and projects and vested rights during its period of validity.

Article 22

SETTLEMENT OF DISPUTES

1. Where a dispute arises between Member States as to the interpretation or application of the provisions of this Protocol or an Approval Agreement the dispute shall be settled in accordance with the rules and procedures laid down in Article 56 of the Treaty.
2. Where a dispute arises as to the interpretation or application of the provisions of this Protocol or an Approval Agreement between the Community and a Community Enterprise or between a Member State and a Community Enterprise, the parties shall inform the Executive Secretariat and endeavour to settle the dispute amicably within six months from the date when the dispute arose.
3. Where a dispute referred to in paragraph 2 of this Article cannot be settled amicably, either party to the dispute shall notify the Executive Secretariat of the existence of such a dispute and each party shall within a period of 90 days nominate an arbitrator from the panel of Arbitrators of the International Centre for the Settlement of Investment Disputes or the Panel of Arbitrators of the Community as may from time to time be constituted by the Executive Secretariat. The two arbitrators so nominated shall within thirty days elect a third arbitrator from either of the said two panels who shall preside over the proceedings of the arbitration. In the event of the failure of the two arbitrators to agree on the election of the third arbitrator, either party may request the President of the International Court of Justice to elect the third arbitrator from either of the said two panels.
4. The arbitrators so nominated shall conduct the arbitration at the headquarters of the Community or at any other place within the Community as may be agreed by the parties.
5. The procedure of the arbitration shall be determined by the arbitrators, but the presiding arbitrator shall have full power to settle all questions of procedure in any case of disagreement in respect thereto.
6. All decisions of the arbitrators shall be by majority vote which decisions shall be final and binding on the parties to the arbitration.
7. The Council may make regulations concerning the application of the provisions of this Article.

Article 23

AMENDMENT

1. Any Member State may submit proposals for the amendment or revision of this Protocol to the Executive Secretariat.
 2. The Executive Secretariat shall communicate such proposals to the Member States not later than thirty days after their receipt. Amendments or revisions shall be considered by the Authority after the Member States have been given thirty days notice thereof.
-

3. No amendment to this Protocol shall prejudice any rights acquired by a Community Enterprise in pursuance of the provisions of this Protocol prior to the coming into force of the amendment.

Article 24

APPLICATION

The provisions of this Protocol:

- a. shall apply to enterprises defined in paragraph 1 of Article 2 of this Protocol; and
- b. may apply to wholly privately-owned enterprises in which nationals or legal persons of Member States own not less than 70% of equity capital and for this purposes the Council shall prescribe the rules and regulations for the application of the provisions of this Protocol to enterprises specified in this sub-paragraph.

Article 25

ENTRY INTO FORCE

1. This Protocol shall enter into force provisionally upon signature by the Authority of Heads of State and Government of Member States and definitively upon ratification by at least seven (7) signatory States in accordance with the constitutional procedures applicable for each signatory State.
2. This Protocol and all instruments of ratification shall be deposited with the Executive Secretariat of the Community which shall transmit certified true copies of this Protocol to all Member States and notify them of the dates of deposit of instruments of ratification and shall register this Protocol with the Organisation of African Unity, the United Nations and such other organisations as the Council shall determine.
3. This Protocol shall be annexed to and shall form an integral part of the Treaty.

In Faith Whereof, We, The Authority of Heads of State and Government of The Economic Community of West African States, Have Signed This Protocol.

Done at Lome, this 23rd Day of November, 1984 in Single Original in the English French Languages, both texts being equally Authentic.

ANNEX

SPECIMEN OF APPROVAL AGREEMENT

THIS APPROVAL AGREEMENT IS MADE THIS.....DAY OF 19.....IN..... BETWEEN The Economic Community of West African States (hereinafter referred to as "The Community") whose headquarters is at 6, King George V Road, Lagos, in the Federal Republic of Nigeria, represented by the Executive Secretary of the Community OF THE ONE PART and the Company (Name of the Company) (hereinafter referred to as "The Promoter") whose

Headquarters is at incorporated under Noand ad-mitted to the Status of Community Enterprise by Decision No.....of theday of ...19.....of the Council of Ministers of the Community and represented by(name and status) OF THE OTHER PART

In accordance with the provisions of the protocol of the community relating to community enterprises (hereinafter referred to as "the protocol")

The contracting parties have agreed as follows:

Article 1

COMMUNITY GUARANTEES, BENEFITS AND PRIVILEGES

As a Community Enterprise, the Promoter may enjoy the guaranteed benefits and privileges set out in Article 16, and contingently those set out in Article 17 of the Protocol as may be conferred.

Article 2

OBLIGATIONS OF PROMOTER

The Promoter hereby accepts and undertakes to comply with all the obligations provided for in the Protocol and in this Agreement. He shall begin his operations not later than the 31st of December,

Article 3

NOTICE

All orders, approvals, declarations, notices, communications or undertakings of any kind between the Community and the Promoter shall be in writing and the parties hereto shall not under any circumstances be permitted to allege or rely upon any oral order, approval, declaration, notice, communication or undertaking.

Article 4

LAW OF THE AGREEMENT

The law which shall govern this Agreement and in accordance with which it is to be construed shall be the Protocol and any Regulations or Decisions made or taken thereunder. In the case of issues not expressly covered by the Protocol and this Agreement the governing law shall be the Memorandum and Articles of Association of the Promoter and the law of the Country where the principal office, incorporated branches and subsidiaries of the Promoter are located.

Article 5

DECISIONS RELATING TO THE ARTICLE OF THE PROMOTER

The Promoter shall previously inform the Executive Secretariat of any decision taken by its Board of Directors or shareholders affecting the provisions of its Articles.

Article 6

LOCATION OF PROMOTER

The Promoter will be principally located inwith branches and subsidiaries in

Article 7

PRODUCTS AND SERVICES

The products and/or services which shall be produced and/or provided by the Promoter under the terms of this Agreement are.....

Article 8

FORCE MAJEURE

1. Under this Agreement, force majeure means any unforeseeable, irresistible and insurmountable event independent of both parties occurring after the entry into force of this Agreement such as to impede the performance of either party obligations.
2. Either party to the Agreement shall inform the other party of the occurrence of a force majeure within forty-eight (48) hours following the occurrence of such force majeure.
3. Failure on the part of the parties to comply with any of the terms and conditions hereof shall not constitute grounds for termination or breach or give the parties any claims for damages insofar as the failure arises from force majeure as defined in paragraph (1) of this Article provided that the parties shall take all reasonable steps to minimise the effects of such failure and to fulfil the terms and conditions of this Agreement with the minimum of delay.

Article 9

ENTRY INTO FORCE AND DURATION OF AGREEMENT

This Agreement shall enter into force upon signature for a period ofyears and subject to revision after the first.....years.

Article 10

COMPLIANCE WITH NATIONAL LAWS

1. The Promoter shall comply with the general laws and regulations in force in the Member States.

2. With respect to fiscal laws and regulations in force in the Member States the grant of investment incentives under this Agreement shall not release the Promoter of liabilities for any act, omission or things required to be done under the fiscal bases of the Member States to the extent of which such compliance is not inconsistent with any provision of the Protocol and of this Agreement.

Article 11

AMENDMENT AND REVISION

This Agreement may be amended and revised by the parties after the expiration of the period provided in Article 9. Any party wishing to amend or to revise this Agreement shall notify the other through written proposals which shall be discussed by common consent within six (6) months after the date of notification.

Article 12

TERMINATIONS, SUSPENSION AND INVALIDATION OF AGREEMENT

1. This Agreement may be terminated at any time by either party provided that notice of one (1) year is given to other party.
2. The termination of this Agreement shall not affect on-going actions or projects, vested rights of parties during its period of validity.
3. This Agreement may be suspended or invalidated immediately without notice by the Council of Ministers of the Community, subject to conditions stipulated in Article 21 of the Protocol.

Article 13

RESIDUAL PROVISIONS

The provisions of the Protocol shall govern obligations, breach of contract, settlement of disputes and all such all other matters not provided for in this Agreement.

Article 14

ANNEXES

The following documents are annexed to this Agreement:

- a. The Protocol
- b. The Articles of the Promoter and any other document relating to him.

III. SUPPORT MEASURES

*

**SUPPLEMENTARY PROTOCOL A/Sp.2/5/90 ON THE IMPLEMENTATION OF THE
THIRD PHASE (RIGHT OF ESTABLISHMENT) OF THE PROTOCOL ON FREE
MOVEMENT OF PERSONS, RIGHT OF RESIDENCE AND ESTABLISHMENT***
(ECONOMIC COMMUNITY OF WEST AFRICAN STATES)

The Supplementary Protocol A/Sp.2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment was signed by the Member States of Economic Community of West African States, namely Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo on 30 May 1990.

THE HIGH CONTRACTING PARTIES,

MINDFUL of Article 5 of the ECOWAS Treaty establishing the Authority of Heads of State and Government and defining its composition and functions;

MINDFUL of Article 27 of the ECOWAS Treaty relating to freedom of movement and residence within the Community;

MINDFUL of Protocol A/P.1/5/79 dated 29 May, 1979, on Free Movement of Persons, Right of Residence and Establishment;

MINDFUL of Protocol A/P.3/5/82 dated 29 May, 1979, establishing the Code of Citizenship of the Community;

MINDFUL of Protocol A/P.1/11/84 dated 23 November, 1984 on Community Enterprises;

MINDFUL of Supplementary Protocol A/SP.1/7/85 dated 6 July, 1985, establishing the Code of Conduct for the implementation of the Protocol on Free Movement of Persons, Right of Residence and Establishment;

CONSIDERING the deadline for the implementation of Phase II (Right of Residences) of the Protocol on Free Movement of Persons, Right of Residence and Establishment, which deadline will expire on 4 June, 1990;

CONVINCED of the imperative need to proceed to the third phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment, in-as-much-as the uniform implementation of the provisions of ECOWAS texts on free movement of persons, goods, services and capital by all Member States is a fundamental basis of Community

* *Source:* Economic Community of West African States (1990). "Supplementary Protocol A/Sp.2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment "; available on the Internet (<http://www.ecowas.int/>). [Note added by the editor.]

building and a pre-requisite for the harmonious development of the economic, social and cultural activities of the States of the region which will ensure the welfare of their peoples;

HEREBY AGREE AS FOLLOWS:

CHAPTER 1

DEFINITIONS

Article 1

1. In this Protocol, the following terms shall have the meanings assigned to them hereunder:

"Treaty" means the Treaty of the Economic Community of West African States;

"Community" means the Economic Community of West African States;

"Member State" or "Member States" means a Member State or Member States of the Economic Community of West African States;

"Host Member State" means the Member State or country of residence of the migrant worker;

"Member State of Origin" means the Member State or country of residence of the migrant worker or the country of which he is a national;

"Authority" means the Authority of Heads of State and Government established by Article 5 of the Treaty;

"Council" means the Council of Ministers established by Article 6 of the Treaty;

"Executive Secretary" and "Executive Secretariat" mean the Executive Secretary and the Executive Secretariat of the Community as defined in Article 8 of the Treaty.

"Commission" means the Trade, Customs, Immigration, Money and Payments Commission of the Community, as defined in Article 9 paragraph 1 (a) of the Treaty.

"Community Citizen" or "Community Citizens" means any national or nationals of a Member State fulfilling the conditions stipulated in the Protocol A/P.3/5/82 relating to the definition of Community Citizen;

"Right of Residence" means the right of a citizen who is a national of one Member State to reside in a Member State other than his State of origin which issues him with a residence card or permit that may or may not allow him to hold employment;

"Right of Establishment" means the right granted to a citizen who is a national of the Member State to settle or establish in another Member State other than his State of origin, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises, and in particular companies, under the same conditions as defined by the legislation of the host Member State for its own nationals;

"Residence Card" or "Residence Permit" means the document issued by the competent authorities of a Member State granting right of residence in the territory of the Member State;

"Resident" means any citizen, who is a national of one Member State, and who is accorded the right of residence.

"Migrant Worker" or "Migrant" means any citizen who is a national of one Member State, who has travelled from his country of origin to the territory of another Member State of which he is not a national and who seeks to hold employment there;

"Competent Administrations" or "Relevant Departments" means national Administrations of Member States responsible for immigration and emigration matters;

"Competent Authority of place of residence" means the competent local authority responsible for problems concerning the residence of foreigners in the territory of the host Member State;

"Fundamental Rights" means the right granted to any migrant worker by this Protocol and the Conventions of the International Labour Organisation (ILO) on the protection of the rights of migrant workers.

"Border area workers" means migrant workers who, while in employment in one Member State, maintain their normal residence in a neighbouring Member State, which is their country of origin and to which they return each day or at least once a week.

"Seasonal Workers" means migrant workers in employment or practising a business on their own account in one Member State of which they are not nationals, the activity being by its nature dependent on seasonal conditions and capable of being practised only during a part of the year.

"Itinerant Workers" means migrant workers who normally residing in one Member State, may have to travel to another Member State for a short period for the requirements of their activities.

"Company" means a company constituted under civil or commercial law or any other legal entity constituted under public or private law with the exception of non-profit-making companies.

2. In this Protocol, the term "migrant workers" excludes:

- i. Persons on official posting who are employed by international organisations and persons employed by a State outside the territory of that State, whose entry into the country and conditions of service are governed by general international law or by specific International Agreements or Conventions;
- ii. Persons on official posting who are employed by a State outside the territory of that State for the implementation of co-operation programmes for development agreed on with the host country, the entry into the country and conditions of service of such persons being established by specific International Agreements or Conventions;
- iii. Persons whose working relations with an employer have not been established in the host Member State;

- iv. Persons who become residents in their capacity as investors in a country other than their State of origin or who, since their arrival in that country, have been carrying out an economic activity as an employer.

CHAPTER II

ESTABLISHMENT OF OR ACCESS TO ENTERPRISES

Article 2

The right of establishment as defined in Article 1 above shall include access to non-salaried activities and the exercise of such activities as well as the creation and management of enterprises and companies which comply with the definition contained in Article 3 below are subject to the same conditions stipulated by the laws and regulations of the country of establishment for its own nationals.

Article 3

For the purpose of implementation of this Protocol, companies which are formed in accordance with the laws and regulations of a Member State with their headquarters, central seat of administration or principal establishment within the Community shall be considered in the same category as individual nationals of Member States. Where, however, only the statutory headquarters of the company are established in a Member State, activities of such a company should have effective and sustained links with the economy of the Member State.

CHAPTER III

PROVISIONS FOR SECTORS OF ECONOMIC ACTIVITY GOVERNED BY SPECIAL MEASURES WHERE SUCH ACTIVITY INVOLVES NON-NATIONALS

Article 4

1. In matters of establishment and services, each Member State shall undertake to accord non-discriminatory treatment to nationals and companies of other Member States.
2. If, however, for a specific activity, a Member State is unable to accord such treatment, the Member State must indicate as much, in writing, to the Executive Secretariat. Other Member States shall then not be bound to accord non-discriminatory treatment to nationals and companies of the State concerned.
3. The provisions of this Protocol and measures taken as a result thereof shall be without prejudice to the application of legislative and administrative provisions, which provide a special treatment for non-nationals and are justified by exigencies of public order, security or public health.
4. On the recommendation of the Commission, and on the proposal of the Council, the Authority shall take the relevant decision for the co-operation and harmonisation of legislative,

statutory and administrative provisions which, in at least one Member State, make access to certain non-salaried activities (liberal or non-liberal professionals) and the exercise of such activities subject to protective or restrictive measures.

5. To facilitate access to non-salaried activities and the exercise of such activities, the Commission shall recommend to the Council, which shall propose to the Authority that decisions be taken for the mutual recognition at Community level of diplomas, certificates and other qualifications.

6. Activities which, in a Member State, form part, even occasionally, of the exercise of public authority, shall be exempted from the provisions of this Protocol.

CHAPTER IV

PROVISIONS FOR THE PROMOTION AND PROTECTION OF CAPITAL FOR INVESTMENT OR ALREADY INVESTED IN THE ESTABLISHMENT OF AN ENTERPRISE OR FOR THE PURPOSE OF OBTAINING ACCESS TO ECONOMIC ACTIVITY

Article 5

Member States recognise the importance of capital (whether private or public) in the promotion of development co-operation and the need to take measures conducive to the promotion of such capital. Member States shall therefore undertake, jointly and severally to:

- i. implement measures to encourage participation in development efforts by economic operators who share the objectives and priorities of development co-operation and respect the law and regulations of their respective States ;
- ii. accord fair and equitable treatment to such capital to encourage and create conditions which favour investment of such capital;
- iii. promote effective co-operation between economic operators in their respective States.

Article 6

In order to further accelerate co-operation in their development efforts and increase directly productive investments, Member States shall undertake to adopt provisions which will facilitate and increase the flow of more stable private capital and enhance:

1. co-financing of productive investment with the private sector;
2. the activities and efficacy of domestic financial markets;
3. access to international financial markets.

Article 7

1. Assets and capital invested by ECOWAS citizens who are not nationals of the Member State of establishment, having been duly authorised, shall not be subject to any act of confiscation or expropriation on a discriminatory basis.
2. Any act of confiscation, expropriation or nationalisation must be followed by fair and equitable compensation.

Article 8

In recognition of the intermediary role of national development finance institutions in attracting the flow of capital for development co-operation, Member States shall undertake to encourage, as part of their monetary and financial co-operation, the establishment or enhancement of:

1. national or regional export financing and export credit guarantee institutions ; and
2. regional payment mechanism likely to facilitate and promote intra-community trade.

Article 9

In recognition of the need to promote and protect the investments of each Member State in their respective territories, Member States shall undertake, in their mutual interest, to harmonise their national legislations, administrative rules and regulations governing the promotion and protection of investments in order to establish the foundations for the Community guarantee and insurance systems.

CHAPTER V

PROVISIONS GOVERNING THE MOVEMENT OF CAPITAL FOR INVESTMENT AND CURRENT PAYMENTS

Article 10

1. In transactions involving movement of capital for investment and current payments, Member States shall refrain from taking exchange control measures which are incompatible with their obligations under the terms of this Protocol and earlier Community provisions, particularly Protocol A/P.1/11/84 of the Authority dated 23 November, 1984 and relating to Community Enterprises.
2. However, such obligations shall not prevent Member States from taking the necessary protective measures for reasons of grave economic difficulty or serious balance of payment problems, provided that the decision-making bodies of the Community are given notification thereof.

Article 11

In the case of foreign exchange transactions related to investment and current payments, Member States shall, as far as possible, refrain from taking discriminatory measures and from according preferential treatment to nationals of third countries.

CHAPTER VI

CO-OPERATION BETWEEN RELEVANT ADMINISTRATIONS IN MEMBER STATES

Article 12

The relevant authorities of Member States shall co-operate closely with one another and with the Executive Secretariat in accordance with the general conditions for the realisation of the right of establishment in order to:

1. identify activities in which freedom of establishment has a particularly useful contribution to make to the development of production and trade and to deal with such activities in order of priority;
2. eliminate administrative practices and procedures emanating either from internal legislation or from agreements earlier concluded between Member States which, if maintained, would be an impediment to the freedom of establishment;
3. ensure that salaried workers of one Member State employed in the territory of another Member State shall remain in the said territory to carry out non-salaried activity on condition that they fulfill the requirements binding upon any ECOWAS citizen arriving from his State of origin for the purpose of carrying out a non-salaried activity;
4. make possible the acquisition and exploitation of landed property situated in the territory of one Member State by a national of another Member State, in-so-far as this is permitted by the laws and regulations or the host Member State;
5. eliminate restrictions to freedom of establishment in any sector of activity both in terms of conditions for the establishment of agencies, branches or subsidiaries and in terms of conditions of entry for staff of the parent establishment into the management or supervisory organs of the subsidiaries;
6. co-ordinate as far as necessary with a view to making them equivalent, the guarantees required from companies by Member States to protect the interests of both partners and third parties.

CHAPTER VII

GENERAL AND MISCELLANEOUS PROVISIONS

Article 13

Member States shall undertake to institute all legislative and other measures which are in conformity with their constitutional procedures and necessary for the implementation of the provisions of this Protocol.

Article 14

Any dispute arising between Member States on the interpretation or implementation of this Protocol shall be resolved in accordance with the procedure for settlement of disputes as laid down in Article 56 of the Treaty.

Article 15

1. Any Member State may submit proposals for amendment or revision of this Protocol.
2. All proposals shall be forwarded to the Executive Secretary who shall communicate them to Member States within thirty (30) days of receiving them. Amendments or revisions shall be considered by the Authority at the expiration of the thirty- (30) days-period of notice granted to Member States.

CHAPTER VIII

DEPOSIT AND ENTRY INTO FORCE

Article 16

1. This Supplementary Protocol shall enter into force, provisionally, upon signature by the Heads of State and Government and definitively, upon ratification by at least seven signatory States in accordance with the constitutional procedures of each signatory State.
2. This Supplementary Protocol and all instruments of ratification shall be deposited with the Executive Secretariat, which shall forward certified copies of the instruments of ratification to all Member States and shall notify them of the dates of deposit of the instruments of ratification. This Protocol shall be registered with the Organisation of African Unity, the United Nations Organisation and such Organisations as may be determined by the Authority of Heads of State and Government.
3. This Supplementary Protocol shall be annexed to the Treaty of which it shall form an integral part.

In Faith Whereof, We, Heads of State and Government of the Economic Community of West African States, Have Signed This Protocol.

*

**REVISED TREATY OF CHAGUARAMAS ESTABLISHING THE CARIBBEAN
COMMUNITY INCLUDING THE CARICOM SINGLE MARKET AND ECONOMY***
(THE CARIBBEAN COMMUNITY)

The Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the Caricom Single Market and Economy is intended to update the 1973 Treaty. The Treaty Establishing the Caribbean Community reproduced in volume III of this *Compendium* was signed in Chaguaramas on 4 July 1973. The Revised Treaty has been open for signature to the States Members of the Community, namely Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago since 2001.

**CHAPTER TWO
INSTITUTIONAL ARRANGEMENTS**

**ARTICLE 10
Organs of the Community**

1. The principal Organs of the Community are:
 - (a) the Conference of Heads of Government; and
 - (b) the Community Council of Ministers which shall be the second highest organ.
2. In the performance of their functions, the principal Organs shall be assisted by the following Organs:
 - (a) the Council for Finance and Planning;
 - (b) the Council for Trade and Economic Development; the Council for Foreign and Community Relations, and
 - (c) the Council for Human and Social Development.

* *Source:* The Caribbean Community Secretariat (2001). "Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the Caricom Single Market and Economy"; available on the Internet (<http://www.caricom.org/revisedtreaty.pdf>) and (<http://www.sice.oas.org/trade/caricom/caricind.asp>). [Note added by the editor.]

ARTICLE 11
Composition of the Conference

1. The Conference of Heads of Government shall consist of the Heads of Government of the Member States.
2. Any Head of Government may designate a Minister or other person to represent him or her at any Meeting of the Conference.

ARTICLE 12
Functions and Powers of the Conference

1. The Conference shall be the supreme Organ of the Community.
2. Community. The Conference shall determine and provide policy direction for the
3. Save as otherwise provided in this Treaty, the Conference shall be the final authority for the conclusion of treaties on behalf of the Community and for entering into relationships between the Community and international organizations and States.
4. The Conference may take decisions for the purpose of establishing the financial arrangements necessary to defray the expenses of the Community and shall be the final authority on questions arising in relation to the financial affairs of the Community.
5. Subject to the relevant provisions of this Treaty, the Conference shall exercise such powers as may be conferred on it by or under any Instrument elaborated by or under the auspices of the Community.
6. The Conference may establish such Organs or Bodies as it considers necessary for the achievement of the objectives of the Community.
7. The Conference may issue policy directives of a general or special character to other Organs and Bodies of the Community concerning the policies to be pursued for the achievement of the objectives of the Community and effect shall be given to such directives.
8. Notwithstanding any other provision of this Treaty, the Conference may consider and resolve disputes between Member States.
9. The Conference may consult with entities within the Caribbean Region or with other organizations and for this purpose may establish such machinery as it considers necessary.
10. Subject to the provisions of this Chapter, the Conference shall regulate its own procedure and may decide to admit at its deliberations as observers representatives of non-Member States of the Community and other entities.
11. The Bureau, consisting of the current Chairman and the immediately outgoing and incoming Chairmen of the Conference, shall perform the following functions:
 - (a) initiating proposals for development and approval by the Ministerial Councils as it considers necessary;

- (b) updating the consensus of the Member States on issues falling to be determined by the Conference;
- (c) facilitating implementation of Community decisions, both at the regional and local levels, in an expeditious and informed manner;
- (d) providing guidance to the Secretariat on policy issues.

ARTICLE 13
The Community Council of Ministers

1. The Community Council shall consist of Ministers responsible for Community Affairs and any other Minister designated by the Member States in their absolute discretion.
2. The Community Council shall, in accordance with the policy directions established by the Conference, have primary responsibility for the development of Community strategic planning and co-ordination in the areas of economic integration, functional co-operation and external relations.
3. In pursuance of paragraph 2, the Community Council shall:
 - (a) approve the programmes of the Community on the basis, inter alia, of proposals emanating from other Community Organs;
 - (b) subject to paragraph 5 of Article 20, amend proposals developed by the Ministerial Councils or request them to develop proposals for the achievement of Community objectives, and have responsibility for promoting and monitoring the implementation of Community decisions in the Member States.
4. Without prejudice to the generality of the foregoing provisions, the Community Council shall:
 - (a) subject to paragraph 4 of Article 12, examine and approve the Community budget;
 - (b) mobilise and allocate resources for the implementation of Community plans and programmes;
 - (c) establish, subject to the provisions of Article 26, a system of regional and national consultations in order to enhance the decision-making and implementation processes of the Community;
 - (d) promote, enhance, monitor and evaluate regional and national implementation processes and, to this end, establish a regional technical assistance service;
 - (e) function as a preparatory body for meetings of the Conference;
 - (f) ensure the efficient operation and orderly development of the CSME, particularly by seeking to resolve problems arising out of its functioning, taking into account the work and decisions of COTED;

- (g) receive and consider allegations of breaches of obligations arising under this Treaty, including disputes between Organs of the Community;
- (h) on the instructions of the Conference, issue directives to Organs and to the Secretariat aimed at ensuring the timely implementation of Community decisions;
- (i) undertake any additional functions remitted to it by the Conference, arising under this Treaty.

ARTICLE 14

The Council for Finance and Planning

1. The Council for Finance and Planning shall consist of Ministers designated by the Member States. Each Member State shall be entitled to designate alternates to represent it on COFAP.

2. Subject to the relevant provisions of Article 12, COFAP shall have primary responsibility for economic policy co-ordination and financial and monetary integration of Member States and, without prejudice to the generality of the foregoing, shall:

- (a) establish and promote measures for the co-ordination and convergence of national macro-economic policies of the Member States and for the execution of a harmonised policy on foreign investment;
- (b) promote and facilitate the adoption of measures for fiscal and monetary co-operation among the Member States, including the establishment of mechanisms for payment arrangements;
- (c) recommend measures to achieve and maintain fiscal discipline by the Governments of the Member States;
- (d) pending the establishment of a monetary union in the Community, recommend arrangements for the free convertibility of the currencies of the Member States on a reciprocal basis;
- (e) promote the establishment and integration of capital markets in the Community, and
- (f) undertake any additional functions remitted to it by the Conference arising under this Treaty.

3. Under the direction of COFAP, the Committee of Central Bank Governors shall assist in the performance of the functions mentioned in paragraph 2 of this Article.

ARTICLE 15

The Council for Trade and Economic Development

1. The Council for Trade and Economic Development shall consist of Ministers designated by the Member States. Each Member State shall be entitled to designate alternates to represent it on COTED.

2. Subject to the provisions of Article 12, COTED shall be responsible for the promotion of trade and economic development of the Community. In particular, COTED shall:

- (a) promote the development and oversee the operation of the CSME;
- (b) evaluate, promote and establish measures to enhance production, quality control and marketing of industrial and agricultural commodities so as to ensure their international competitiveness;
- (c) establish and promote measures to accelerate structural diversification of industrial and agricultural production on a sustainable and regionally-integrated basis;
- (d) determine and promote measures for the accelerated development and marketing of services;
- (e) promote and develop policies and programmes to facilitate the transportation of people and goods;
- (f) promote measures for the development of energy and natural resources on a sustainable basis;
- (g) establish and promote measures for the accelerated development of science and technology;
- (h) promote and develop policies for the protection of and preservation of the environment and for sustainable development;
- (i) promote and develop, in collaboration with the Council for Foreign and Community Relations, co-ordinated policies for the enhancement of external economic and trade relations of the Community, and
- (j) undertake any additional functions remitted to it by the Conference, arising under this Treaty.

ARTICLE 16

The Council for Foreign and Community Relations

1. The Council for Foreign and Community Relations shall consist of Ministers Responsible for the Foreign Affairs of Member States. Each Member State shall be entitled to designate an alternate to represent it on COFCOR.

2. Subject to the provisions of Article 12, COFCOR shall be responsible for determining relations between the Community and international organisations and Third States.

3. Without prejudice to the generality of paragraph 2, COFCOR shall:

- (a) promote the development of friendly and mutually beneficial relations among the Member States;

- (b) establish measures to co-ordinate the foreign policies of the Member States of the Community, including proposals for joint representation, and seek to ensure, as far as practicable, the adoption of Community positions on major hemispheric and international issues;
 - (c) co-ordinate the positions of the Member States in inter- governmental organisations in whose activities such States participate;
 - (d) collaborate with COTED in promoting and developing co-ordinated policies for the enhancement of external economic and trade relations of the Community;
 - (e) co-ordinate, in close consultation with the Member States, Community policy on International issues with the policies of States in the wider Caribbean Region in order to arrive at common positions in relation to Third States, groups of States and relevant inter-governmental organisations, and
 - (f) undertake any additional functions remitted to it by the Conference, arising under this Treaty.
4. Only Member States possessing the necessary competence with respect to the matters under consideration from time to time may take part in the deliberations of COFCOR.

ARTICLE 17
The Council for Human and Social Development

1. The Council for Human and Social Development shall consist of Ministers designated by the Member States. Each Member State shall be entitled to designate alternates to represent it on COHSOD.
2. Subject to the provisions of Article 12, COHSOD shall be responsible for the promotion of human and social development in the Community. In particular, COHSOD shall:
- (a) promote the improvement of health, including the development and organisation of efficient and affordable health services in the Community;
 - (b) promote the development of education through the efficient organisation of educational and training facilities in the Community, including elementary and advanced vocational training and technical facilities;
 - (c) promote and develop co-ordinated policies and programmes to improve the living and working conditions of workers and take appropriate measures to facilitate the organisation and development of harmonious labour and industrial relations in the Community;
 - (d) establish policies and programmes to promote the development of youth and women in the Community with a view to encouraging and enhancing their participation in social, cultural, political and economic activities;
 - (e) promote and establish programmes for the development of culture and sports in the Community;
-

- (f) promote the development of special focus programmes supportive of the establishment and maintenance of a healthy human environment in the Community, and
- (g) undertake any additional functions remitted to it by the Conference, arising under this Treaty.

3. Without prejudice to the requirements of any other provision of this Treaty, COHSOD shall promote co-operation among the Member States in the areas set out in the schedule hereto in furtherance of the objectives set out in Article 5.

ARTICLE 18 **Bodies of the Community**

1. There are hereby established as Bodies of the Community:
 - (a) the Legal Affairs Committee; and
 - (b) the Budget Committee.
2. The Council of Central Bank Governors shall be redesignated the "Committee of Central Bank Governors" and recognised as a Body of the Community.
3. The Organs of the Community may establish, as they deem necessary, other Bodies of the Community.

ARTICLE 19 **Composition and Functions of Bodies of the Community**

1. The Legal Affairs Committee shall consist of the Ministers responsible for Legal Affairs or Attorneys-General of the Member States, or both, and shall be responsible for providing the Organs and Bodies, either on request or on its own initiative, with advice on treaties, international legal issues, the harmonisation of laws of the Community and other legal matters.
2. The Budget Committee shall consist of senior officials of the Member States who shall perform their functions in a professional capacity. It shall examine the draft budget and work programme of the Community prepared by the Secretariat and submit recommendations to the Community Council.
3. The Committee of Central Bank Governors shall consist of the Governors or Heads of the Central Banks of the Member States or their nominees. The Committee shall make recommendations to COFAP on matters relating to monetary co-operation, payments arrangements, free movement of capital, integration of capital markets, monetary union and any other related matters referred to it by the Organs of the Community.
4. The procedures of Bodies shall be regulated, *mutatis mutandis*, by the relevant provisions of Articles 27 and 29.

ARTICLE 20
Co-operation by Community Organs

1. Community Organs shall co-operate with each other for the achievement of Community objectives.
2. The Bureau and the Community Council may initiate proposals for development by the Ministerial Councils within their respective areas of competence.
3. Where a Community Organ proposes to develop a proposal which is likely to impact importantly on activities within the sphere of competence of another Community Organ, the first-mentioned Community Organ shall transmit such proposal to other interested Community Organs for their consideration and reaction before reaching a final decision on the proposal.
4. Proposals approved by the Ministerial Councils shall be transmitted to the Community Council for prioritisation and resource allocation for their implementation.
5. Proposals approved by the Ministerial Councils and transmitted to the Community Council for prioritisation and resource allocation for implementation may be returned by the Community Council to the originating Organ for modification. The Community Council may modify the proposal to the extent and in the manner agreed with the originating Organ.
6. The Secretariat shall monitor the development and implementation of proposals for the achievement of Community objectives and keep the Community Council informed accordingly.
4. Proposals approved by the Ministerial Councils shall be transmitted to the Community Council for prioritisation and resource allocation for their implementation.
5. Proposals approved by the Ministerial Councils and transmitted to the Community Council for prioritisation and resource allocation for implementation may be returned by the Community Council to the originating Organ for modification. The Community Council may modify the proposal to the extent and in the manner agreed with the originating Organ.
6. The Secretariat shall monitor the development and implementation of proposals for the achievement of Community objectives and keep the Community Council informed accordingly.

ARTICLE 21
Institutions of the Community

The following entities established by or under the auspices of the Community shall be recognised as Institutions of the Community:

- Caribbean Disaster Emergency Response Agency (CDERA);
- Caribbean Meteorological Institute (CMI);
- Caribbean Meteorological Organisation (CMO);
- Caribbean Environmental Health Institute (CEHI);
- Caribbean Agricultural Research and Development Institute (CARDI);
- Caribbean Regional Centre for the Education and Training of Animal Health and Veterinary Public Health Assistants (REPAHA);

- Association of Caribbean Community Parliamentarians (ACCP);
- Caribbean Centre For Developmental Administration (CARICAD);
- Caribbean Food and Nutrition Institute (CFNI),

and such other entities as may be designated by the Conference.

ARTICLE 22

Associate Institutions of the Community

The following entities with which the Community enjoys important functional relationships which contribute to the achievement of the objectives of the Community shall be recognised as Associate Institutions of the Community:

- Caribbean Development Bank (COB);
- University of Guyana (UG);
- University of the West Indies (UWI);
- Caribbean Law Institute / Caribbean Law Institute Centre (CLI/CLIC);
- the Secretariat of the Organisation of Eastern Caribbean States; .

and such other entities as may be designated by the Conference.

ARTICLE 23

The Secretariat

1. The Secretariat shall be the principal administrative organ of the Community. The headquarters of the Community shall be located in Georgetown, Guyana.

2. The Secretariat shall comprise a Secretary-General and such other staff as the Community may require. In the recruitment of such staff, consideration shall be given to securing the highest standards of efficiency, competence and integrity, bearing in mind the principle of equitable geographical distribution.

3. The Secretary-General shall, in addition to the powers conferred by or under the Treaty, be the Chief Executive Officer of the Community and shall act in that capacity at all meetings of Community Organs and Bodies. He shall make an annual report to the Conference on the work of the Community.

4. In the performance of their duties the Secretary-General and staff shall neither seek nor receive instructions from any Government of the Member States or from any other authority external to the Community. They shall refrain from any action which might reflect adversely on their position as officials of the Community and shall be responsible only to the Community.

5. Member States undertake to respect the exclusively international character of the responsibilities of the Secretary-General and staff and shall not seek to influence them in the discharge of their responsibilities.

6. The Conference shall approve the Staff Regulations governing the operations of the Secretariat.

7. The Community Council shall approve the financial regulations governing the operations of the Secretariat.

8 The Secretary-General shall establish Staff Rules for the operation of the Secretariat.

ARTICLE 24 **The Secretary-General**

1. The Secretary-General shall be appointed by the Conference, on the recommendation of the Community Council, for a term not exceeding five years and may be reappointed by the Conference.

2. The Secretary-General shall be the Chief Executive Officer of the Community and shall, subject to the determinations of competent Organs of the Community and in accordance with the financial and other regulations, perform the following functions:

- (a) represent the Community;
- (b) develop, as mandated, decisions of competent Organs of the Community into implementable proposals;
- (c) identify and mobilise, as required, external resources to implement decisions at the regional level and undertake studies and develop decisions on relevant issues into implementable proposals;
- (d) implement, as mandated, decisions at the regional level for the achievement of Community objectives;
- (e) implement, with the consent of the Member State concerned, Community decisions which do not require legislative or administrative action by national authorities;
- (f) monitor and report on, as mandated, implementation of Community decisions; (g) initiate or develop proposals for consideration and decision by competent Organs in order to achieve Community objectives, and (h) such other functions assigned by the Conference or other competent Organs.

ARTICLE 25 **Functions of the Secretariat**

In addition to any functions which may be assigned to it by Organs of the Community, the Secretariat shall:

- (a) service meetings of the Organs and Bodies of the Community and take appropriate follow up action on determinations issuing from such meetings;
- (b) initiate, organise and conduct studies on issues for the achievement of the objectives of the Community;

- (c) provide, on request, services to the Member States of the Community on matters relating to the achievement of its objectives;
- (d) collect, store and disseminate to the Member States of the Community information relevant for the achievement of its objectives;
- (e) assist Community Organs in the development and implementation of proposals and programmes for the achievement of objectives of the Community;
- (f) co-ordinate in relation to the Community the activities of donor agencies, international, regional and national institutions for the achievement of objectives of the Community;
- (g) prepare the draft budget of the Community for examination by the Budget Committee;
- (h) provide, on request, technical assistance to national authorities to facilitate implementation of Community decisions;
- (i) conduct, as mandated, fact-finding assignments in the Member States, and
- (j) initiate or develop proposals for consideration and decision by competent Organs in order to achieve Community objectives.

ARTICLE 26
The Consultative Process

1. In order to enhance the decision-making process in the Community, the Community Council, assisted by the Secretary-General, shall, in collaboration with competent authorities of the Member States, establish and maintain an efficient system of consultations at the national and regional levels.

2. The system of consultations shall be structured to ensure that determinations of Community Organs and the Legal Affairs Committee are adequately informed by relevant information inputs and are reinforced by consultations undertaken at successively lower levels of the decision-making process.

ARTICLE 27
Common Voting Procedures
in Community Organs and Bodies

1. Subject to paragraph 2 of this Article, each Member State represented on Community Organs and Bodies shall have one vote. A simple majority of Member States shall constitute a quorum.

2. Member States, whose contributions to the regular budget of the Community are in arrears for more than two years, shall not have the right to vote except on matters relating to the CSME, but may otherwise participate in the deliberations of Community Organs and Bodies. The Conference may, nevertheless, permit such Member States to vote if it is satisfied that the failure to contribute is due to conditions beyond their control.

3. Decisions on procedural issues in Community Organs shall be reached by a simple majority of Member States.

4. Subject to the agreement of the Conference, a Member State may opt out of obligations arising from the decisions of competent Organs provided that the fundamental objectives of the Community, as laid down in the Treaty, are not prejudiced thereby.

5. Prior to taking decisions on any issue falling to be determined by Community Organs, the Secretariat shall bring to the attention of the meeting the financial implications of such decisions and any other matters which may be relevant.

6. Recommendations of Community Organs shall be made by a two-thirds majority of Member States and shall not be legally binding. Member States omitting to comply with recommendations shall inform the Secretariat in writing within six months stating the reasons for their non-compliance.

7. Subject to the relevant provisions of this Treaty, Community Organs and Bodies shall establish their rules of procedure.

ARTICLE 28 **Voting in the Conference**

1. Save as otherwise provided in this Treaty and subject to paragraph 2 of this Article and the relevant provisions of Article 27, the Conference shall take decisions by an affirmative vote of all its members and such decisions shall be binding.

2. For the purpose of this Article abstentions shall not be construed as impairing the validity of decisions of the Conference provided that the Member States constituting three-quarters of the membership of the Community, vote in favour of such decisions.

3. Omission by a Member State to participate in the vote shall be deemed an abstention within the meaning of paragraph 2 of this Article.

4. Parties to a dispute or against which sanctions are being considered shall not have the right to vote on the issue falling to be determined.

ARTICLE 29 **Voting in the Community Council and Ministerial Councils**

1. Save as otherwise provided in this Treaty and subject to the provisions of this Article and Article 27, the Ministerial Councils shall take decisions by a qualified majority vote and such decisions shall be binding.

2. For the purposes of paragraph 1 of this Article a qualified majority vote means an affirmative vote of the Member States comprising no less than three-quarters of the membership of the Community.

3. Where issues have been determined to be of critical importance to the national well-being of a Member State, in accordance with paragraph 4 of this Article, such decisions shall be reached by an affirmative vote of all Member States.

4. Decisions that an issue is of critical importance to the national well-being of a Member State shall be reached by a two-thirds majority of the Member States.

5. For the purposes of paragraph 3 of this Article abstentions shall not be construed as impairing the validity of decisions required to be reached by unanimity provided that Member States constituting not less than three-quarters of the membership of the Community vote in favour of such decisions.

CHAPTER THREE ESTABLISHMENT, SERVICES, CAPITAL AND MOVEMENT OF COMMUNITY NATIONALS

ARTICLE 30 Scope of Application

1. Save as otherwise provided in this Article and Article 31, the provisions of this Chapter shall apply to the right of establishment, the right to provide services and the right to move capital in the Community.

2. Activities in a Member State involving the exercise of governmental authority shall, in so far as that Member State is concerned, be excluded from the operation of this Chapter.

3. For the purposes of this Chapter, "activities involving the exercise of governmental authority" means activities conducted neither on a commercial basis nor in competition with one or more economic enterprises, and includes:

- (a) activities conducted by a central bank or monetary authority or any other public entity, in pursuit of monetary or exchange rate policies;
- (b) activities forming part of a statutory system of social security or public retirement plans;
- (c) activities forming part of a system of national security or for the establishment or maintenance of public order; and
- (d) other activities conducted by a public entity for the account of or with the guarantee or using financial resources of the government.

ARTICLE 31 Treatment of Monopolies

1. The Member States may determine that the public interest requires the exclusion or restriction of the right of establishment in any industry or in a particular sector of an industry.

2. Where such a determination has been made:

- (a) if the determination results in the continuation or establishment of a government monopoly, the Member State shall adopt appropriate measures to ensure that the monopoly does not discriminate between nationals of Member States, save as

otherwise provided In this Treaty, and is subject to the agreed rules of competition established for Community economic enterprises;

- (b) if the determination results in the continuation or establishment of a private sector monopoly, the Member State shall, subject to the provisions of this Treaty, adopt appropriate measures to ensure that national treatment is accorded to nationals of other Member States in terms of participating in its operations.

ARTICLE 32

Prohibition of New Restrictions on the Right of Establishment

1. The Member States shall not introduce in their territories any new restrictions relating to the right of establishment of nationals of other Member States save as otherwise provided in this Treaty.
2. The Member States shall notify CO TED of existing restrictions on the right of establishment in respect of nationals of other Member States.
3.
 - (1) The right of establishment within the meaning of this Chapter shall include the right to:
 - (a) engage in any non-wage-earning activities of a commercial, industrial, agricultural, professional or artisanal nature;
 - (b) create and manage economic enterprises referred to in paragraph 5(b) of this Article.
 - (2) For the purposes of this Chapter "non-wage earning activities" means activities undertaken by self-employed persons.
4. The Community Council may, with the approval of the Conference and upon the recommendation of COTED or COFAP, as the case may be, enlarge the body of rights provided in paragraph 3 of this Article. The competent Organ shall establish basic criteria for Member States in order to safeguard against manipulation or abuse of such rights so as to gain an unfair advantage against other Member States, for example, in the areas of nationality criteria and in the operation of companies.
5. For the purposes of this Chapter:
 - (a) a person shall be regarded as a national of a Member State if such person -
 - (i) is a citizen of that State;
 - (ii) has a connection with that State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the laws thereof relating to immigration; or
 - (iii) is a company or other legal entity constituted in the Member State in conformity with the laws thereof and which that State regards as

belonging to it, provided that such company or other legal entity has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, within the Community and which is substantially owned and effectively controlled by persons mentioned in sub- paragraphs (i) and (ii) of this paragraph;

- (b) "economic enterprises" includes any type of organisation for the production of or trade in goods or the provision of services (other than a non-profit organisation) owned or controlled by any person or entity mentioned in sub-paragraph (a) of this paragraph;
- (c) a company or other legal entity is:
 - (i) substantially owned if more than 50 per cent of the equity Interest therein is beneficially owned by nationals mentioned in sub-paragraph (a) (i) or (ii) of this paragraph;
 - (ii) effectively controlled if nationals mentioned in sub- paragraph (a) of this paragraph have the power to name a majority of its directors or otherwise legally to direct its actions.

ARTICLE 33 **Removal of Restrictions on the Right of Establishment**

1. Subject to the provisions of Article 221 and Article 222, the Member States shall remove restrictions on the right of establishment of nationals of a Member State in the territory of another Member State.
2. The removal of restrictions on the right of establishment mentioned in paragraph 1 of this Article shall also apply to restrictions on the setting up of agencies, branches or subsidiaries by nationals of a Member State in the territory of another Member State.
3. Subject to the approval of the Conference, COTED, in consultation with COHSOD and COFAP, shall, within one year from the entry into force of this Treaty, establish a programme providing for the removal of restrictions on the right of establishment of nationals of a Member State in the territory of another Member State. The programme shall, *inter alia*:
 - (a) identify the activities in respect of which the right of establishment shall not apply;
 - (b) establish the conditions under which the right of establishment is to be achieved; and
 - (c) set out the conditions, stages and time-frames for the removal of restrictions on the right of establishment.
4. The Community Council may authorise a Member State whose nationals have been aggrieved by the violation of obligations set out in this Article, Article 32, Article 36 and Article 37 to take such measures as may be provided for in this Treaty.

ARTICLE 34
Management of Removal of Restrictions on the Right of Establishment

In performing its tasks set out in Article 33, COTED shall, inter alia:

- (a) accord priority to the removal of restrictions on activities in respect of which the right of establishment encourages the development of:
 - (i) the production of trade in goods;
 - (ii) the provision of services, which generate foreign exchange earnings;
- (b) require the Member States to remove administrative practices and procedures, the maintenance of which impede the exercise of the right of establishment;
- (c) require the Member States to remove all restrictions on the movement of managerial, technical and supervisory staff of economic enterprises and on establishing agencies, branches and subsidiaries of companies and other entities established in the Community;
- (d) establish measures to ensure the removal of restrictions on the right of establishment in respect of activities accorded priority treatment pursuant to paragraph (a) of this Article as they relate to:
 - (i) the establishment, in the territories of the Member States, of agencies, branches or subsidiaries belonging to an economic enterprise; and
 - (ii) the conditions governing the entry of managerial, technical or supervisory personnel employed in such agencies, branches and subsidiaries, including the spouses and immediate dependent family members of such personnel;
- (e) take appropriate measures to ensure close collaboration among competent national authorities in order to improve their knowledge of the particular situation regarding the relevant activities within the Community;
- (f) require the Member States to ensure that nationals of one Member State may have access to land, buildings and other property situated in the territory of another Member State, other than for speculative purposes or for a purpose potentially destabilising to the economy, on a non-discriminatory basis, bearing in mind the importance of agriculture for many national economies;
- (g) ensure concordance in the Member States regarding the protection afforded the interests of partners, members and other persons with financial interests in companies and other entities.

ARTICLE 35

Acceptance of Diplomas, Certificates, and other Evidence of Qualifications

1. COHSOD, in consultation with the competent Organ, shall establish common standards and measures for accreditation or when necessary for the mutual recognition of diplomas, certificates and other evidence of qualifications of the nationals of the Member States in order to facilitate access to, and engagement in, employment and non-wage-earning activities in the Community.
2. The Member States shall establish or employ, as the case may be, appropriate mechanisms to establish common standards to determine equivalency or accord accreditation to diplomas, certificates and other evidence of qualifications secured by nationals of other Member States.
3. COHSOD shall also establish measures for the co-ordination of legislative and administrative requirements of the Member States for the participation of Community nationals in employment and for the conduct of non-wage-earning activities in the Community.

ARTICLE 36

Prohibition of New Restrictions on the Provision of Services

1. The Member States shall not introduce any new restrictions on the provision of services in the Community by nationals of other Member States except as otherwise provided in this Treaty.
2. Without prejudice to the provisions relating to the right of establishment, persons providing services may, in order to provide such services, temporarily engage in approved activities in the Member State where the services are to be provided under the same conditions enjoyed by nationals of that Member State.
3. The Member States shall notify COTED of existing restrictions on the provision of services in respect of nationals of other Member States.
4. For the purposes of this Chapter, "services" means services provided against remuneration other than wages in any approved sector and "the provision of services" means the supply of services:
 - (a) from the territory of one Member State into the territory of another Member State;
 - (b) in the territory of one Member State to the service consumer of another Member State;
 - (c) by a service supplier of one Member State through commercial presence in the territory of another Member State; and
 - (d) by a service supplier of one Member State through the presence of natural persons of a Member State in the territory of another Member State.

ARTICLE 37

Removal of Restrictions on Provision of Services

1. Subject to the provisions of this Treaty, Member States shall abolish discriminatory restrictions on the provision of services within the Community in respect of Community nationals.
2. Subject to the approval of the Conference, COTED, in consultation with other competent Organs, shall, within one year from the entry into force of this Treaty, establish a programme for the removal of restrictions on the provision of such services in the Community by Community nationals.
3. In establishing the programme mentioned in paragraph 2 of this Article, COTED shall:
 - (a) accord priority to services which directly affect production costs or facilitate the trade in goods and services which generate foreign exchange earnings;
 - (b) require the Member States to remove administrative practices and procedures, the maintenance of which impede the exercise of the right to provide services;
 - (c) establish measures to ensure the abolition of restrictions on the right to provide services in respect of activities accorded priority treatment in accordance with sub-paragraph (a) of this paragraph, both in terms of conditions for the provision of services in the territories of Member States as well as the conditions governing the entry of personnel, including their spouses and immediate dependent family members, for the provision of services;
 - (d) take appropriate measures to ensure close collaboration among competent national authorities in order to improve their knowledge of the conditions regarding relevant activities within the Community, and
 - (e) require the Member States to ensure that nationals of one Member State have on a non-discriminatory basis, access to land, buildings and other property situated in the territory of another Member State for purposes directly related to the provision of services, bearing in mind the importance of agriculture for many national economies.

ARTICLE 38

Removal of Restrictions on Banking, Insurance and Other Financial Services

1. Subject to the provisions of this Chapter, the Member States shall remove discriminatory restrictions on banking, insurance and other financial services.
2. Subject to the approval of the Conference, COFAP, in consultation with other competent Organs of the Community, may exclude certain financial services from the operation of the provisions of this Article.

ARTICLE 39

Prohibition of New Restrictions on Movement of Capital and Current Transactions

The Member States shall not introduce any new restrictions on the movement of capital and payments connected with such movement and on current payments and transfers, nor render more restrictive existing regulations except as provided in Article 43 and Article 46.

ARTICLE 40

Removal of Restrictions on Movement of Capital and Current Transactions

1. The Member States shall, in order to ensure the proper functioning of the CSME, remove among themselves:
 - (a) restrictions on the movement of capital payments;
 - (b) restrictions on all current payments including payments for goods and services and other current transfers.
2. COFAP, subject to the approval of the Conference, shall establish in collaboration with the Committee of Central Bank Governors a programme for the removal of the restrictions mentioned in paragraph 1 of this Article.
3. For the purpose of this Article, capital and related payments and transfers include:
 - (a) equity and portfolio investments;
 - (b) short-term bank and credit transactions;
 - (c) payment of interest on loans and amortization;
 - (d) dividends and other income on investments after taxes;
 - (e) repatriation of proceeds from the sale of assets; and
 - (f) other transfers and payments relating to investment flows.

ARTICLE 41

Authorisation to Facilitate Movement of Capital

1. The Member States shall, where necessary and subject to paragraph 2 of this Article, grant the authorisations required for the movement of capital mentioned in Article 40 on a non-discriminatory basis.
2. A loan intended for State purposes may require prior notification to the State in which it is being issued or placed.

ARTICLE 42

Co-ordination of Foreign Exchange Policies and Exchange of Information

1. The Member States shall take such measures as are necessary to coordinate their foreign exchange policies in respect of the movement of capital between them and third States.
2. The Member States shall keep the competent authorities in other Member States informed of significant unusual movements of capital within their knowledge to and from third States.

ARTICLE 43
Restrictions to Safeguard Balance-of-Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof a Member State may, consistently with its international obligations and subject to paragraph 5 of this Article, adopt or maintain restrictions to address such difficulties.
 2. The restrictions which may be adopted or maintained pursuant to paragraph 1 of this Article may include quantitative restrictions on imports, restrictions on the right of establishment, restrictions on the right to provide services, restrictions on the right to move capital or on payments and transfers for transactions connected therewith. However, such restrictions:
 - (a) shall, subject to the provisions of this Treaty, not discriminate among Member States or against Member States in favour of third States;
 - (b) shall at all times seek to minimise damage to the commercial, economic or financial interests of any other Member State;
 - (c) shall not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article; and
 - (d) shall be temporary but in any event not longer than a period of eighteen (18) months and be phased out progressively as the situation described in paragraph 1 improves.
 3. In determining the incidence of such restrictions, the Member State concerned may accord priority to activities which are essential to its economic stability. Such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector in contravention of the relevant provisions of this Treaty, due regard being paid in either case to any special factors which may be affecting the reserves of such Member State or its need for reserves.
 4. Restrictions adopted or maintained pursuant to paragraph 1 of this Article, or any changes therein, shall be promptly notified within three (3) working days to COFAP and to COTED, and, in any event, the Member State concerned shall immediately consult with the competent Organ if and when requested.
 5. COFAP shall establish procedures for periodic consultations including, where possible and desirable, prior consultations with the objective of making recommendations to the Member State concerned for the removal of the restrictions.
 6. The consultations referred to in paragraph 5 of this Article shall:
 - (a) be designed to assist the Member State concerned to overcome its balance-of-payments and external financial difficulties;
 - (b) assess the balance-of-payments situation of the Member State concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia:
-

- (i) the nature and extent of the balance-of-payments and the external financial difficulties;
- (ii) the external economic and trading environment of the Member State applying the restrictions; and
- (iii) alternative corrective measures which may be available.

7. The consultations shall address the compliance of any restrictions with paragraph 2 of this Article and, in particular, the progressive phase-out of restrictions in accordance with paragraph 2(d).

8. In such consultations, all findings of statistical and other facts presented by the Committee of Central Bank Governors relating to foreign exchange, monetary reserves and balance-of-payments, shall be accepted and conclusions shall be based on the assessment by the Committee of the balance-of-payments and the external financial situation of the Member State concerned.

ARTICLE 44

Measures to Facilitate Establishment, Provision of Services and Movement of Capital

1. In order to facilitate the exercise of the rights provided for in this Chapter, COTED and COFAP shall, subject to the approval of the Conference, adopt appropriate measures for:

- (a) the establishment of market intelligence and information systems in the Community;
- (b) harmonised legal and administrative requirements for the operation of partnerships, companies, or other entities;
- (c) abolition of exchange controls in the Community, and free convertibility of the currencies of the Member States;
- (d) the establishment of an integrated capital market in the Community;
- (e) convergence of macro-economic performance and policies through the co-ordination or harmonisation of monetary and fiscal policies, including, in particular, policies relating to interest rates, exchange rates, tax structures and national budgetary deficits;
- (f) the establishment of economical and efficient land, sea and air transport services throughout the Community, and
- (g) the establishment of efficient communication services.

2. COFAP and COTED shall establish a comprehensive set of rules in respect of the areas listed in paragraph 1 of this Article for approval by the Conference.

ARTICLE 45
Movement of Community Nationals

Member States commit themselves to the goal of free movement of their nationals within the Community.

ARTICLE 46
Movement of Skilled Community Nationals

1. Without prejudice to the rights recognised and agreed to be accorded by Member States in Articles 32, 33, 37, 38 and 40 among themselves and to Community nationals, Member States have agreed, and undertake as a first step towards achieving the goal set out in Article 45, to accord to the following categories of Community nationals the right to seek employment in their jurisdictions:

- (a) University graduates;
- (b) media workers;
- (c) sportspersons;
- (d) artistes; and
- (e) musicians,

recognised as such by the competent authorities of the receiving Member States.

2. Member States shall establish appropriate legislative, administrative and procedural arrangements to:

- (a) facilitate the movement of skills within the contemplation of this Article;
- (b) provide for movement of Community nationals into and within their jurisdictions without harassment or the imposition of impediments, including:
 - (i) the elimination of the requirement for passports for Community nationals travelling to their jurisdictions;
 - (ii) the elimination of the requirement for work permits for Community nationals seeking approved employment in their jurisdictions;
 - (iii) establishment of mechanisms for certifying and establishing equivalency of degrees and for accrediting institutions;
 - (iv) harmonisation and transferability of social security benefits.

3. Nothing in this Treaty shall be construed as inhibiting Member States from according Community nationals unrestricted access to, and movement within, their jurisdictions subject to such conditions as the public interest may require.

4. The Conference shall keep the provisions of this Article under review in order to:

- (c) enlarge, as appropriate, the classes of persons entitled to move and work freely in the Community; and

- (d) monitor and secure compliance therewith.

ARTICLE 47
Restrictions to Resolve Difficulties or Hardships
Arising from the Exercise of Rights

1. Where the exercise of rights granted under this Chapter creates serious difficulties in any sector of the economy of a Member State or occasions economic hardships in a region of the Community, a Member State adversely affected thereby may, subject to the provisions of this Article, apply such restrictions on the exercise of the rights as it considers appropriate in order to resolve the difficulties or alleviate the hardships.

2. Where a Member State:

- (a) intends to apply restrictions in accordance with paragraph 1 of this Article, it shall, prior to applying those restrictions, notify the competent Organ of that intention and the nature of the restrictions;
- (b) is unable to comply with sub-paragraph (a) of this paragraph, it shall, upon applying the restrictions in accordance with paragraph 1, immediately notify the competent Organ of the application and nature of the restrictions.

3. The Member State shall, at the time of application of the restrictions mentioned in paragraph 1, submit to COTED or COFAP, as the case may require, a programme setting out the measures to be taken by that Member State to resolve the difficulties or to alleviate the hardships.

4. The competent Organ shall give its earliest consideration to the programme, and:

- (a) make a determination in respect of the appropriateness of the restrictions and whether they shall be continued; and
- (b) where it decides that the restrictions shall be continued, determine:
 - (i) the adequacy of the programme; and
 - (ii) the period for which the restrictions should continue.

The competent Organ, in making a determination under sub-paragraph (b) of this paragraph, may impose such conditions as it considers necessary.

5. Restrictions applied by a Member State pursuant to paragraph 1 of this Article shall be confined to those necessary:

- (a) to resolve the difficulties in the affected sectors;
- (b) to alleviate economic hardships in a particular region.

6. In applying restrictions mentioned in paragraph 5, Member States shall:

- (a) minimise damage to the commercial or economic interests of any other Member

State; or

- (b) prevent the unreasonable exercise of rights granted under this Chapter, the exclusion of which could impair the development of the CSME.

7. The Member States, in applying restrictions pursuant to paragraph 1 of this Article, shall not discriminate and:

- (a) shall progressively relax them as relevant conditions improve;
- (b) may maintain them only to the extent that conditions mentioned in paragraph 1 of this Article continue to justify their application.

8. If COTED or COFAP, as the case may require, is not satisfied that Member States applying restrictions are acting in accordance with the provisions of paragraph 6 of this Article, it may recommend to the Member States adversely affected thereby alternative arrangements to the same end.

ARTICLE 48 **Waiver of Obligations to Grant Rights**

1. Notwithstanding any provision in this Chapter, a Member State may apply to the Community Council for a waiver of the requirement to grant any of the rights mentioned in paragraph 1 of Article 30 in respect of any industry, sector or enterprise.

2. An application for a waiver within the meaning of paragraph 1 of this Article shall:

- (a) be made prior to the establishment of the relevant programme for the removal of restrictions on the rights mentioned in paragraph 1;
- (b) identify the rights in respect of which the waiver is required;
- (c) set out the circumstances justifying the grant of the waiver; and
- (d) indicate the period for which the waiver is required.

3. The Community Council may require the applicant to furnish such additional information as the Council may specify.

4. Where the Community Council is satisfied that the waiver should be granted, it shall grant a waiver for a period not exceeding five years, subject to such terms and conditions as the Community Council may determine.

5. A Member State which has been granted a waiver within the meaning of paragraph 1 of this Article:

- (a) shall not, while the waiver is in force, be entitled to espouse a claim on behalf of its nationals against another Member State in respect of the rights for which the waiver was granted;

- (b) shall:
 - (i) at the termination of the period of the waiver, remove the restrictions and notify the Community Council; or
 - (ii) where the Member State removes the restrictions before the end of the period of the waiver; notify the Community Council accordingly.

ARTICLE 49
Special Provisions for Less Developed Countries

Where in this Chapter; the Member States or competent Organs are required to remove restrictions on the exercise of the rights mentioned in paragraph 1 of Article 30 the special needs and circumstances of the Less Developed Countries shall be taken into account.

ARTICLE 50
Accelerated Implementation

Nothing in this Chapter shall be construed as precluding the Member States from adopting measures to remove restrictions on the right of establishment, the right to provide services or the right to move capital within the Community earlier than is required by these provisions

CHAPTER FOUR
POLICIES FOR SECTORAL DEVELOPMENT

PART ONE
INDUSTRIAL POLICY

ARTICLE 51

Objectives of the Community Industrial Policy

1. The goal of the Community Industrial Policy shall be market-led, internationally competitive and sustainable production of goods and services for the promotion of the Region's economic and social development.
2. In fulfilment of the goal set out in paragraph 1 of this Article, the Community shall pursue the following objectives:
 - (a) cross-border employment of natural resources, human resources, capital, technology and management capabilities for the production of goods and services on a sustainable basis;
 - (b) linkages among economic sectors and enterprises within and among the Member States of the CSME;
 - (c) promotion of regional economic enterprises capable of achieving scales of production to facilitate successful competition in domestic and extra-regional markets;

- (d) establishment of a viable micro and small economic enterprise sector;
- (e) enhanced and diversified production of goods and services for both export and domestic markets;
- (f) sustained public and private sector collaboration in order to secure market-led production of goods and services;
- (g) enhanced industrial production on an environmentally sustainable basis;
- (h) balanced economic and social development in the CSME bearing in mind the special needs of disadvantaged countries, regions and sectors within the meaning of Article I; and
- (i) stable industrial relations.

ARTICLE 52

Implementation of Community Industrial Policy

1. In order to achieve the objectives of its industrial policy, the Community shall promote, *inter alia*:

- (a) the co-ordination of national industrial policies of the Member States;
- (b) the establishment and maintenance of an investment-friendly environment, including a facilitative administrative process;
- (c) the diversification of the products and markets for goods and services with a view to increasing the range and value of exports;
- (d) the organisation and development of product and factor markets;
- (e) the development of required institutional, legal, technical, financial, administrative and other support for the establishment or development of micro and small economic enterprises throughout the Community; and
- (f) in collaboration with the social partners, the advancement of production integration.

2. The Community shall establish a special regime for disadvantaged countries, regions and sectors.

3. COTED shall, in collaboration with competent organs and bodies of the Community and the private sector; establish criteria for according special consideration to particular industries and sectors. Such criteria shall include, in particular; arrangements relating to the prospects of the industry for successful production integration.

4. COTED shall collaborate with competent agencies to assist the Member States in designing appropriate policy instruments to support industries, which may include effective export promotion policies, financing policies, incentives and technology policies.

5. In implementing the Community Industrial Policy, COTED shall have regard to the provisions of this Treaty relating to environmental protection.

6. The Member States undertake to establish and maintain appropriate macro-economic policies supportive of efficient production in the Community. In addition, they shall undertake to put in place arrangements for; inter alia:

- (a) effective payment mechanisms;
- (b) the avoidance of double taxation;
- (c) harmonised legislation in relevant areas;
- (d) the elimination of bureaucratic impediments to deployment of investments in industrial enterprises;
- (e) the improvement of infrastructure and co-operation in the areas of air and maritime transport;
- (f) communications systems.

7. In order to facilitate the implementation of the Community Industrial Policy, COTED shall, in collaboration with competent organs and agencies:

- (a) develop strategies for the development and dissemination of market information and appropriate mechanisms to facilitate acquisition, storage and retrieval of such information;
- (b) promote the establishment and development of capital markets in the Member States; and
- (c) encourage the Member States to establish and develop export markets, especially in non-traditional sectors, through the development of sector-specific incentives and appropriate policy instruments.

8. For the purpose of this Article, "production integration" includes:

- (a) the direct organisation of production in more than one Member State by a single economic enterprise;
- (b) complementary production involving collaboration among several economic enterprises operating in one or more Member States to produce and use required inputs in the production chain; and
- (c) co-operation among economic enterprises in areas such as purchasing, marketing, and research and development.

ARTICLE 53
Micro and Small Economic Enterprise Development

1. The Community shall adopt appropriate policy measures to encourage the development of competitive micro and small economic enterprises in the Member States.
2. Without prejudice to the generality of the foregoing, the competent Organ shall encourage policy initiatives and the establishment of effective programmes to foster a facilitative legal, economic, and administrative framework in the Member States to enhance micro and small economic enterprise development, and shall promote:
 - (a) the development of the capacities of national and regional support agencies for micro and small economic enterprises, including the creation of entrepreneurial centres, by organising technical assistance inclusive of planning, delivery and evaluation of support services to the sector;
 - (b) access to, improvement in the quality of and opportunities for training and education in areas such as technical skills, entrepreneurial competence and business management for micro and small entrepreneurs;
 - (c) access by micro and small economic enterprises to the technical assistance provided by the support agencies;
 - (d) the establishment, development or modernising, as the case may require, of financial institutions to provide, to micro and small economic enterprises, services by way of appropriate and innovative instruments;
 - (e) innovation within the micro and small enterprise sector; and
 - (f) the creation of, and access to, trade and technology information networks.
3. For the purposes of this Article, micro and small economic enterprises shall be economic enterprises within the meaning of Article 32 that satisfy such other criteria as may be determined by the competent authorities.

ARTICLE 54
Development of the Services Sector

1. COTED shall, in collaboration with the appropriate Councils, promote the development of the services sector in the Community in order to stimulate economic complementarities among, and accelerate economic development in, the Member States. In particular; COTED shall promote measures to achieve:
 - (a) increased investment in services;
 - (b) increased volume, value and range of trade in services within the Community and with third States;
 - (c) competitiveness in the modes of delivering services; and
-

- (d) enhanced enterprise and infrastructural development, including that of micro and small service enterprises.
2. In order to achieve the objectives set out in paragraph 1, the Member States shall, through the appropriate Councils, collaborate in:
- (a) designing programmes for the development of human resources to achieve competitiveness in the provision of services;
 - (b) establishing a regime of incentives for the development of and trade in services; and
 - (c) adopting measures to promote the establishment of an appropriate institutional and administrative framework and, in collaboration with the Legal Affairs Committee, promote the establishment of the appropriate legal framework to support the services sector in the Community.
3. In the establishment of programmes and policies of the Community for the development of the services sector; the relevant Councils shall give priority to:
- (a) the efficient provision of infrastructural services including telecommunications, road, air; maritime and riverain transportation, statistical data generation and financial services;
 - (b) the development of capacity-enhancing services including education services, research and development services;
 - (c) the development of services which enhance cross-sector competitiveness;
 - (d) the facilitation of cross-border provision of services which enhance the competitiveness of the services sector; and
 - (e) the development of informatics and other knowledge-based services.

ARTICLE 55

Sustainable Tourism Development

1. The Community shall, in collaboration with competent international organisations, formulate proposals for sustainable tourism development. These proposals shall recognise the importance of the tourism sub-sector to the economic development of the Region, and the need to conserve its cultural and natural resources and to maintain a balance between a healthy ecology and economic development.
2. The programme for sustainable tourism development shall have the following objectives:
- (a) an enhanced image for the Region as a tourist destination;
 - (b) a diversified tourism product of a consistently high quality;
 - (c) an expanded market-base;
-

- (d) education programmes designed to ensure that appropriate practices are pursued by service providers;
- (e) linkages with other sectors in the economy;
- (f) conservation of the natural and cultural resources of the Region through proper management; and
- (g) appropriate infrastructure and other services in support of tourism, considering the natural and social carrying-capacity of the Member States.

**PART THREE
COMMON SUPPORTIVE MEASURES**

**ARTICLE 66
Protection of Intellectual Property Rights**

COTED shall promote the protection of intellectual property rights within the Community by, inter alia:

- (a) the strengthening of regimes for the protection of intellectual property rights and the simplification of registration procedures in the Member States;
- (b) the establishment of a regional administration for intellectual property rights except copyright;
- (c) the identification and establishment, by the Member States of mechanisms to ensure:
 - (i) the use of protected works for the enhanced benefit of the Member States;
 - (ii) the preservation of indigenous Caribbean culture; and
 - (iii) the legal protection of the expressions of folklore, other traditional knowledge and national heritage, particularly of indigenous populations in the Community;
- (d) increased dissemination and use of patent documentation as a source of technological information;
- (e) public education;
- (f) measures to prevent the abuse of intellectual property rights by rights-holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology; and
- (g) participation by the Member States in international regimes for the protection of intellectual property rights.

ARTICLE 69
Harmonisation of Investment Incentives

1. The Member States shall harmonise national incentives to investments in the industrial, agricultural and services sectors.
2. COFAP shall, consistently with relevant international agreements, formulate proposals for the establishment of regimes for the granting of incentives to enterprises in the sectors mentioned in paragraph 1. In particular, such proposals shall accord support for industries considered to be of strategic interest to the Community.
3. In formulating the proposals mentioned in paragraph 2, COFAP shall give due consideration to the peculiarities of the industries concerned and, without prejudice to the generality of the foregoing, may provide for the following:
 - (a) national incentives to investment designed to promote sustainable, export-led industrial and service-oriented development;
 - (b) investment facilitation through the removal of bureaucratic impediments; and
 - (c) non-discrimination in the granting of incentives among Community nationals.

ARTICLE 72
Double Taxation Agreements

1. The Member States shall conclude among themselves an agreement for the avoidance of double taxation in order to facilitate the free movement of capital in the Community.
2. The Member States shall conclude their double taxation agreements with third States on the basis of mutually agreed principles which shall be determined by COFAP.

ARTICLE 73
Industrial Relations

COHSOD shall, in consultation with COTED, formulate proposals and adopt appropriate measures for the promotion of harmonious, stable and enlightened industrial relations in the Community. In formulating such measures and proposals, COHSOD shall, inter alia, promote:

- (a) the objectives of full employment, improved living and working conditions; adequate social security policies and programmes; tripartite consultations among governments, workers' and employers' organisations; and cross-border mobility of labour;
- (b) recognition of the principle of non-discriminatory treatment among Community workers in the pursuit of employment within the Community;
- (c) the establishment and maintenance of effective mechanisms for the enhancement of industrial relations, particularly that of collective bargaining; and

(d) awareness among Community workers and employers that international competitiveness is essential for social and economic development of Member States and requires collaboration of employers and workers for increased production and productivity in Community enterprises.

ARTICLE 77
Special Provisions for Less Developed Countries

Where in this Chapter Member States or competent Organs are required to adopt measures for the achievement of the Community Industrial Policy, the special needs and circumstances of the Less Developed Countries shall be taken into account.

CHAPTER FIVE
TRADE POLICY

PART THREE
SUBSIDIES

ARTICLE 96
Determination of a Subsidy

For the purpose of this Part, a subsidy shall be deemed to exist if there is a financial contribution by a Government or any public body within the territory of a Member State (hereinafter referred to as "government") where:

- (a) a government practice involves direct transfer of funds (e.g., grants, loans and equity infusion) or potential direct transfer of funds or liabilities (e.g., loan guarantees);
- (b) government revenue that is otherwise due is foregone or not collected (e.g., fiscal incentives, such as tax credits);
- (c) a government purchases goods or provides goods or services other than general infrastructure;
- (d) a government makes payments to a funding mechanism, or directs or entrusts to a private body the conduct of activities mentioned in sub-paragraphs (a), (b) and (c) which are normally conducted by governments; and a benefit is thereby conferred. (e) there is any form of income or price support,

ARTICLE 97
Types of Subsidies

- 1. A subsidy within the meaning of Article 96 shall be categorised as follows:
 - (a) a prohibited subsidy;
 - (b) a subsidy which:
 - (i) causes injury to a domestic industry; or

- (ii) results in nullification or impairment of benefits accruing directly or indirectly to any Member State; or
- (iii) seriously prejudices the interests of any Member State; or
- (c) a subsidy which causes serious adverse effects to a domestic industry of any Member State such as to cause damage which would be difficult to repair:

Provided that the subsidy is specific to an enterprise or industry or group of enterprises or industries within the jurisdiction of the granting Member State.

2. For the purpose of this Chapter a determination of whether a subsidy as defined in Article 92 is specific shall be governed by the following:

- (a) in order to determine whether a subsidy referred to in paragraph 1 of this Article is specific to an enterprise or industry or group of enterprises or industries (referred to in this Part as "certain enterprises, / within the jurisdiction of the granting authority, the following criteria shall apply:
 - (i) where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such a subsidy shall be specific;
 - (ii) where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;
 - (iii) if notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in sub-paragraphs (i) and (ii), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use of certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In applying this sub-paragraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation;
- (b) a subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Part;

- (c) any subsidy falling under the provisions of Article 99 shall be deemed to be specific;
- (d) any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.

ARTICLE 98
Entitlement to Take Action
Against Subsidised Products

1. A Member State may take action against subsidised products where:
 - (a) the products have benefited from a prohibited subsidy;
 - (b) the subsidy is specific and has caused any of the effects referred to in Article 112; and
 - (c) the subsidy is specific and does not conform to the provisions of Article 108.
2. Notwithstanding the provisions of paragraph 1, a Member State shall not take definitive action against products which are believed to be benefitting from subsidies referred to in Article 97 if the Member State aggrieved thereby has not:
 - (a) promulgated legislation to permit the introduction of counter measures or countervailing duties against subsidised imports;
 - (b) consulted with the Member State which is alleged to have introduced or to be maintaining subsidies identified in Article 97;
 - (c) notified COTED of the alleged subsidisation based on preliminary investigations and failure of consultations; and
 - (d) received authorisation from COTED to introduce countervailing duties or countermeasures as a result of a definitive determination of the existence of prohibited subsidies which cause nullification, impairment, serious prejudice or adverse effects caused by subsidisation.
3. Consultations for the purposes of this Part shall follow the procedures set out in Annex II.

ARTICLE 99
Prohibited Subsidies

1. Subject to this Treaty, a Member State shall neither grant nor maintain subsidies referred to in paragraph 2.
2. The following subsidies within the meaning of Article 96 shall be prohibited:
 - (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those listed in Schedule V; and

- (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods. 3. Nothing in this Article shall be construed as applying to agricultural commodities produced in the Community.

ARTICLE 100
Preliminary Investigation of Prohibited Subsidies

1. An application for an investigation may be made in writing by or on behalf of a domestic industry to the competent authority where the industry has reason to believe that a prohibited subsidy referred to in Article 99 has been granted or maintained by another Member State. The authority shall examine the application and determine, on the basis of the facts available, whether to initiate an investigation.
2. An investigation initiated pursuant to paragraph 1 of this Article shall be deemed to be a preliminary investigation. The authority shall give public notice of the preliminary investigation to inform the concerned Member State, other Member States and the interested parties all of whom shall be afforded adequate time to submit information required and to make comments.
3. The authority shall make a preliminary determination whether a prohibited subsidy has been granted or maintained and, where the determination is affirmative, invite the concerned Member States and interested parties to defend their interests.
4. A request for investigation by the domestic industry under this Article or under Article 106 or 112 shall be accompanied by information set out in the *Illustrative List at Annex III (a)*.
5. Wherever the term "domestic industry" is used in this Chapter, it shall mean domestic industry as defined in *Annex I*.

ARTICLE 101
**Request for Consultations Relating
to Prohibited Subsidies**

1. Whenever a Member State has reason to believe, pursuant to Article 99 that a prohibited subsidy has been granted or is maintained by a Member State, the aggrieved or any other Member State may request consultations with the Member State believed to be granting or maintaining the subsidy. The aggrieved Member State shall notify COTED of the request for consultations. A request for consultations shall include a statement of the available evidence with regard to the existence and nature of the alleged prohibited subsidy.
2. Upon receipt of a request for consultations under paragraph 1, the Member State believed to be granting or maintaining the subsidy shall reply within 10 days and shall furnish the relevant information requested and shall promptly enter into consultations which shall be concluded within 30 days of the date of request for such consultations unless the parties agree to extend the consultations to a mutually agreed date. The purpose of the consultations shall be to clarify the facts relating to the existence and type of the alleged subsidy and to arrive at a mutually agreed solution.

ARTICLE 102
Reference to COTED to Investigate
Prohibited Subsidies

1. If no mutually agreed solution is reached at the completion of 30 days from the date of the request for the consultations referred to in Article 101, or at such time as the parties agree, or if the Member State believed to be granting or maintaining the subsidy refuses to co-operate, the Member State requesting consultations or any other Member State interested in such consultations may refer the matter to COTED which shall carry out an investigation to establish whether the subsidy in question is a prohibited subsidy.
2. The referral of the matter to COTED for an investigation shall not prevent the aggrieved Member State from taking, on a provisional basis, which shall not be sooner than 60 days from the date of initiation of investigations under paragraph 1 of Article 103 counter-measures to forestall injury or to prevent further injury to its domestic industry.

ARTICLE 103
Investigation by COTED of
Prohibited Subsidies

1. Whenever COTED decides to carry out an investigation pursuant to Article 102, such an investigation by COTED shall proceed as expeditiously as possible. COTED may appoint competent experts to advise whether the subsidy falls to be classified as a prohibited subsidy, in which case COTED shall set a time limit for the examination of the evidence by the competent experts. COTED shall make its determination and issue its report which shall, unless extenuating circumstances arise, not exceed 90 days from the date of receipt of request for the investigation.
2. The results of an investigation carried out pursuant to Article 102 shall be made available to all Member States for information and to afford the concerned Member States an opportunity to arrive at a mutually agreed solution within 30 days from the date of issue of the report failing which COTED shall adopt the recommendations of the report.
3. If COTED is satisfied, based on the results of the investigation, that the subsidy in question is a prohibited subsidy and that the concerned Member States cannot reach a mutually agreed solution, it shall, subject to Article 104, require the offending Member State to withdraw the subsidy within a specified time-frame. Where the offending Member State fails to comply, COTED shall authorise the aggrieved Member State to take counter-measures on the products which benefit from such a subsidy.

ARTICLE 104
Withdrawal of Prohibited Subsidies

1. Notwithstanding the investigation confirming the existence of a prohibited subsidy in paragraph 3 of Article 103, COTED shall not impose a requirement for the Member States to withdraw such a subsidy sooner than specified in this paragraph as follows:
 - (a) with respect to subsidies contingent upon export performance:
 - (i) the Member States with per capita GNP of less than one thousand United States dollars shall be allowed to maintain such subsidies; and

- (ii) other Member States shall be allowed to maintain such subsidies until 1 January 2003;
 - (b) with respect to subsidies contingent upon the use of domestic over imported inputs, the Member States with per capita GNP of less than one thousand United States dollars shall be allowed to maintain such subsidies until 2003.
2. Whenever the results of an investigation by COTED prove that the alleged subsidy is not a prohibited subsidy, any provisional countervailing measures which might have been imposed shall be promptly withdrawn and any bond or deposit which might have been effected, released or refunded, as the case may be. If the provisional measures referred to in this paragraph have materially retarded the exports of the Member State which was wrongfully alleged to have introduced or maintained prohibited subsidies, COTED shall, upon application from such a Member State, assess the effects of the provisionally applied measures and determine the nature and extent of compensation which is warranted and recommend compensation in accordance with its assessment.
3. From the date of entry into force of this Treaty until the expiration of the dates mentioned in paragraph 1, no provisional measures shall be imposed where it has been determined by preliminary investigations that prohibited subsidies are maintained.

ARTICLE 105
Subsidies Causing Injury, Nullification,
Impairment or Serious Prejudice

A Member State may take action against subsidised imports from any other Member State where it can be established, based on an investigation, that the effect of the subsidy has been:

- (a) injury to its domestic industry;
 - (b) nullification or impairment of benefits which it expects under this Treaty; or
 - (c) serious prejudice to its interests.
2. Serious prejudice shall be deemed to exist in the case where:
- (a) the total ad valorem subsidisation of a product exceeds 5 per cent;
 - (b) subsidies cover operating losses sustained by an industry;
 - (c) subsidies cover operating losses sustained by an enterprise, other than one-time measures which are non-recurrent and cannot be repeated for that enterprise and which are given merely to provide time for the development of long-term solutions and to avoid acute social problems; or
 - (d) subsidies are granted in the form of forgiveness of government-held debt and government grants to cover debt repayment.

3. Notwithstanding the provisions of this Article, serious prejudice shall not be found if the Member State granting the subsidy in question demonstrates that the effect of the subsidy has not been:

- (a) to displace or impede the imports of like products from the Member State exporting to the Member State which has introduced or maintains the subsidy;
- (b) to displace or impede the exports of a like product from the affected exporting Member State into the market of a third Member State;
- (c) a significant price undercutting by the subsidised product as compared with the price of a like product of another Member State in the same market or a significant price suppression or price depression;
- (d) lost sales of another Member State in the same market; or
- (e) an increase in its market share within the CSME.

4. The provisions of this Article shall not apply to Part Three.

ARTICLE 106
**Preliminary Investigation of Subsidies Causing Injury,
Nullification, Impairment or Serious Prejudice**

1. An application for an investigation may be made in writing by or on behalf of a domestic industry to the national authority where the industry has reason to believe that a subsidy referred to in Article 105 has been granted or is maintained by another Member State and has caused injury, or resulted in nullification, impairment or serious prejudice to its interests.

2. An application under paragraph 1 shall include sufficient information about the existence of a subsidy and, if possible, its amount, injury and a causal link between the subsidised products and the alleged injury.

3. An application to initiate an investigation shall be considered to have been made by or on behalf of a domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product by that proportion of the domestic industry expressing support for or opposition to the application. The investigation shall not be initiated where the domestic producers expressly supporting the application account for less than 25 per cent of the total production of the like product produced by the domestic industry.

4. Upon receipt of a request for such an investigation, the authority shall examine the application and determine, on the basis of the facts available, whether to initiate an investigation. If the authority decides to initiate an investigation, it shall issue a public notice to that effect, invite the concerned Member State, other interested Member States and interested parties to submit required information and comments.

5. An investigation initiated pursuant to paragraph 1 shall be deemed to be a preliminary investigation. The authority shall inform the concerned Member State and all interested parties of the results of the investigation.

6. For the purpose of this Part, "like product" shall be interpreted to mean a product which is identical, i. e. , alike in all respects to the product under consideration, or in the absence of such a product, another product, which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

ARTICLE 107

Request for Consultations Relating to Subsidies Causing Injury, Nullification, Impairment or Serious Prejudice

1. Whenever a Member State has reason to believe that a subsidy within the meaning of Article 96 has been granted or is maintained by another Member State, and that imports from such a Member State have resulted in any of the effects mentioned in paragraph 1(b) of Article 97, the first-mentioned Member State may approach the Member State believed to be granting a subsidy with a request for consultations.

2. A request for consultations shall include a statement of available evidence with regard to

- (a) the existence and nature of the subsidy; and
- (b) the injury caused to the domestic industry; or
- (c) the impairment or nullification of benefits of exporting to other Member States in the Community; or
- (d) serious prejudice to its interests.

3. Upon receipt of a request for consultations under paragraph 1, the Member State believed to be granting or maintaining the subsidy shall reply within 10 days, and shall furnish relevant information and enter into consultations within 30 days of the date of the request. The purpose of the consultations shall be to clarify the facts relating to the existence, type and effect of the alleged subsidy and to arrive at a mutually agreed solution.

ARTICLE 108

Reference to COTED to Investigate Subsidies Causing Injury, Nullification, Impairment or Serious Prejudice

1. If no mutually agreed solution is reached at the completion of 60 days from the date of request for consultations, or on a date mutually agreed, the Member State requesting consultations may refer the matter to COTED which shall initiate an investigation, make a determination to resolve the dispute and issue a report within 120 days of the date of the request for an investigation by the aggrieved Member State.

2. A decision by COTED to initiate an investigation shall not prevent the aggrieved Member State from taking, on a provisional basis, countermeasures which shall not be sooner than 60 days from the date of initiation of a preliminary investigation by the national authority to forestall or prevent further adverse effects.

ARTICLE 109
**Investigation by COTED of Subsidies Causing Injury,
Nullification, Impairment or Serious Prejudice**

1. In order to arrive at a determination of the existence, degree and effect of subsidisation, and remedial action which may be taken pursuant to the referral of a complaint of alleged subsidisation mentioned in Article 108, CO TED shall -

- (a) carry out an investigation into the circumstances relating to the alleged grant or maintenance of the subsidy by the offending Member State; the investigation is to be completed within 120 days of the date of receipt of a complaint regarding alleged subsidisation by an offending Member State; and
- (b) upon receipt of the report arising from the investigation, promptly make available the report to the concerned Member States to facilitate consultation and to permit the Member states concerned to arrive at a mutually acceptable solution.

ARTICLE 110
**Consequences of Failure to Remove Subsidies Causing
Injury, Nullification, Impairment or Serious Prejudice**

1. If no mutually acceptable solution is reached within 30 days of the date of issue of the report by COTED, and COTED is satisfied:

- (a) of the existence of a subsidy within the meaning of Article 105; and
- (b) that the subsidy has caused injury to the enterprise in the aggrieved Member State; or
- (c) that the subsidy has impaired or nullified benefits expected of the aggrieved Member State with respect to its exports to the Community; or
- (d) that the effect of the subsidy was to seriously prejudice the interests of the Member State, then in such a case, COTED shall request the Member State which has granted or maintained the subsidy to take appropriate steps to remedy the effects of the subsidy within six months of the date of the issue of the report by COTED.

2. If, at the end of the period of six months allowed by COTED to the Member State granting or maintaining the subsidy to remedy the effects of the subsidy, the Member State fails to comply and in the absence of agreement on compensation COTED shall authorise the aggrieved Member State to impose countervailing duties at a rate equivalent to the amount of subsidisation for such time and under such conditions as COTED may prescribe.

ARTICLE 111
Types of Subsidies Causing Serious Adverse Effects

1. The Member States shall not ordinarily impose or introduce countervailing duties or take countermeasures on products which benefit from:

- (a) subsidies which are not specific within the meaning of Article 97; or
- (b) subsidies which are specific within the meaning of Article 97 but which satisfy all of the conditions set out in this sub-paragraph hereunder:
 - (i) subsidies granted for research activities conducted by enterprises or by higher education or research establishments on a contract basis with firms if the assistance covers not more than 75 per cent of the costs of industrial research or 50 per cent of the costs of pre- competitive development activity and provided that such assistance is limited exclusively to:
 - (aa) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);
 - (bb) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;
 - (cc) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;
 - (dd) additional overhead costs incurred directly as a result of the research activity;
 - (ee) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.
 - (c) subsidies granted to assist disadvantaged regions within the territory of a Member State given pursuant to a general framework of regional development and that are non-specific within eligible regions provided that:
 - (i) each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identify;
 - (ii) the Region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;
 - (iii) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors:
 - (aa) one of either income per capita or household income per capita, or GDP per capita, which must not be above 85 per cent of the average for the territory concerned;
 - (bb) unemployment rate, which must be at least 110 per cent of the average for the territory concerned;

- (d) subsidies granted to assist entities in the adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on enterprises provided that the subsidies
 - (i) are a one-time non-recurring measure; and
 - (ii) are limited to 20 per cent of the cost of adaptation; and
 - (iii) do not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms; and
 - (iv) are directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and do not cover any manufacturing cost savings which may be achieved; and
 - (v) are available to all firms which can adopt the new equipment and/or production processes.
- (e) subsidies granted to assist enterprises to undertake training or retraining of employees, whether or not the enterprise is new, and the upgrading of existing facilities to facilitate transition to competitive status within the Community, provided that such subsidies are not specific.

2. The Member States shall notify COTED of any subsidy mentioned in paragraph 1. Any Member State may request further information regarding a notified subsidy programme and COTED shall review annually all notified subsidies referred to in paragraph 1.

ARTICLE 112

Preliminary Investigation of Subsidies Causing Serious Adverse Effects

1. A domestic industry may submit to the competent authority an application for an investigation to verify that serious adverse effects have been caused by imports which benefit from subsidies referred to in Article 111.

2. Upon receipt of an application for an investigation to verify adverse effects, the authority shall examine the application, and, on the basis of the available facts, determine whether to initiate an investigation.

3. The investigation referred to in paragraph 2 shall be deemed a preliminary investigation. The authority shall give public notice of its decision to initiate a preliminary investigation and the concerned Member State, other interested Member States, and the interested persons shall all be invited to provide relevant information and make comments.

4. The results of the preliminary investigation shall be made available to the concerned Member State, other interested Member States and the interested persons to enable them to defend their interests.

ARTICLE 113
Request for Consultations Relating to Subsidies
Causing Serious Adverse Effects

1. Whenever a Member State has reason to believe that imports from another Member State benefited from subsidies within the meaning of Article 111 and such imports have resulted in serious adverse effects to a domestic industry so as to cause damage which would be difficult to repair, the Member State aggrieved may request consultations with the Member State granting or maintaining the subsidy.
2. The Member State alleged to be granting the subsidy which caused adverse effects shall reply within 10 days of the date of the request for consultations and shall enter into the consultations requested by the aggrieved Member State. If there is no mutual agreement within 60 days of the date of the request for such consultations or on a later date which was mutually agreed or if the Member State refuses to co-operate, the aggrieved Member State may refer the matter to COTED and request COTED to carry out an investigation.

ARTICLE 114
Investigation by COTED of Subsidies
Causing Serious Adverse Effects

1. The referral of the matter to COTED for an investigation shall not prevent the aggrieved Member State from imposing on a provisional basis not sooner than 60 days from the date of initiation of the preliminary investigation referred to in Article 106, countermeasures to forestall or prevent further adverse effects.
2. If COTED is satisfied that the investigation requested is justified, COTED shall carry out the investigation, make a determination and issue a report within 120 days from the date when the request was referred.
3. Where the results of the investigation carried out by COTED demonstrate that the subsidised imports caused serious adverse effects to the domestic industry of the aggrieved Member State requesting the investigation, COTED shall recommend that the offending Member State modify the programme of subsidies in such a way as to remove the adverse effects complained of.

ARTICLE 115
Consequences of Failure to Eliminate or
Establish Adverse Effects of Subsidies

1. If the offending Member State fails to implement the recommendations of COTED within 6 months of the date of issue of the report referred to in paragraph 2 of Article 114, COTED shall authorise the aggrieved Member State to impose appropriate countervailing duties commensurate with the nature and degree of serious adverse effects determined to exist.
2. Whenever the results of an investigation by COTED prove that serious adverse effects have not been caused by subsidised imports referred to in paragraph 1 of Article 111, the Member State alleging that its domestic industry has suffered serious adverse effects shall promptly refund any duties which might have been provisionally imposed and where such provisional duties had materially retarded the exports of the Member State complained against,

CO TED shall, upon application from such State, assess the effects of the provisionally applied duties and determine the nature and extent of compensation which is warranted and require compensation in accordance with its assessment.

ARTICLE 116
Imposition of Provisional Measures
and Countervailing Duties

1. Notwithstanding anything to the contrary in this Chapter; a Member State aggrieved by the application or maintenance of prohibited subsidies or by subsidies which cause injury, or result in nullification, impairment, or serious prejudice, or cause serious adverse effects, as the case may be, shall introduce provisional measures only on the basis of the following rules:

- (a) Provisional measures may be applied only if -
 - (i) a preliminary investigation has been initiated in accordance with the provisions of this Chapter; a public notice has been given to that effect and interested persons have been given adequate opportunities to submit information and make comments;
 - (ii) an affirmative preliminary determination has been made of the existence of a prohibited subsidy, or a subsidy causing injury, nullification, impairment, serious prejudice, or a subsidy causing serious adverse effects, as the case may be;
 - (iii) consultations were requested and undertaken, COTED was notified and requested to investigate and the authorities concerned judge such measures necessary to prevent injury being caused during the investigation;
- (b) Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the subsidisation calculated on a provisional basis;
- (c) Provisional measures shall not be applied sooner than 60 days from the date of initiation of the preliminary investigation;
- (d) The application of provisional measures shall be limited to as short a period as possible, not exceeding 120 days.

2. Where investigations by COTED continue beyond the period allowed for the maintenance of provisional measures under sub-paragraph 1 (d), the Member State imposing the measures may continue with such measures until a definitive determination is made by COTED.

3. The Member States which are parties to an investigation to verify the existence and the effect of alleged subsidisation, may seek or accept, as the case may be, undertakings from the Member State alleged to have granted or to be maintaining a subsidy. Undertakings may take the form of.

- (a) withdrawal, or limiting the amount of the subsidy to such an extent that injury, nullification, impairment, serious prejudice or serious adverse effects, as the case may be, are eliminated; or
- (b) a guarantee from the exporter benefiting from the subsidy to raise his price to such an extent that the injurious effect is eliminated.

4. If a Member State accepts a voluntary guarantee pursuant to sub-paragraph 3(b), then the accepting Member State shall notify COTED and promptly suspend proceedings, and any provisional measures which may have been imposed shall be withdrawn with immediate effect.

5. In the event that investigations to determine subsidisation have been concluded and the evidence proves injury, nullification, impairment or serious prejudice, or serious adverse effects, as the case may be, a Member State may impose countervailing duties retroactively to account for the entire period during which provisional measures have been in force. Such retroactively applied duties shall take into account the definitively assessed countervailing duties and the amount guaranteed by cash deposit or bond and:

- (a) where the definitive countervailing duties are higher than the provisional duties, the difference shall not be collected;
- (b) where the definitive countervailing duties are lower than the provisional duties, the excess of the deposit shall be refunded or the bond released promptly.

6. No Member State shall impose countervailing duties other than provisional countervailing duties without prior authorisation from COTED and the determination and imposition of definitive countervailing duties shall be governed by the relevant provisions of the WTO Agreement on Subsidies and Countervailing Measures.

7. COTED shall keep under review all counter-measures imposed by the Member States and shall ensure that the Member States observe the conditions and timetable for review and withdrawal of counter-measures that it may have authorised.

8. The Member States undertake to co-operate in establishing harmonised legislation and procedures in accordance with the provisions of this Chapter.

**CHAPTER SEVEN
DISADVANTAGED COUNTRIES, REGIONS
AND SECTORS**

**PART THREE
SPECIAL REGIME FOR LESS DEVELOPED COUNTRIES**

**ARTICLE 160
Import Duties**

Where a less developed country has suffered or is likely to suffer loss of revenue as a result of the importation of goods eligible for Community treatment, COTED may, on application made

in that behalf by the less developed country, authorise the imposition of import duties on such goods for such time and on such terms and conditions as COTED may decide.

ARTICLE 161
Community Origin

The Member States agree that in the determination and operation of the criterion of substantial transformation pursuant to Article 84, the special needs of the less developed countries shall be taken into account.

ARTICLE 162
Incentive Regimes

The Member States agree that in the establishment of any programme for incentives in the Community provided for in Article 52 and Article 69, the special needs of the less developed countries shall be taken into account.

ARTICLE 163
The Common External Tariff

The Member States agree that in the implementation of the Common External Tariff provided for in Article 82, the special needs of the less developed countries shall be taken into account.

ARTICLE 164
Promotion of Industrial Development

1. Upon application made in that behalf by the less developed countries, COTED may, if necessary, as a temporary measure in order to promote the development of an industry in any of these States, authorise such States to suspend Community origin treatment to any description of imports eligible therefor on grounds of production in one or more less developed countries.

2. COTED may, in taking decisions pursuant to paragraph 1 of this Article, establish terms and conditions including a phasing-out period during which Member States and the Community shall provide support measures and the industry implement the necessary programmes for achieving competitiveness.

3. The grant of authorisation pursuant to paragraph 1 of this Article shall be by means of a decision supported by the affirmative votes of all the less developed countries and at least two of the more developed countries.

ARTICLE 165
Public Undertakings

Paragraph 1 of Article 94 shall not apply to the less developed countries.

ARTICLE 166
Use of Technological and Research Facilities

The more developed countries undertake to provide opportunities for the use of their technological and research facilities by the less developed countries.

ARTICLE 167
Special Provisions for Belize

Belize shall be allowed to impose import duties or quantitative restrictions on beer and cigarettes produced in the Community for a period ending 31 December 2000

CHAPTER EIGHT
COMPETITION POLICY AND CONSUMER PROTECTION

PART ONE

ARTICLE 168
Scope of Chapter

The rules of competition shall not apply to -

- (a) combinations or activities of employees for their own reasonable protection as employees;
- (b) arrangements for collective bargaining on behalf of employers or employees for the purpose of fixing terms and conditions of employment;
- (c) business conduct within the meaning of Article 177 duly notified to COTED in accordance with Article 170;
- (d) negative clearance rulings within the meaning of Article 180 or exemptions within the meaning of Articles 181 and 183;
- (e) activities of professional associations designed to develop or enforce professional standards of competence reasonably necessary for the protection of the public and approved by the Commission.

ARTICLE 169
Objectives of Community Competition Policy

1. The goal of the Community Competition Policy shall be to ensure that the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct.
2. In fulfilment of the goal set out in paragraph 1 of this Article, the Community shall pursue the following objectives:
 - (a) the promotion and maintenance of competition and enhancement of economic efficiency in production, trade and commerce;
 - (b) subject to this Treaty, the prohibition of anti-competitive business conduct which prevents, restricts or distorts competition or which constitutes the abuse of a dominant position in the market; and

- (c) the promotion of consumer welfare and protection of consumer interests.

ARTICLE 170
Implementation of Community Competition Policy

1. In order to achieve the objectives of the Community Competition Policy,
 - (a) the Community shall:
 - (i) subject to Articles 164, 177, 178 and 179 of this Treaty, establish appropriate norms and institutional arrangements to prohibit and penalise anti-competitive business conduct; and
 - (ii) establish and maintain information systems to enable enterprises and consumers to be kept informed about the operation of markets within the GSME;
 - (b) the Member States shall:
 - (i) take the necessary legislative measures to ensure consistency and compliance with the rules of competition and provide penalties for anti-competitive business conduct;
 - (ii) provide for the dissemination of relevant information to facilitate consumer choice;
 - (iii) establish and maintain institutional arrangements and administrative procedures to enforce competition laws; and
 - (iv) take effective measures to ensure access by nationals of other Member States to competent enforcement authorities including the courts on an equitable, transparent and non-discriminatory basis.
 2. Every Member State shall establish and maintain a national competition authority for the purpose of facilitating the implementation of the rules of competition.
 3. Every Member State shall require its national competition authority to:
 - (a) co-operate with the Commission in achieving compliance with the rules of competition;
 - (b) investigate any allegations of anti-competitive business conduct referred to the authority by the Commission or another Member State;
 - (c) co-operate with other national competition authorities in the detection and prevention of anti-competitive business conduct, and the exchange of information relating to such conduct.
 4. Nothing in this Article shall be construed as requiring a Member State to disclose confidential information, the disclosure of which would be prejudicial to the public interest or to
-

the legitimate commercial interests of enterprises, public or private. Confidential or proprietary information disclosed in the course of an investigation shall be treated on the same basis as that on which it was provided.

5. Within 24 months of the entry into force of this Treaty, the Member States shall notify COTED of existing legislation, agreements and administrative practices inconsistent with the provisions of this Chapter. Within 36 months of entry into force of this Treaty, COTED shall establish a programme providing for the repeal of such legislation, and termination of agreements and administrative practices.

ARTICLE 171 **Establishment of the Competition Commission**

For the purposes of implementation of the Community Competition Policy, there is hereby established a Competition Commission (hereinafter called "the Commission") having the composition, functions and powers hereinafter set forth.

ARTICLE 172 **Composition of the Commission**

1. The Commission shall comprise seven members appointed by the Regional Judicial and Legal Services Commission to serve on the Commission. The Regional Judicial and Legal Services Commission shall appoint a Chairman from among the members so appointed.

2. The Commission shall comprise persons, collectively having expertise or experience in commerce, finance, economics, law, competition policy and practice, international trade and such other areas of expertise or experience as may be necessary.

3. A Commissioner shall be appointed for a term of five years and such appointment may be renewed for a further period of not more than five years as determined by the Regional Judicial and Legal Services Commission.

4. A Commissioner may be removed from office only for inability to perform the functions of his office or for misbehaviour and shall otherwise be subject to the disciplinary procedures of the Regional Judicial and Legal Services Commission.

5. A Commissioner shall be removed only on the vote of the Judicial and Legal Services Commission that represents not less than three-quarters of all the Members of the Commission.

6. A Commissioner may at any time resign the office of Commissioner by writing under his hand addressed to the Chairman of the Judicial and Legal Services Commission.

7. A Commissioner shall not enter upon the duties of the office unless he has taken and subscribed before the Chairman of the Judicial and Legal Services Commission, the Oath of Office set out in the Annex to this Treaty.

8. Notwithstanding the foregoing provisions of this Article, the Conference shall on the recommendation of COTED execute the functions required to be carried out by the Regional Judicial and Legal Services Commission where the Parties to the Agreement Establishing the Caribbean Court of Justice are less than seven.

ARTICLE 173
Functions of the Commission

1. The Commission shall:
 - (a) apply the rules of competition in respect of anti-competitive cross-border business conduct;
 - (b) promote and protect competition in the Community and co-ordinate the implementation of the Community Competition Policy; and
 - (c) perform any other function conferred on it by any competent body of the Community.

2. In discharging the functions set out in paragraph 1, the Commission shall:
 - (a) monitor anti-competitive practices of enterprises operating in the CSME, and investigate and arbitrate cross-border disputes;
 - (b) keep the Community Competition Policy under review and advise and make recommendations to COTED to enhance its effectiveness;
 - (c) promote the establishment of institutions and the development and implementation of harmonised competition laws and practices by the Member States to achieve uniformity in the administration of applicable rules;
 - (d) review the progress made by the Member States in the implementation of the legal and institutional framework for enforcement;
 - (e) co-operate with competent authorities in the Member States;
 - (f) provide support to the Member States in promoting and protecting consumer welfare;
 - (g) facilitate the exchange of relevant information and expertise; and
 - (h) develop and disseminate information about competition policy, and consumer protection policy.

3. The Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its functions to one or more of its members.

ARTICLE 174
Powers of the Commission

1. Subject to Articles 175 and 176, the Commission may, in respect of cross-border transactions or transactions with cross-border effects, monitor, investigate, detect, make determinations or take action to inhibit and penalise enterprises whose business conduct prejudices trade or prevents, restricts or distorts competition within the CSME.

2. The Commission may, in accordance with applicable national laws, in the conduct of its investigations:
 - (a) secure the attendance of any person before it to give evidence;
 - (b) require the discovery or production of any document or part thereof; and
 - (c) take such other action as may be necessary in furtherance of the investigation.
3. The Commission may, on the basis of its investigations, make determinations regarding the compatibility of business conduct with the rules of competition and other related provisions of the Treaty.
4. The Commission shall, to the extent required to remedy or penalise anti-competitive business conduct referred to in Article 177:
 - (a) order the termination or nullification as the case may require, of agreements, conduct, activities or decisions prohibited by Article 170;
 - (b) direct the enterprise to cease and desist from anti-competitive business conduct and to take such steps as are necessary to overcome the effects of abuse of its dominant position in the market, or any other business conduct inconsistent with the principles of fair competition set out in this Chapter;
 - (c) order payment of compensation to persons affected; and
 - (d) impose fines for breaches of the rules of competition.
5. The Commission may enter into such arrangements for the provision of services as may be necessary for the efficient performance of its functions.
6. The Member States shall enact legislation to ensure that determinations of the Commission are enforceable in their jurisdictions.
7. The Commission may establish its own rules of procedure.

ARTICLE 175
Determination of Anti-Competitive Business Conduct:
Procedure of Commission on Request

1. A Member State may request an investigation referred to in paragraph 1 of Article 174 where it has reason to believe that business conduct by an enterprise located in another Member State prejudices trade and prevents, restricts or distorts competition in the territory of the requesting Member State.
2. Where COTED has reason to believe that business conduct by an enterprise in the CSME prejudices trade and prevents, restricts or distorts competition within the CSME and has or is likely to have cross-border effects, COTED may request an investigation referred to in paragraph 1 of Article 174.

3. Requests under paragraphs 1 and 2 shall be in writing and shall disclose sufficient information for the Commission to make a preliminary assessment whether it should proceed with the investigation.
4. Upon receipt of a request mentioned in paragraph 3, the Commission shall consult with the interested parties and shall determine on the basis of such consultations whether:
 - (a) the investigation is within the jurisdiction of the Commission; and
 - (b) the investigation is justified in all the circumstances of the case.
5. The consultations shall be concluded within 30 days of the date of receipt of the request for the investigation, unless the parties agree to continue the consultations for a longer period.
6. Where the Commission decides to conduct the investigation, the Commission shall:
 - (a) notify the interested parties and COTED;
 - (b) complete the investigation within 120 days from the date of receipt of the request for the investigation; and
 - (c) where the circumstances so warrant, extend the time period for completion of the investigation and notify the interested parties.
7. Where the Commission decides to conduct an enquiry following an investigation, the Commission shall afford any party complained of the opportunity to defend its interest.
8. At the conclusion of an enquiry, the Commission shall notify the interested parties of its determination.
9. Where the Commission determines that a party has engaged in anti-competitive business conduct, it shall also require the party to take the action necessary to remove the effects of the anti-competitive business conduct.
10. Where a specific course of action is required under paragraph 9, the enterprise concerned shall take the appropriate course of action within 30 days of the date of notification. If the concerned enterprise cannot comply, it shall notify the Commission and request an extension.
11. If the enterprise cannot comply within the time period specified and fails to inform the Commission, the Commission may apply to the Court for an order.
12. A party which is aggrieved by a determination of the Commission under paragraph 4 of Article 174 in any matter may apply to the Court for a review of that determination.

ARTICLE 176
Determination of Anti-Competitive Business Conduct:
Procedure of Commission Proprio Motu

1. Where the Commission has reason to believe that business conduct by an enterprise in the CSME prejudices trade and prevents, restricts, or distorts competition within the CSME and has
-

cross-border effects, the Commission shall request the national competition authority to undertake a preliminary examination of the business conduct of the enterprise.

2. Where a request is made under paragraph 1, the national competition authority shall examine the matter and report its findings to the Commission within such time as may be determined by the Commission.

3. Where the Commission is not satisfied with the outcome of its request, the Commission may initiate its own preliminary examination into the business conduct of the enterprise referred to in paragraph 1.

4. Where the findings of the preliminary examination under paragraphs 2 and 3 require investigation, the Commission and the Member State concerned shall hold consultations to determine and agree on who should have jurisdiction to investigate.

5. If there is a difference of opinion between the Commission and the Member State regarding the nature and effects of the business conduct or the jurisdiction of the investigating authority, the Commission shall:

- (a) cease any further examination of the matter; and
- (b) refer the matter to COTED for its decision.

6. Nothing in this Article shall prejudice the right of the Member State to initiate proceedings before the Court at any time.

7. Where there is a finding that the Commission has jurisdiction to investigate the matter, the Commission shall follow the procedures set out in paragraphs 5, 6, 7 and 8 of Article 175.

ARTICLE 177

Prohibition of Anti-Competitive Business Conduct

1. A Member State shall, within its jurisdiction, prohibit as being anti-competitive business conduct, the following:

- (a) agreements between enterprises, decisions by associations of enterprises, and concerted practices by enterprises which have as their object or effect the prevention, restriction or distortion of competition within the Community;
- (b) actions by which an enterprise abuses its dominant position within the Community; or
- (c) any other like conduct by enterprises whose object or effect is to frustrate the benefits expected from the establishment of the CSME.

2. Anti-competitive business conduct within the meaning of paragraph 1 includes the following:

- (a) the direct or indirect fixing of purchase or selling prices,

- (b) the limitation or control of production, markets, investment or technical development;
- (c) the artificial dividing up of markets or restriction of supply sources;
- (d) the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing a competitive disadvantage;
- (e) making the conclusion of a contract subject to the acceptance by the other party to the contract of additional obligations which, by their nature or according to commercial practice, have no connection with the subject matter of the contract;
- (f) unauthorised denial of access to networks or essential infrastructure;
- (g) predatory pricing;
- (h) price discrimination;
- (i) loyalty discounts or concessions;
- (j) exclusionary vertical restrictions; and
- (k) bid-rigging.

3. Subject to Article 168, a Member State shall ensure that all agreements and decisions within the meaning of paragraph 1 of this Article shall be null and void within its jurisdiction.

4. An enterprise shall not be treated as engaging in anti-competitive business conduct if it establishes that the activity complained of:

- (a) contributes to:
 - (i) the improvement of production or distribution of goods and services; or
 - (ii) the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- (b) imposes on the enterprises affected only such restrictions as are indispensable to the attainment of the objectives mentioned in sub-paragraph (a); or
- (c) does not afford the enterprise engaged in the activity the possibility of eliminating competition in respect of a substantial part of the market for goods or services concerned.

ARTICLE 178

Determination of Dominant Position

For the purposes of this Chapter:

(a) an enterprise holds a dominant position in a market if by itself or together with an interconnected enterprise, it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors;

(b) any two enterprises shall be treated as interconnected enterprises if one of them is a subsidiary of the other or both of them are subsidiaries of the same parent enterprise.

ARTICLE 179
Abuse of a Dominant Position

1. Subject to paragraph 2 of this Article, an enterprise abuses its dominant position in a market if it prevents, restricts or distorts competition in the market and, in particular but without prejudice to the generality of the foregoing, it:

- (a) restricts the entry of any enterprise into a market;
- (b) prevents or deters any enterprise from engaging in competition in a market;
- (c) eliminates or removes any enterprise from a market;
- (d) directly or indirectly imposes unfair purchase or selling prices or other restrictive practices;
- (e) limits the production of goods or services for a market to the prejudice of consumers;
- (f) as a party to an agreement, makes the conclusion of such agreement subject to acceptance by another party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the agreement;
- (g) engages in any business conduct that results in the exploitation of its customers or suppliers, so as to frustrate the benefits expected from the establishment of the CSME.

2. In determining whether an enterprise has abused its dominant position, consideration shall be given to:

- (a) the relevant market defined in terms of the product and the geographic context;
- (b) the concentration level before and after the relevant activity of the enterprise measured in terms of annual sales volume, the value of assets and the value of the transaction;
- (c) the level of competition among the participants in terms of number of competitors, production capacity and product demand;
- (d) the barriers to entry of competitors; and

- (e) the history of competition and rivalry between participants in the sector of activity.
3. An enterprise shall not be treated as abusing its dominant position if it establishes that:
- (a) its behaviour was directed exclusively to increasing efficiency in the production, provision or distribution of goods or services or to promoting technical or economic progress and that consumers were allowed a fair share of the resulting benefit;
 - (b) it reasonably enforces or seeks to enforce a right under or existing by virtue of a copyright, patent, registered trade mark or design; or
 - (c) the effect or likely effect of its behaviour on the market is the result of superior competitive performance of the enterprise concerned.

ARTICLE 180
Negative Clearance Rulings

1. In any case where a Member State is uncertain whether business conduct is prohibited by paragraph 1 of Article 177, such a Member State may apply to the Commission for a ruling on the matter. If the Commission determines that such conduct is not prohibited by paragraph 1 of Article 177, it shall issue a negative clearance ruling to this effect.
2. Subject to paragraph 3, a negative clearance ruling shall be conclusive of the matters stated therein in any judicial proceedings in the Community.
3. The Court may, on an application of the Commission, review a decision of the Commission where the decision was induced by deceit or improper means.

ARTICLE 181
De Minimis Rule

The Commission may exempt from the provisions of this Part any business conduct referred to it if it considers that the impact of such conduct on competition and trade in the CSME is minimal.

ARTICLE 182
**Powers of the COTED Respecting Community
Competition Policy and Rules**

Subject to this Treaty, COTED shall develop and establish appropriate policies and rules of competition within the Community including special rules for particular sectors.

ARTICLE 183
Exemptions

1. Where COTED determines, pursuant to Article 182, that special rules shall apply to specific sectors of the Community, it may suspend or exclude the application of Article 177 to such sectors pending adoption of the relevant rules.

2. COTEQ may, on its own initiative or pursuant to an application by a Member State in that behalf exclude or suspend the application of Article 177 to any sector or any enterprise or group of enterprises in the public interest.

**PART TWO
CONSUMER PROTECTION**

**ARTICLE 184
Promotion of Consumer Interests in the Community**

1. The Member States shall promote the interests of consumers in the Community by appropriate measures that:
- (a) provide for the production and supply of goods and the provision of services to ensure the protection of life, health and safety of consumers;
 - (b) ensure that goods supplied and services provided in the CSME satisfy regulations, standards, codes and licensing requirements established or approved by competent bodies in the Community;
 - (c) provide, where the regulations, standards, codes and licensing requirements referred to in paragraph (b) do not exist, for their establishment and implementation;
 - (d) encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
 - (e) encourage fair and effective competition in order to provide consumers with greater choice among goods and services at lowest cost;
 - (f) promote the provision of adequate information to consumers to enable the making of informed choices;
 - (g) ensure the availability of adequate information and education programmes for consumers and suppliers;
 - (h) protect consumers by prohibiting discrimination against producers and suppliers of goods produced in the Community and against service providers who are nationals of other Member States of the Community;
 - (i) encourage the development of independent consumer organisations;
 - (j) provide adequate and effective redress for consumers.
2. For the purpose of this Part, "consumer" means any person:
- (a) to whom goods or services are supplied or intended to be supplied in the course of business carried on by a supplier or potential supplier; and
-

- (b) who does not receive the goods or services in the course of a business carried on by him.

ARTICLE 185

Protection of Consumer Interests in the Community

The Member States shall enact harmonised legislation to provide, inter alia:

- (a) for the fundamental terms of a contract and the implied obligations of parties to a contract for the supply of goods or services;
- (b) for the prohibition of the inclusion of unconscionable terms in contracts for the sale and supply of goods or services to consumers;
- (c) for the prohibition of unfair trading practices, particularly such practices relating to misleading or deceptive or fraudulent conduct;
- (d) for the prohibition of production and supply of harmful and defective goods and for the adoption of measures to prevent the supply or sale of such goods including measures requiring the removal of defective goods from the market;
- (e) that the provision of services is in compliance with the applicable regulations, standards, codes and licensing requirements;
- (f) that goods supplied to consumers are labelled in accordance with standards and specifications prescribed by the competent authorities;
- (g) that hazardous or other goods whose distribution and consumption are regulated by law are sold or supplied in accordance with applicable regulations;
- (h) that goods or materials, the production or use of which is likely to result in potentially harmful environmental effects, are labelled and supplied in accordance with applicable standards and regulations;
- (i) that producers and suppliers are liable for defects in goods and for violation of product standards and consumer safety standards which occasion loss or damage to consumers;
- (j) that violations of consumer safety standards by producers or suppliers are appropriately sanctioned and relevant civil or criminal defences to such violations are available to defendants.

ARTICLE 186

Action by the Commission to Provide Support in the Promotion of Consumer Welfare and Protection of Consumer Interests

1. The Commission shall, for the purpose of providing support to the Member States in the enhancement of consumer education and consumer welfare:

- (a) promote in the Community the elaboration, publication and adoption of fair contract terms between suppliers and consumers of goods and services produced or traded in the CSME;

- (b) take such measures as it considers necessary to ensure that the Member States discourage and eliminate unfair trading practices, including misleading or deceptive conduct, false advertising, bait advertising, referral selling and pyramid selling;
- (c) promote in the Member States product safety standards as part of a programme of consumer education in order to assist the consumer to make informed choices concerning the purchase of consumer goods;
- (d) keep under review the carrying on of commercial activities in the Member States which relate to goods supplied to consumers in such States or produced with a view to their being so supplied, or which relate to services supplied for consumers with a view to identifying practices which may adversely affect the interests of consumers;
- (e) educate and guide consumers generally in the practical resolution of their problems and in the best use of their income and credit, using such techniques and means of communications as are available;
- (f) confer, on request, with consumer organisations of the Member States and offer such advice and information as may be appropriate for the resolution of their consumer problems; (g) establish the necessary co-ordination with government agencies and departments for the effective education and guidance of consumers having regard to the programmes, activities and resources of each agency or department;
- (h) conduct research and collect and collate information in respect of matters affecting the interests of consumers;
- (i) compile, evaluate and publicise enactments for the protection of consumers in such States and recommend to COTEO the enactment of legislation considered necessary or desirable for the protection of consumers;
- (j) promote, after consultation with the competent standardising agency and other public and private agencies or organisations, the establishment of quality standards for consumer products;
- (k) promote and monitor, after consultation with relevant agencies and departments of Government, the enforcement of legislation affecting the interests of consumers, including, but not limited to, legislation relating to weights and measures, food and drugs adulteration, the control of standards and price controls;
- (l) make recommendations to COTED for the enactment of legislation by the Member States for the effective enforcement of the rights of consumers.

2. The Commission shall:

- (a) draw to the attention of COTED business conduct by enterprises which impacts adversely on consumer welfare;
-

- (b) collaborate with competent Organs of the Community to promote consumer education and consumer welfare.

*

**ADDITIONAL PROTOCOL TO THE CONVENTION FOR THE PROTECTION OF
INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA
REGARDING SUPERVISORY AUTHORITIES AND TRANSBORDER DATA FLOWS***

(THE COUNCIL OF EUROPE)

The Additional Protocol to the Convention for the Protection of Individuals With Regard to Automatic Processing of Personal Data Regarding Supervisory Authorities and Transborder Data Flows (ETS N° 181) was opened for signature in Strasbourg on 8 November 2001, by the Signatories of the Treaty ETS N° 108 and by the European Communities, and for the accession by the States having acceded to the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal (ETS N°108). Treaty ETS N°108 is reproduced in Volume II of this *Compendium*.

Preamble

The Parties to this additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, opened for signature in Strasbourg on 28 January 1981 (hereafter referred to as "the Convention");

Convinced that supervisory authorities, exercising their functions in complete independence, are an element of the effective protection of individuals with regard to the processing of personal data;

Considering the importance of the flow of information between peoples;

Considering that, with the increase in exchanges of personal data across national borders, it is necessary to ensure the effective protection of human rights and fundamental freedoms, and in particular the right to privacy, in relation to such exchanges of personal data,

Have agreed as follows:

Article 1 – Supervisory authorities

1. Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the measures in its domestic law giving effect to the principles stated in Chapters II and III of the Convention and in this Protocol.

* *Source:* The Council of Europe (2001). "Additional Protocol to the Convention for the Protection of Individuals With Regard to Automatic Processing of Personal Data Regarding Supervisory Authorities and Transborder Data Flows (ETS N° 181)"; available on the web site of the Council of Europe's Treaty Office, at (<http://conventions.coe.int>). [Note added by the editor.]

2. a. To this end, the said authorities shall have, in particular, powers of investigation and intervention, as well as the power to engage in legal proceedings or bring to the attention of the competent judicial authorities violations of provisions of domestic law giving effect to the principles mentioned in paragraph 1 of Article 1 of this Protocol.
- b. Each supervisory authority shall hear claims lodged by any person concerning the protection of his/her rights and fundamental freedoms with regard to the processing of personal data within its competence.
3. The supervisory authorities shall exercise their functions in complete independence.
4. Decisions of the supervisory authorities, which give rise to complaints, may be appealed against through the courts.
5. In accordance with the provisions of Chapter IV, and without prejudice to the provisions of Article 13 of the Convention, the supervisory authorities shall co-operate with one another to the extent necessary for the performance of their duties, in particular by exchanging all useful information.

Article 2 – Transborder flows of personal data to a recipient which is not subject to the jurisdiction of a Party to the Convention

1. Each Party shall provide for the transfer of personal data to a recipient that is subject to the jurisdiction of a State or organisation that is not Party to the Convention only if that State or organisation ensures an adequate level of protection for the intended data transfer.
2. By way of derogation from paragraph 1 of Article 2 of this Protocol, each Party may allow for the transfer of personal data:
 - a. if domestic law provides for it because of :
 - specific interests of the data subject, or
 - legitimate prevailing interests, especially important public interests, or
 - b. if safeguards, which can in particular result from contractual clauses, are provided by the controller responsible for the transfer and are found adequate by the competent authorities according to domestic law.

Article 3 – Final provisions

1. The provisions of Articles 1 and 2 of this Protocol shall be regarded by the Parties as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.
2. This Protocol shall be open for signature by States Signatories to the Convention. After acceding to the Convention under the conditions provided by it, the European Communities may sign this Protocol. This Protocol is subject to ratification, acceptance or approval. A Signatory to this Protocol may not ratify, accept or approve it unless it has previously or simultaneously

ratified, accepted or approved the Convention or has acceded to it. Instruments of ratification, acceptance or approval of this Protocol shall be deposited with the Secretary General of the Council of Europe.

3.
 - a. This Protocol shall enter into force on the first day of the month following the expiry of a period of three months after the date on which five of its Signatories have expressed their consent to be bound by the Protocol in accordance with the provisions of paragraph 2 of Article 3.
 - b. In respect of any Signatory to this Protocol which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiry of a period of three months after the date of deposit of the instrument of ratification, acceptance or approval.
4.
 - a. After the entry into force of this Protocol, any State which has acceded to the Convention may also accede to the Protocol.
 - b. Accession shall be effected by the deposit with the Secretary General of the Council of Europe of an instrument of accession, which shall take effect on the first day of the month following the expiry of a period of three months after the date of its deposit.
5.
 - a. Any Party may at any time denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
 - b. Such denunciation shall become effective on the first day of the month following the expiry of a period of three months after the date of receipt of such notification by the Secretary General.
6. The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the European Communities and any other State which has acceded to this Protocol of:
 - a. any signature;
 - b. the deposit of any instrument of ratification, acceptance or approval;
 - c. any date of entry into force of this Protocol in accordance with Article 3;
 - d. any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 8th day of November 2001, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, the European Communities and any State invited to accede to the Convention.

List of Declarations Made With Respect to Treaty No. 181

Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows

Complete chronology on: 20/02/02

Germany:

Declaration contained in a Note verbale from the Permanent Representation of Germany, dated 5 November 2001, handed to the Secretary General of the Council of Europe at the time of signature of the instrument, on 8 November 2001 - Or. Engl./Germ.

Article 1, paragraph 3, of the Additional Protocol (as well as paragraph 2 of its Preamble) provides that supervisory authorities shall exercise their functions in complete independence.

The Federal Republic of Germany recalls its statement made at the meeting of 6 to 8 June 2000 of the Consultative Committee, set up by virtue of Article 18 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, that the existing practice for supervising data protection in Germany meets the requirements of Article 1, paragraph 3, of the Additional Protocol because the supervisory authorities responsible for data protection - even where they are incorporated in a hierarchical administrative structure - exercise their functions in complete independence.

The preceding statement concerns Article(s): 1

United Kingdom:

Declaration contained in a letter from the Permanent Representative of the United Kingdom, dated 8 November 2001, handed to the Secretary General of the Council of Europe at the time of signature of the instrument, on 8 November 2001 - Or. Engl.

The Government of the United Kingdom declares that the United Kingdom's signature of the Additional Protocol is extended to the Bailiwicks of Jersey and Guernsey and the Isle of Man, being territories for whose international relations the United Kingdom is responsible.

The preceding statement concerns Article(s):

*

CONVENTION ESTABLISHING THE EUROPEAN FREE TRADE ASSOCIATION^{*}
CONSOLIDATED VERSION¹
[excerpts]

(EUROPEAN FREE TRADE ASSOCIATION SECRETARIAT)

The Convention Establishing the European Free Trade Association was originally signed on 4 January 1960. It applies mainly to the relations between Switzerland on the one hand and the other EFTA States on the other. It served for over 30 years as an institutional framework for the co-operation among the EFTA States which, still today, applies mainly to free trade in goods. The EFTA member States, namely Iceland, Liechtenstein, Norway and Switzerland, amended the Convention on 21 June 2001 thereby introducing significant changes and modernizing and bringing it up to a similar level of co-operation as is the cases between the EFTA States and the European Community. The following excerpts are from the Convention as amended in 2001, including Annexes and reservations.

The Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (hereinafter referred to as the "Member States");

...

Resolved to deepen the co-operation instituted within the European Free Trade Association, further facilitating the free movement of goods, aiming at the progressive attainment of free movement of persons and the progressive liberalisation of trade in services and investment, further opening up the public procurement markets in the EFTA States, and providing for the appropriate protection of intellectual property rights, under fair conditions of competition;

Building on their respective rights and obligations under the Agreement establishing the World Trade Organization and other multilateral and bilateral instruments of co-operation;

...

Have agreed as follows:

* *Source:* The European Free Trade Association Secretariat (2001). "Convention establishing the European Free Trade Association ", available on the Internet (<http://secretariat.efta.int/library/legal/vaduz/>). [Note added by the editor.]

¹ This consolidated version of the Convention forms an integral part of the Convention as Annex XX to the Agreement amending the Convention.

CHAPTER I: OBJECTIVES

ARTICLE 2 Objectives

The objectives of the Association shall be

- (a) to promote a continued and balanced strengthening of trade and economic relations between the Member States with fair conditions of competition, and the respect of equivalent rules, within the area of the Association;
- (b) the free trade in goods;
- (c) to progressively liberalise the free movement of persons;
- (d) the progressive liberalisation of trade in services and of investment;
- (e) to provide fair conditions of competition affecting trade between the Member States;
- (f) to open the public procurement markets of the Member States;
- (g) to provide appropriate protection of intellectual property rights, in accordance with the highest international standards.

CHAPTER VI: RULES OF COMPETITION

ARTICLE 18 Competition

1. Member States recognise that the following practices are incompatible with this Convention in so far as they frustrate the benefits arising from this Convention:

- (a) agreements between enterprises, decisions by associations of enterprises and concerted practices between enterprises which have as their object or result the prevention, restriction or distortion of competition;
- (b) abuse by one or more undertakings of a dominant position in the territories of the Member States as a whole or in a substantial part thereof.

2. Should a Member State consider that a given practice is incompatible with this Article, it may ask for consultations in accordance with the procedures set out in Article 47 and take appropriate measures under the conditions set out in paragraph 2 of Article 40 to deal with the difficulties resulting from the practice in question.

CHAPTER VII: PROTECTION OF INTELLECTUAL PROPERTY

ARTICLE 19

1. Member States shall grant and ensure adequate and effective protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement thereof, counterfeiting and piracy, in accordance with the provisions of this Article, Annex J to this Agreement and the international agreements referred to therein.
2. Member States shall accord to each other's nationals treatment no less favourable than that they accord to their own nationals. Exemptions from this obligation must be in accordance with the substantive provisions of Article 3 of the TRIPS Agreement.
3. Member States shall grant to each other's nationals treatment no less favourable than that accorded to nationals of any other State. Exemptions from this obligation must be in accordance with the substantive provisions of the TRIPS Agreement, in particular Articles 4 and 5 thereof.
4. Member States agree, upon request of any Member State, to review the provisions on the protection of intellectual property rights contained in the present Article, with a view to further improve levels of protection and to avoid or remedy trade distortions caused by actual levels of protection of intellectual property rights.

CHAPTER VIII: FREE MOVEMENT OF PERSONS

ARTICLE 20

Movement of persons

1. Freedom of movement of persons shall be secured among Member States in accordance with the provisions set out in Annex K and in the Protocol to Annex K on the free movement of persons between Liechtenstein and Switzerland.
2. The objective of this Article for the benefit of the nationals of the Member States shall be:
 - (a) to accord a right of entry, residence, access to work as employed persons, establishment on a self-employed basis and the right to stay in the territory of the Member States;
 - (b) to facilitate the provision of services in the territory of the Member States, and in particular to liberalise the provision of services of brief duration;
 - (c) to accord a right of entry into, and residence in, the territory of the Member States to persons without an economic activity in the host State;
 - (d) to accord the same living, employment and working conditions as those accorded to nationals.

ARTICLE 21
Coordination of social security systems

In order to provide freedom of movement of persons, the Member States shall make provision, in accordance with Appendix 2 of Annex K and with the Protocol to Annex K on the free movement of persons between Liechtenstein and Switzerland, for the coordination of social security systems with the aim in particular of:

- (a) securing equality of treatment;
- (b) determining the legislation applicable;
- (c) aggregating, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into consideration by the national legislation of the States concerned;
- (d) paying benefits to persons resident in the territories of the Member States;
- (e) fostering mutual administrative assistance and cooperation between authorities and institutions.

ARTICLE 22
Mutual recognition of professional qualifications

In order to make it easier for nationals of the Member States to take up and pursue activities as workers and self-employed persons, the Member States shall take the necessary measures, as contained in Appendix 3 to Annex K and in the Protocol to Annex K on the free movement of persons between Liechtenstein and Switzerland, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications, and the coordination of the provisions laid down by law, regulation or administrative action in the Member States concerning the taking up and pursuit of activities by workers and self-employed persons.

CHAPTER IX: INVESTMENT

SECTION I: ESTABLISHMENT

ARTICLE 23
Principles and scope

1. Within the framework of, and subject to, the provisions of this Convention, there shall be no restrictions on the right of establishment of companies or firms, formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business in the territory of the Member States. This shall also apply to the setting up of agencies, branches or subsidiaries by companies or firms of any Member State established in the territory of any other Member State.

The right of establishment shall include the right to set up, acquire and manage undertakings, in particular companies or firms within the meaning of paragraph 2, under the conditions laid down

for its own undertakings by the law of the Member State where such establishment is effected, subject to the provisions set out hereafter.

2. For the purposes of this Chapter:

- (a) “subsidiary” of a company shall mean a company which is effectively controlled by the first company;
- (b) “companies or firms” shall mean companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making; in order to be considered as a company or firm of a Member State, the company or firm shall have a real and continuous link with the economy in that Member State.

3. Annexes L to O contain specific provisions and exemptions regarding the right of establishment. The Member States shall endeavour to eliminate gradually remaining discriminations, which they may maintain in accordance with Annexes L to O. The Member States agree to review the present provision, including its Annexes, within two years after the entry into force of the Agreement amending the Convention establishing the European Free Trade Association of 21 June 2001 with a view to reducing, and ultimately eliminating, the remaining restrictions.

4. From the date of entry into force of the Agreement amending the Convention establishing the European Free Trade Association of 21 June 2001, neither Member State shall adopt new, or more, discriminatory measures as regards the establishment and operation of companies or firms of another Member State, in comparison with the treatment accorded to its own companies or firms.

5. In sectors covered by an exemption as contained in Annexes L to O, each Member State shall accord to companies or firms of another Member State treatment no less favourable than that accorded to companies or firms of third parties other than the European Community. As regards any new agreements concluded between any Member State and the European Community, the Member States further undertake to extend to each other, on the basis of reciprocity, the benefits of such agreements, subject to a decision by the Council.

6. The right of establishment in the field of road, rail and air transport shall be governed by the provisions of Article 35 and Annexes P and Q, subject to the specific provisions and exemptions set out in Annexes L and M.

7. The right of establishment of natural persons shall be governed by the provisions of Article 20, Annexes K and the Protocol to Annex K on movement of persons between Liechtenstein and Switzerland.

ARTICLE 24

National treatment

1. Within the scope of application of this Chapter, and without prejudice to any special provisions contained herein:

- (a) Member States shall grant treatment no less favourable than that accorded to their own companies or firms;
- (b) each Member State may regulate the establishment and operation of companies or firms on its territory, in so far as these regulations do not discriminate against companies or firms of the other Member States in comparison to its own companies or firms.

2. The provisions of this Article do not preclude the application by a Member State of particular rules concerning the establishment and operation in its territory of branches and agencies of companies of another Member State not incorporated in the territory of the first Member State, which are justified by legal or technical differences between such branches and agencies as compared to branches and agencies of companies incorporated in its territory. The difference in treatment shall not go beyond what is strictly necessary as a result of such legal or technical differences.

ARTICLE 25

Financial market regulation

1. In respect of financial services, this Chapter does not prejudice the right of the Member States to adopt measures necessary for prudential grounds in order to ensure the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed, or to ensure the integrity and stability of the financial system. These measures shall not discriminate against companies or firms of the other Member States in comparison to its own companies or firms.

2. Nothing in this Chapter shall be construed to require a Member State to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

ARTICLE 26

Recognition

1. A Member State may enter into an agreement or arrangement with a particular State providing for the recognition of standards, criteria for authorization, licensing or certification of service suppliers, in which case it shall offer adequate opportunity for any other Member State to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it.

2. Where a Member State accords recognition as provided for in paragraph 1 autonomously, it shall afford adequate opportunity for any other Member State to demonstrate that experience, licences or certifications obtained or requirements met in that other Member State's territory should be recognised.

3. A Member State shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction to establishment in the services sector.

ARTICLE 27
Exceptions

1. The provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that Member State are connected, even occasionally, with the exercise of official authority.
2. The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign companies or firms on grounds of public policy, public security, public health or the environment.
3. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between States where like conditions prevail, or a disguised restriction on trade in services, nothing in this Convention shall be construed to prevent the adoption or enforcement by any Member State of measures:
 - (a) inconsistent with Article 24, provided that the difference in treatment is aimed at ensuring the equitable or effective⁴ imposition or collection of direct taxes in respect of services or service suppliers of other Member States;
 - (b) inconsistent with paragraph 5 of Article 23, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member State is bound.

⁴ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Member State's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member State's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Member State in order to ensure the imposition or collection of taxes of such consumers derived from sources in the Member State's territory; or
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member State's tax base.

Tax terms or concepts in paragraph 3(a) of Article 27 and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member State taking the measure.

SECTION II: CAPITAL MOVEMENTS

ARTICLE 28

1. Within the framework of this Chapter, there shall be no restrictions between the Member States on the movement of capital relating to the establishment in another Member State's territory of a company or firm of that Member State.
2. The movement of capital not relating to establishment between the Member States shall be ensured in accordance with the international agreements to which they are parties.
3. The Member States agree to review the present provision within two years after the entry into force of the Agreement amending the Convention establishing the European Free Trade Association of 21 June 2001 in order to broaden the scope of, and ultimately eliminate the remaining restrictions to, the movement of capital.

CHAPTER X: TRADE IN SERVICES

ARTICLE 29

Principles and scope

1. Within the framework of, and subject to, the provisions of this Convention, there shall be no restrictions on the right to supply services within the territory of the Member States in respect of natural persons, companies or firms of Member States who are established in a Member State other than that of the natural person, company or firm for whom the services are intended.
 2. For the purposes of this Chapter, services shall be considered to be "services" within the meaning of this Convention where they are normally supplied for remuneration
 - (a) from the territory of one Member State into the territory of another Member State;
 - (b) in the territory of a Member State to the service consumer of another Member State in accordance with paragraph 7 below;
 - (c) by service supplier of a Member State, through presence of natural persons of that Member State in the territory of another Member State in accordance with paragraph 7 below.
 3. Annexes L to O contain specific provisions and exemptions regarding the right to supply services. The Member States shall endeavour to eliminate gradually remaining discriminations, which they may maintain in accordance with Annexes L to O. The Member States agree to review the present provision, including its Annexes, within two years after the entry into force of the Agreement amending the Convention establishing the European Free Trade Association of 21 June 2001 with a view to reducing, and ultimately eliminating, the remaining restrictions.
 4. From the date of entry into force of the Agreement amending the Convention establishing the European Free Trade Association of 21 June 2001, neither Member State shall adopt new, or more, discriminatory measures as regards services or service suppliers of another Member State, in comparison with the treatment accorded to its own like services or service suppliers.
-

5. In sectors covered by an exemption as contained in Annexes L to O, each Member State shall accord to services or service suppliers of another Member State treatment no less favourable than that accorded to like services or service suppliers of third parties other than the European Community. As regards any new agreements concluded between any Member State and the European Community, the Member States further undertake to extend to each other, on the basis of reciprocity, the benefits of such agreements, subject to a decision by the Council.

6. The right to supply services in the field of road, rail and air transport shall be governed by the provisions of Article 35 and Annexes P and Q, subject to the specific provisions and exemptions set out in Annex M.

7. The supply or consumption of services by natural persons as provided for in paragraphs 2(b) and (c) shall be governed by the relevant provisions of Article 20, Annex K and the Protocol to Annex K on movement of persons between Liechtenstein and Switzerland, in accordance with the principles set out hereinafter.

ARTICLE 30

National treatment

Within the scope of application of this Chapter, and without prejudice to any special provisions contained herein:

- (a) Member States shall grant treatment no less favourable than that accorded to their own natural persons, companies or firms providing services;
- (b) each Member State may regulate services activities within its territory in so far as these regulations do not discriminate against natural persons, companies or firms of the other Member States in comparison to its own natural persons, companies or firms.

ARTICLE 31

Financial market regulation

1. In respect of financial services, this Chapter does not prejudice the right of the Member States to adopt measures necessary for prudential grounds in order to ensure the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed, or to ensure the integrity and stability of the financial system. These measures shall not discriminate against natural persons, companies or firms of the other Member States in comparison to its own natural persons, companies or firms.

2. Nothing in this Chapter shall be construed to require a Member State to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

ARTICLE 32

Recognition

1. The mutual recognition between the Member States of diplomas, certificates and other evidence of formal qualifications, and the coordination of the provisions laid down by law, regulation or administrative action in the Member States concerning the taking up and pursuit of

activities by natural persons, shall be governed by the relevant provisions of Article 22, Annex K and Appendix 3 thereto and the Protocol to Annex K on movement of persons between Liechtenstein and Switzerland.

2. A Member State may enter into an agreement or arrangement with a particular State providing for the recognition of standards, criteria for authorization, licensing or certification of service suppliers, in which case it shall offer adequate opportunity for any other Member State to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it.

3. Where a Member State accords recognition as provided for in paragraph 2 autonomously, it shall afford adequate opportunity for any other Member State to demonstrate that experience, licences or certifications obtained or requirements met in that other Member State's territory should be recognised.

4. A Member State shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction to trade in services.

ARTICLE 33 **Exceptions**

1. The provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that Member State are connected, even occasionally, with the exercise of official authority.

2. The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment of foreign service suppliers on grounds of public policy, public security, public health or the environment.

3. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between States where like conditions prevail, or a disguised restriction on trade in services, nothing in this Convention shall be construed to prevent the adoption or enforcement by any Member State of measures:

- (a) inconsistent with Article 30, provided that the difference in treatment is aimed at ensuring the equitable or effective⁵ imposition or collection of direct taxes in respect of services or service suppliers of other Member States;

⁵ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Member State's territory; or
 - (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member State's territory; or
 - (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
-

- (b) inconsistent with paragraph 5 of Article 29, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member State is bound.

ARTICLE 34
Public procurement

Nothing in this Chapter shall be construed to impose any obligations with respect to public procurement.

ARTICLE 35
Transport

The Member States shall liberalise the access to each other's transport markets for the carriage of passengers and goods by road, rail and air in accordance with the provisions set out in Annex P and Annex Q respectively.

CHAPTER XII: PUBLIC PROCUREMENT

ARTICLE 37

1. The Member States reaffirm their rights and obligations under the WTO Agreement on Government Procurement (GPA). Under this Convention, the Member States broaden the scope of their commitments under the WTO Government Procurement Agreement with an aim to pursue liberalisation in public procurement markets in accordance with Annex R.
2. To this effect, the Member States shall secure non-discriminative, transparent and reciprocal access to their respective public procurement markets and shall ensure open and effective competition based on equal treatment.

CHAPTER XIII: CURRENT PAYMENTS

ARTICLE 38

Current payments connected with the movement of goods, persons, services or capital as defined in Article 28 between Member States within the framework of the provisions of this Convention shall be free of all restrictions.

-
- (iv) apply to consumers of services supplied in or from the territory of another Member State in order to ensure the imposition or collection of taxes of such consumers derived from sources in the Member State's territory; or
 - (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
 - (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member State's tax base.

Tax terms or concepts in paragraph 3(a) of Article 27 and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member State taking the measure.

CHAPTER XIV: EXCEPTIONS AND SAFEGUARDS

ARTICLE 39 Security exceptions

Nothing in this Convention shall prevent a Member State from taking any measures:

- (a) which it considers necessary to prevent the disclosure of information contrary to its essential security interests;
- (b) which relate to the production of, or trade in, arms, munitions and war materials or other products or services indispensable for defence purposes or to research, development or production indispensable for defence purposes, provided that such measures do not impair the conditions of competition in respect of products or services not intended for specifically military purposes;
- (c) which it considers essential to its own security in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

ARTICLE 40 Safeguard measures

1. If serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising, a Member State may unilaterally take appropriate measures under the conditions and procedures set out in Article 41.
2. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Convention.
3. The safeguard measures shall apply with regard to all Member States.
4. This Article is without prejudice to the application of specific safeguard provisions set out in the Annexes to this Convention or of special safeguard measures in accordance with Article 5 of the WTO Agreement on Agriculture.

ARTICLE 41

1. A Member State which is considering taking safeguard measures under Article 40, shall, without delay, notify the other Member States through the Council and shall provide all relevant information.
2. The Member States shall immediately enter into consultations in the Council with a view to finding a commonly acceptable solution.
3. The Member State concerned may not take safeguard measures until one month has elapsed after the date of notification under paragraph 1, unless the consultation procedure under paragraph 2 has been concluded before the expiration of the stated time limit. When exceptional

circumstances requiring immediate action exclude prior examination, the Member State concerned may apply forthwith the protective measures strictly necessary to remedy the situation.

4. The Member State concerned shall, without delay, notify the measures taken to the Council and shall provide all relevant information.

5. The safeguard measures taken shall be the subject of consultations in the Council every three months from the date of their adoption with a view to their abolition before the date of expiry envisaged, or to the limitation of their scope of application.

Each Member State may at any time request the Council to review such measures.

CHAPTER XVIII: GENERAL PROVISIONS

ARTICLE 49

Obligations under other international agreements

1. Nothing in this Convention shall be regarded as exempting any Member State from obligations which it has undertaken by virtue of agreements with third States or multilateral agreements to which they are parties.

2. This Convention shall be without prejudice to the rules applicable to Member States governed by the Agreement on the European Economic Area, the Nordic cooperation and the regional union between Switzerland and Liechtenstein

ARTICLE 50

Rights and obligations of the Member States

The Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Convention. They shall abstain from any measure which could jeopardize the attainment of the objectives of this Convention.

ARTICLE 51

Transparency

1. The Member States shall publish their laws, or otherwise make publicly available their laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as the international agreements which may affect the operation of this Convention.

2. The Member States shall promptly respond to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1.

ARTICLE 52

Confidentiality

The representatives, delegates and experts of the Member States, as well as officials and other servants acting under this Convention shall be required, even after their duties have ceased, not

to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

ARTICLE 53

Annexes

1. The Annexes, Appendices and Protocols to this Convention shall form an integral part of it.

2. The Annexes to this Convention are the following:

Annex A	on Rules of Origin
Annex B	on mutual administrative assistance in customs matters
Annex C	List of agricultural goods and goods processed from agricultural raw materials referred to in paragraph 1 of Article 8
Annex D	List of tariff concessions to agricultural products
Annex E	Seeds
Annex F	Organic agriculture
Annex G	Sanitary and phytosanitary measures
Annex H	Procedure for the provision of information in the field of technical regulations and of rules on Information Society services
Annex I	Mutual recognition in relation to conformity assessment
Annex J	Intellectual property rights
Annex K	Movement of persons
Annex L	Reservations by Iceland on investment and services
Annex M	Reservations by Liechtenstein on investment and services
Annex N	Reservations by Norway on investment and services
Annex O	Reservations by Switzerland on investment and services
Annex P	Land transport
Annex Q	Air transport
Annex R	Public procurement
Annex S	Organs, committees and other bodies set up by the Council

Annex T Arbitration.

Annex U List of territories to which Article 58 applies.

The Council may decide to amend the provisions to this paragraph.

3. The Council may decide to amend Annexes A, C, H, S and T, as well as the Appendices to Annexes E, F, K, P, Q and R, unless otherwise provided in the Annexes.
4. The Committee established under Annex I may decide to amend Article 4 of that Annex as well as Appendices 1 and 2 thereto. It shall inform the Council of its decision-making.

ARTICLE 54

Ratification

1. This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Government of Sweden, which shall notify all other signatory States.
2. The Government of Norway shall act as Depositary as of 17 November 1995.
3. The Council may decide to amend the provisions of this Article.

ARTICLE 55

Entry into force

This Convention shall enter into force on the deposit of instruments of ratification by all signatory States.

ARTICLE 56

Accession and association

1. Any State may accede to this Convention, provided that the Council decides to approve its accession, on such terms and conditions as may be set out in that decision. The instrument of accession shall be deposited with the Depositary, which shall notify all other Member States. This Convention shall enter into force in relation to an acceding State on the date indicated in that decision.
2. The Council may negotiate an agreement between the Member States and any other State, union of States or international organisation, creating an association embodying such reciprocal rights and obligations, common actions and special procedures as may be appropriate. Such an agreement shall be submitted to the Member States for acceptance and shall enter into force provided that it is accepted by all Member States. Instruments of acceptance shall be deposited with the Depositary, which shall notify all other Member States.
3. Any State acceding to this Convention shall apply to become a party to the free trade agreements between the Member States on the one hand and third states, unions of states or international organisations on the other.

ARTICLE 57
Withdrawal

1. Any Member State may withdraw from this Convention provided that it gives twelve months' notice in writing to the Depositary, which shall notify all other Member States.
2. Before the withdrawal takes effect, the Member States shall agree on appropriate arrangements and equitable cost-sharing relating to the withdrawal.

ARTICLE 58
Territorial application

This Convention shall apply to the territories of the Member States except as provided for in Annex U.

ARTICLE 59
Amendment

Except as otherwise provided for in this Convention, an amendment to the provisions of this Convention shall be subject to a decision of the Council which shall be submitted to the Member States for acceptance in accordance with their internal legal requirements. It shall enter into force, unless otherwise provided, on the first day of the second month following the deposit of the instruments of acceptance by all Member States with the Depositary, which shall notify all other Member States.

ANNEX J TO THE CONVENTION
INTELLECTUAL PROPERTY RIGHTS (ART. 19)

ARTICLE 1
Intellectual property

“Intellectual property” comprises in particular copyright, including computer programmes and databases, as well as neighbouring rights, trademarks for goods and services, geographical indications, including appellations of origin, for goods and services, industrial designs, patents, plant varieties, topographies of integrated circuits, as well as undisclosed information.

ARTICLE 2
International conventions

1. The Member States reaffirm their obligations set out in the international agreements to which they are parties, in particular the following multilateral agreements:
 - WTO Agreement of 15 April 1994 on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement);
 - Paris Convention of 20 March 1883 for the Protection of Industrial Property (Stockholm Act, 1967);

- Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works (Paris Act, 1971); and
- International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention).

2. The Member States which are not parties to one or more of the agreements listed below shall undertake to obtain their adherence to the following multilateral agreements before 1 January 2005:

- the Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs;
- the WIPO Copyright Treaty (Geneva 1996); and
- the WIPO Performances and Phonogram Treaty (Geneva 1996).

3. The Member States agree to promptly hold expert consultations, upon request of any Member State, on activities relating to the identified or to future international conventions on harmonization, administration and enforcement of intellectual property rights and on activities in international organizations, such as the WTO and the World Intellectual Property Organization (WIPO), as well as relations of the Member States with third States on matters concerning intellectual property.

ARTICLE 3

Patents

The Member States shall ensure in their national laws at least the following:

(a) adequate and effective patent protection for inventions in all fields of technology. For Liechtenstein and Switzerland this means protection on a level corresponding to the one in the European Patent Convention of 5 October 1973, as implemented in national law. For Iceland and Norway this means protection on a level corresponding to the one in the Agreement on the European Economic Area of 2 May 1992, as implemented in national law;

(b) an additional term of protection for pharmaceuticals and plant protection products which shall be calculated from the expiry of the maximum term of patent of 20 years for a period equal to the period which elapsed between the filing date of the patent application and the date of the first market authorization of the product, reduced by a period of five years. Such additional protection shall cover a period of five years at the most and shall be granted under the following conditions:

- the product is protected by a patent in force;
- there has been an official marketing authorization procedure for the medicinal or plant protection product;
- the marketing of the patented product has been postponed by administrative procedures regarding authorization of market access, so that the effective use of the patent amounts to less than 15 years;

- the effective protection conferred by the patent and the additional protection shall together not exceed 15 years.

ARTICLE 4 **Designs**

The Member States shall ensure in their national laws adequate and effective protection of industrial designs by providing in particular a period of protection of five years from the date of application with a possibility of renewal for at least four consecutive periods of five years each. The Member States may provide for a shorter period of protection for designs of component parts used for the purpose of the repair of a product.

ARTICLE 5 **Geographical indications**

The Member States shall ensure in their national laws adequate and effective means to protect geographical indications, including appellations of origin, with regard to all products and services.

ARTICLE 6 **Acquisition and maintenance of intellectual property rights**

Where the acquisition of an intellectual property right is subject to the right being granted or registered, the Member States shall ensure that the procedures for grant or registration are of the same level as that provided in the TRIPS Agreement, in particular Article 62.

ARTICLE 7 **Enforcement of intellectual property rights**

The Member States shall provide for enforcement provisions under their national laws of the same level as that provided in the TRIPS Agreement, in particular Articles 41 to 61.

ANNEX L

RESERVATIONS BY ICELAND **(CHAPTER IX – INVESTMENT AND CHAPTER X – TRADE IN SERVICES)**

As of the entry into force of the Agreement amending the Convention establishing the European Free Trade Association of 21 June 2001, Iceland will grant Switzerland treatment identical to that granted to Norway and Liechtenstein pursuant to the Agreement on the European Economic Area.

As regards air transport, foreign investment will continue to be subject to the current Icelandic legislation.

The Member States agree to review the reservation on air transport within two years after the entry into force of the Agreement amending the Convention establishing the European Free Trade Association of 21 June 2001 with the aim of eliminating the remaining restrictions on air transport.

ANNEX M

**RESERVATIONS BY LIECHTENSTEIN
(CHAPTER IX – INVESTMENT AND CHAPTER X – TRADE IN SERVICES)**

The term “unbound” shall mean that Liechtenstein does not commit itself with respect to the specified item.

Sector or subsector	Reservations	Chapter to which reservations apply
I. HORIZONTAL RESERVATIONS		
ALL SECTORS		
<p>The level of commitments in a particular services sector shall not be construed to supersede the level of commitments taken with respect to any other services sector to which such service is an input or to which it is otherwise related. CPC numbers indicated in brackets are references to the UN Provisional Central Product Classification (Statistical Papers Series M No. 77, Provisional Central Product Classification, Department of International Economics and Social Affairs, Statistical Office of the United Nations, New York, 1991).</p>		
<p>Notwithstanding paragraph 4 of Articles 23 and 29, Liechtenstein may incorporate new limitations in sectors that are subject to an “unbound”-reservation to the extent that such limitations do not affect the overall balance of rights and obligations under the present Convention. Liechtenstein shall inform the Council in advance of its intent to introduce such new limitations by written notification. On receiving such written notification, any other Member State may request consultations. Liechtenstein and that Member State shall enter into such consultations. This provision shall be reviewed within two years after the entry into force of the Agreement amending the Convention establishing the European Free Trade Association, with a view to its elimination.</p>		
	Unbound for subsidies, tax incentives and tax credits.	Trade in services and Investment
	Treatment accorded to subsidiaries of third country companies formed in accordance with the law of an EEA Member State and having registered office, central administration or principal place of business within an EEA Member State is not extended to branches or agencies established in an EEA Member State by a third-country company.	Trade in services and Investment
	Treatment less favourable may be accorded to subsidiaries of third countries having only their registered office in the territory of an EEA Member State unless they show that they possess an effective and continuous link with the economy of one of the EEA Member States.	Trade in services and Investment
	The establishment of a commercial presence by a legal entity (including branches) is subject to the requirement that no objection for reasons of national economy	

Sector or subsector	Reservations	Chapter to which reservations apply
	<p>(balanced proportion of national and foreign capital; balanced ratio of foreigners in comparison with the number of resident population; balanced ratio of total number of jobs in the economy in comparison with the number of the resident population; balanced geographic situation; balanced development of the national economy, between and within the sectors) exists.</p> <p>At least one member of the administration of a legal entity authorized to manage and represent it must be a Liechtenstein citizen domiciled in Liechtenstein and in possession of the professional licence to act as a lawyer, legal agent, trustee or auditor, or a government-recognized business qualification. From these obligations are excepted legal entities which on the basis of the law concerning trade have a qualified manager.</p> <p>The law concerning trade stipulates: The establishment of a commercial presence by an individual is subject to the requirement of prior residence during a certain period of time and of permanent domicile in Liechtenstein. He/she must possess sector specific government-recognized professional qualifications. The establishment of a commercial presence by a legal entity (including branches) is subject to the following requirements: At least one of the managers has to fulfil the requirements of prior residence during a certain period of time and of permanent domicile in Liechtenstein. He/She must possess sector specific government-recognized professional qualifications. The majority of the administrators (authorized to manage and represent the juridical person) must be resident in Liechtenstein and have either to be Liechtenstein citizens or have prior residence during a certain period of time in Liechtenstein. The general and the limited partnership have to fulfil the same conditions as corporations with limited liability (juridical person). In addition the majority of the associates have to be Liechtenstein citizens or to have prior residence during a certain period of time in Liechtenstein. The Liechtenstein company law does not prohibit joint stock companies from stipulating in their articles of incorporation the preclusion or limitation of the transfer of registered shares.</p>	
	<p>All acquisitions of real estate are subject to authorization. Such authorization is granted only if an actual and proven requirement for living or business</p>	<p>Investment</p>

Sector or subsector	Reservations	Chapter to which reservations apply
	purposes is given and a certain period of residence has been completed. Non-residents are excluded from the acquisition of real estate.	
II. SECTOR-SPECIFIC RESERVATIONS		
1. BUSINESS SERVICES		
a) Legal services	Unbound except for consultancy on home country law (not Liechtenstein law) and international law. Unbound	Trade in services Investment
b) Accounting, auditing and book-keeping services - Accounting and auditing services, excluding auditing of banks (Part of 8621)	Unbound. Foreign equity ceiling of 49 per cent. Foreign voting rights may not exceed 49 per cent. At least one member of the administration body authorized to manage and represent must be a Liechtenstein citizen domiciled in Liechtenstein, be in possession of the professional licence to act as an auditor and must work full-time for the juridical person. The majority of the members of the administrative body must be in possession of the professional licence to act as an auditor.	Trade in services and Investment
- Auditing services related to banks	Unbound	Trade in services and Investment
c) Taxation services (CPC 863)	Unbound. Foreign equity ceiling of 49 per cent. Foreign voting rights may not exceed 49 per cent. At least one member of the administration body authorized to manage and represent must be a Liechtenstein citizen domiciled in Liechtenstein, be in possession of the professional licence to act as an auditor or trustee and must work full-time for the juridical person.	Investment
e) Engineering services (CPC 8672)	Liechtenstein nationality necessary for survey activities for official public purposes (however, foreign surveyors can work under the responsibility of a licensed Liechtenstein surveyor).	Trade in services and Investment
h) Medical and dental services (CPC 9312)	Unbound	Trade in services and Investment
i) Veterinary surgeons (CPC 932)	Unbound	Trade in services and

Sector or subsector	Reservations	Chapter to which reservations apply
		Investment
j) Services provided by midwives, nurses, physiotherapists and para-medical personnel	Unbound	Trade in services and Investment
k) Other	Unbound	Trade in services and Investment
C. Research and Development Services	Unbound for projects financed in whole or in part by public funds.	Trade in services and Investment
D. Real Estate Services	Unbound	Trade in services and Investment
E. Rental/Leasing without Operators		
a) Relating to ships	Unbound	Trade in services and Investment
e) Other	Unbound	Trade in services and Investment
F. Other Business Services		
a) Advertising services	Unbound for outdoor advertising, advertising for goods subject to import authorization and pharmaceutical products, alcohol, tobacco, toxics, explosives, weapons and ammunition.	Trade in services and Investment
j) Services incidental to energy distribution	Unbound	Trade in services and Investment
k) Placement and supply services of personnel	Unbound	Trade in services and Investment
l) Investigation and security	Unbound	Trade in services and Investment
o) Building cleaning	Unbound for other cleaning services (CPC 87409).	Trade in services and Investment
2. COMMUNICATION SERVICES		
A. Postal services	Unbound	Trade in services and

Sector or subsector	Reservations	Chapter to which reservations apply
		Investment
B. Courier Services	Unbound	Trade in services and Investment
C. Telecommunication services	General condition applicable to all telecommunication sectors: national monopoly on network infrastructure, services have to be provided over the public network or over leased lines; wireless networks subject to licensing, pricing of leased lines not volume-sensitive, connection with the public network possible. Unbound except for electronic mail, voice mail, on-line information and data base retrieval, electronic data interchange (EDI), enhanced/value-added facsimile services, code and protocol conversion, on-line information and/or data processing, videotext, enhanced/value added services based on licensed wireless networks including enhanced/value-added paging services, except for voice transmission.	Trade in services and Investment
D. Audio-visual services	Unbound	Trade in services and Investment
3.CONSTRUCTION AND RELATED ENGINEERING SERVICES	Unbound	Trade in services and Investment
DISTRIBUTION SERVICES services related to goods subject to import authorisation, to pharmaceutical products, toxic, explosives, weapons and ammunition, and precious metals	Unbound	Trade in services and Investment
- retailing services through mobile sales unit	Unbound	Trade in services and Investment
B. Wholesale trade services	Restrictions on sales area.	Investment
C. Retailing services	Restrictions on sales area.	Investment
5. EDUCATIONAL SERVICES		
- Compulsory education services	Unbound	Trade in services and

Sector or subsector	Reservations	Chapter to which reservations apply
(primary & secondary I) - Non-compulsory secondary education services (secondary II), Higher education services, Adult education services, other education services	Foreigners may establish commercial presence only when organized as juridical person according to Liechtenstein law.	Investment Investment
6. ENVIRONMENTAL SERVICES ¹		
B. Refuse Disposal Services (CPC 9402)	Unbound for garbage dump.	Investment
7. FINANCIAL SERVICES		
Commitments on banking, securities and insurance services in accordance with the "GATS Understanding on Commitments in Financial Services" (hereafter "Understanding") and subject to limitations and conditions as contained in Part I (horizontal commitments) and as listed below. It is understood that paragraph B.4 of the Understanding does not impose any obligation to allow non-resident financial services suppliers to solicit business.		
Insurance and Insurance-Related Services	Establishment of a commercial presence is required for the provision of insurance services in Liechtenstein. Residents may not purchase insurance services in the territory of another Member State.	Trade in services
	Permit for establishment of insurance companies from countries other than Liechtenstein is granted only to companies which are supervised by the Swiss insurance supervision authority; To be recognized for participation in the basic health insurance scheme, health insurance suppliers must be organized in the form of mutual associations (Genossenschaft, Verein: Versicherungsverein auf Gegenseitigkeit or Hilfskasse) or foundations (Stiftung); Duty of security for insurance services;	Investment

¹ Nothing in this commitment should be construed to include public work function whether owned and operated by municipalities or the Liechtenstein government or contracted out by them.

Sector or subsector	Reservations	Chapter to which reservations apply
	<p>Economic need test for accident insurance services; Commercial presence does not cover the setting up of representative offices; Domestic legal entities and the branch or agency establishment of foreign legal entities whose managing or representing bodies, such as the board of directors and the administration, are comprised in the main of foreigners or foreign firms, shall appoint in Liechtenstein a Liechtenstein citizen who is permanently resident here either to represent the legal entity towards the authorities as a legal representative or, empowered as an authorized signatory (procurist), to exercise the representation, without the cooperation of others. Before setting up a commercial presence to provide specific classes of insurance services, a foreign insurer must have been authorised to operate in the same classes of insurance in its country of origin for at least three years.</p>	
<p>Banking and Other Financial Services (excluding insurance)</p>	<p>²Participation in settlement and clearing networks is subject to a commercial presence in Liechtenstein. Subvention for house building is only granted to Liechtenstein citizen, which have to take out the loan for the house building at a domestic bank. According to the practice in Liechtenstein, mutual funds (collective investments) have to be marketed through banks having a commercial presence in Liechtenstein. Swiss franc denominated issues can be lead-managed only by a bank having a commercial presence (registered office or branch office) in Liechtenstein.</p>	<p>Trade in services</p>
	<p>Licences granted to banks and financial companies according to the Liechtenstein Banking and Financial Companies Act have to be approved by the Liechtenstein parliament. One member of the board of directors and the administrators must have domicile in Liechtenstein. They must be duly authorized to fully represent their company. Banks and financial companies must be organized in the form of a limited company. Financial institutions other than banks and financial</p>	<p>Investment</p>

² Covered are not only transactions indicated in paragraph B.3 of the 'Understanding' but the whole range of banking and other financial services transactions (excluding insurance).

Sector or subsector	Reservations	Chapter to which reservations apply
	companies according to the Liechtenstein Banking and Companies Act are subject to the following licensing requirements: foreign equity ceiling of 49 per cent; foreign voting rights may not exceed 49 per cent; at least one member of the administrative body authorized to manage and represent must be a Liechtenstein citizen domiciled in Liechtenstein, be in possession of the professional licence to act as an auditor or trustee and must work full-time for the juridical person. Commercial presence of foreign financial institutions is subject to licensing requirements relating to the name of firm, duties toward the Swiss national bank and regulations on financial institutions in the country of origin.	
8. HEALTH RELATED AND SOCIAL SERVICES	Unbound	Trade in services and Investment
9. TOURISM AND TRAVEL RELATED SERVICES		
A. Hotels and Restaurants (includes catering) (CPC 641 - 643)	Licence only granted if need for restaurants exists (assessment of economic needs is based on criteria such as population, degree of built-up area, type of neighbourhood, touristical interests, number of existing restaurants). Passing an examination may be required.	Investment
- catering	Unbound	Trade in services
10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audio-visual services)		
A. Entertainment services	Unbound	Trade in services and Investment
C. Libraries, archives, museums and other cultural services	Unbound	Trade in services and Investment

Sector or subsector	Reservations	Chapter to which reservations apply
11. TRANSPORT SERVICES		
D. Space Transport (CPC 733)	Unbound	Trade in services and Investment
G. Pipeline Transport	Unbound	Trade in services and Investment
12. ENERGY PRODUCTION AND DISTRIBUTION; INSTALLATION OF EQUIPMENT IN THE ENERGY SECTOR	Unbound	Trade in services and Investment

ANNEX N

**RESERVATIONS BY NORWAY
(CHAPTER IX – INVESTMENT AND CHAPTER X – TRADE IN SERVICES)**

The term “unbound” shall mean that Norway does not commit itself with respect to the specified item.

Sector or subsector	Reservations	Chapter to which reservation applies
I. HORIZONTAL RESERVATIONS		
The level of commitments in a particular sector shall not be construed to supersede the level of commitments taken with respect to any other sector to which such activity is an input or to which it is otherwise related. CPC numbers indicated in brackets are references to the UN Provisional Central Product Classification (Statistical Papers Series M No. 77, Provisional Central Product Classification, Department of International Economics and Social Affairs, Statistical Office of the United Nations, New York, 1991).		
All sectors: Company Law	The managing director and at least half of the members of the board of directors of several categories of companies, i.a. joint stock companies, must be domiciled in Norway. This does not apply to citizens of EEA Member States. As a main rule, in order to be considered a Norwegian	Investment

Sector or subsector	Reservations	Chapter to which reservation applies
	group, the parent company must be a Norwegian company. To some extent also foreign parent companies with Norwegian subsidiaries can be considered a group. This applies to a wider extent regarding parent companies from EEA Member States than companies outside the EEA area. A company is to a wider extent permitted to grant credits or pledge security for a parent company from an EEA Member State than for a shareholding company from other states.	
All sectors: Subsidies	Unbound Eligibility for subsidies may be limited to juridical persons established in Norway. Unbound for research and development subsidies.	Trade in services Investment
All sectors: Treatment of branches and agencies	Treatment accorded to subsidiaries of third country companies formed in accordance with the law of an EEA Member State and having their registered office, central administration or principal place of business within an EEA Member State may not be extended to branches or agencies established in an EEA Member State by a third-country company. Treatment less favourable may be accorded to subsidiaries of third-country companies formed in accordance with the law of an EEA Member State having only their registered office in the territory of an EEA Member State unless they show that they possess an effective and continuous link with the economy of one of the EEA Member States.	Investment
II. SECTOR-SPECIFIC RESERVATIONS		
1. BUSINESS SERVICES		
A. Professional services		
Legal services	The advocate is personally responsible for his activities. To have an interest (own shares and/or be a member of the board of the firm) in a firm of Norwegian advocates is only possible when taking active part in the business. Foreign advocates can give advice on foreign law and international law after application. Some restrictions on co-operation with Norwegian advocates as a consequence of legislation on how a firm of Norwegian advocates may be organized.	Investment
b) Accounting, auditing and book-keeping services		

Sector or subsector	Reservations	Chapter to which reservation applies
- Auditing services	Auditors who perform statutory audits must have a permanent place of business in Norway and reside within the European Economic Area. Auditing firms must have a permanent place of business in Norway.	Trade in services and Investment
- Accounting and bookkeeping services	Accounting shall take place in Norway. The King may decide that accounting takes place abroad. ¹ Authorised accountants must have a permanent place of business in Norway, reside within the European Economic Area, and have a minimum of 2 years practice in Norway during the 5 preceding years. The managing director of an accounting firm must be an authorised accountant.	Trade in services
Medical and dental services (CPC 9312)	Unbound Must speak Norwegian and have passed certain national exams in different areas. Foreign exams giving equivalent competence may be recognized.	Trade in services Investment
i) Veterinary services	Unbound	Investment
j) Services provided by midwives, nurses, physiotherapists and para-medical personnel (CPC 93191)	Unbound	Investment
C. Research and development services		
a) R&D on natural science	Unbound	Trade in services and Investment
c) Interdisciplinary R&D services	Unbound	Trade in services and Investment
D. Real Estate Services a) involving own or leased property	Unbound	Trade in services and Investment
E. Rental/Leasing without operators b) relating to aircraft	To be registered in the aircraft register of Norway, the aircraft must be owned either by Norwegian natural persons or by Norwegian juridical persons.	Investment
c) relating to car-hiring	Unbound	Trade in

¹ This requirement continues to apply until changes in the Norwegian Accounting Act come into force.

Sector or subsector	Reservations	Chapter to which reservation applies
(CPC 83101)		services
F. Other business services h) services incidental to mining	Unbound	Trade in services and Investment
j) services incidental to energy distribution	Unbound	Trade in services and Investment
l) investigation and security - security and guarding	The manager must be an EEA-citizen. The members of the board in joint stock companies and partners in other company forms must be EEA-citizens.	Trade in services and Investment
s) convention services	Unbound	Trade in services and Investment
2. COMMUNICATION SERVICES A. Postal services	Unbound	Trade in services and Investment
D. Audiovisual services	Unbound	Trade in services and Investment
DISTRIBUTION SERVICES A. Commission Agents' services	Unbound	Trade in services and Investment
B. Wholesale trade services (import and trade in alcohol, arms, pharmaceuticals, fish and grain)	Unbound	Trade in services and Investment
C. Retailing services services (import and	Unbound	Trade in services and Investment

Sector or subsector	Reservations	Chapter to which reservation applies
trade in pharmaceutical products, alcohol and arms)		
<p>5. EDUCATIONAL SERVICES</p> <p>- Educational services leading to the conferring of State recognized exams and/or degrees</p> <p>A. Primary and lower secondary education services</p> <p>B. Upper secondary education services</p> <p>Higher education services</p> <p>Adult education</p>	<p>Primary and secondary education are public service functions. Authorization may be given to foundations and other legal entities to offer additional parallel or specialized education on a commercial or non-commercial basis. Financial assistance to educational institutions or to students only available for studies at certified establishments.</p>	<p>Trade in services and Investment</p>
<p>6. ENVIRONMENTAL SERVICES²</p> <p>A. Sewage Services (CPC 9401)</p>	<p>Unbound</p>	<p>Trade in services</p>
<p>B. Refuse disposal services (CPC 9402)</p>	<p>For some categories of waste there exists a monopoly situation.</p>	<p>Trade in services and Investment</p>
<p>C. Sanitation and similar services (CPC 9403)</p>	<p>Unbound</p>	<p>Trade in services</p>
<p>D. Other</p> <p>- Noise abatement services (CPC 9405), Nature and landscape protection services (CPC 9406) other environmental protection services (CPC 9409)</p> <p>- Cleaning services of exhaust gases (CPC 9404)</p>	<p>Unbound</p> <p>Government owned monopoly for control services of exhaust-gas from cars and trucks. Such services must be offered on a non-profit basis.</p>	<p>Trade in services</p> <p>Trade in services and Investment</p>
<p>7. FINANCIAL</p>		

² Nothing in this commitment should be construed to include public work function whether owned and operated by municipalities, cantons or federal government or contracted out by them.

Sector or subsector	Reservations	Chapter to which reservation applies
SERVICES	<p>Norway undertakes commitments on financial services in accordance with the “GATS Understanding on Commitments in Financial Services” (hereafter “the Understanding”) and subject to limitations and conditions as contained in Part I (horizontal reservations) and as listed below.</p> <p>It is understood that paragraph B.4 of the Understanding does not impose any obligation to allow non-resident financial service suppliers to solicit business.</p> <p>The following restrictions and limitations apply:</p>	
Insurance and Insurance-Related services	<p>In addition to the services listed in paragraph B.3 (a) of the Understanding, non-resident insurance companies may supply insurance related to offshore exploration activities or insurance contracts regarding domestic companies with an activity of at least 10 man-years or annual sales of at least NOK 50 million.</p> <p>Non-resident insurance companies must supply the services listed above and in paragraph B.3 (a) of the Understanding through an insurance broker authorised in Norway.</p>	Trade in services
	<p>No single or coordinated group of investors may acquire or hold more than 10 per cent of the share capital in a Norwegian insurance company. The Ministry of Finance and Customs may in special circumstances make exemptions from these limitations on single investor ownership.</p> <p>Notwithstanding the foregoing, foreign insurance companies may establish partly or wholly owned subsidiaries in Norway. The other owners of such partly owned subsidiaries must be foreign insurance companies or Norwegian financial institutions.</p> <p>For subsidiaries or branches of financial institutions not incorporated within the European Economic Area, a separation requirement applies on a national treatment basis between life insurance, non-life insurance and credit risk insurance.</p> <p>Insurance companies incorporated in Norway must be organised as joint stock companies or mutual insurance companies. Insurance brokerage firms incorporated in Norway must be organised as joint stock companies.</p> <p>In Norwegian insurance companies, including</p>	Investment

Sector or subsector	Reservations	Chapter to which reservation applies
	<p>subsidiaries of foreign insurance companies, the manager, at least half the members of the board of directors and half the members of the corporate assembly must be permanent residents of Norway. This requirement does not apply to citizens of a State within the European Economic Area when residing in such State. The Ministry of Industry and Trade may grant exemptions from these rules.</p> <p>Foreign financial institutions other than insurance companies cannot own shares in a Norwegian insurance company, which is a partly owned subsidiary of a foreign insurance company.</p>	
	<p>Employers are obliged to have an insurance covering work-related injuries. The insurance company must as a rule have a permission from Norwegian authorities. However, this is not necessary if the head office of the company is established in an EEA Member State on the basis of a permission from the authorities of this state. Workers from EEA Member State are subject to some special rules regarding their rights.</p> <p>Producers and – on certain conditions – importers of medicines must have a specific kind of liability insurance. The insurance company must as a rule have a permission from Norwegian authorities. However, this is not necessary if the head office of the company is established in an EEA Member State on the basis of a permission from the authorities of this state. Import from EEA Member States is subject to some special rules regarding liability.</p>	
Banking and Other Financial Services (excluding Insurance)	<p>No single or coordinated group of investors may acquire or hold more than 10 per cent of the share capital of commercial banks or financing undertakings, or more than 10 per cent of the equity certificates of savings banks. The Ministry of Finance and Customs may in special circumstances make exemptions from these limitations on single investor ownership in such institutions.</p> <p>Notwithstanding the foregoing, foreign banks and financing undertakings may establish partly or wholly</p>	Investment

³ The act relating to the Norwegian Central Securities Depository is currently under revision. The legal monopoly is proposed to be abolished.

Sector or subsector	Reservations	Chapter to which reservation applies
	<p>owned subsidiaries in Norway. The other owners of such partly owned subsidiaries must be banks or financial institutions respectively.</p> <p>Registration of securities, as stated in the act relating to the Norwegian Central Securities Depository regulating the book-entry registration system for paperless securities, is subject to a legal monopoly.³</p> <p>Commercial banks, securities firms and management companies for collective investment funds incorporated in Norway must be organised as joint stock companies.</p> <p>Branches in Norway of banks, securities firms and management companies for collective investment funds incorporated outside the European Economic Area cannot be account-operators in the Norwegian Central Securities Depository.</p> <p>In Norwegian commercial banks, financing undertakings, investment firms and management companies for collective investment funds, including subsidiaries of such foreign institutions, the manager, at least half the members of the board of directors and half the members of the corporate assembly must be permanent residents of Norway. This requirement does not apply to citizens of a State within the European Economic Area when residing in such State. The Ministry of Industry and Trade may grant exemptions from these rules.</p> <p>In savings banks and financing undertakings, which are not organised as joint stock companies, the members of decision-making bodies must be citizens of States within the European Economic Area and permanently residing in such States. The Ministry of Finance and Customs may grant exemptions from these rules.</p>	
8.HEALTH RELATED AND SOCIAL SERVICES	Unbound	Trade in services and Investment
10.RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than		

Sector or subsector	Reservations	Chapter to which reservation applies
audio-visual services)		
A. Entertainment services	Unbound	Trade in services and Investment
C. Libraries, archives museums and other cultural services	Unbound	Trade in services and Investment
D. Sporting and other recreational activities	Unbound	Trade in services Investment
11. TRANSPORT SERVICES		
A. Maritime transport services - International transport (freight and passengers) CPC 7211 and 7212 less cabotage ⁴ transport)	<p>Ships on the Norwegian Ordinary Ship Register (NOR). Ships have to be owned by Norwegian citizens or by a Norwegian company where Norwegian citizens own at least 60 per cent of the capital. Exemptions from the 60 per cent rule may be granted. When the ship-owning company is a limited liability company, it must be headquartered in Norway. The majority of the members of the board, including the chairman, must be Norwegian citizens resident in Norway, having resided in Norway the preceding two years. Support scheme for parts of the NOR-fleet.</p> <p>Ships on the Norwegian International Ship Register (NIS): Ships with more than 40 per cent foreign ownership must be operated by a Norwegian ship-owning company with head office in Norway, or by Norwegian management company. If the ship is registered directly in the NIS by a foreign company, a Norwegian representative is required.</p>	Investment
- Cabotage	Unbound	Trade in services and Investment
B. Internal Waterways Transport	Unbound	Trade in services and Investment
C. Space Transport (CPC 733)	Unbound	Trade in services and Investment

⁴ "Cabotage" is defined as maritime transport of goods and passengers between ports in Norway, including locations on the continental shelf where petroleum is explored or produced.

Sector or subsector	Reservations	Chapter to which reservation applies
D. Pipeline Transport	Unbound	Trade in services and Investment
E. Services auxiliary to all modes of transport	Unbound except for maritime auxiliary services (maritime cargo handling services ⁵ , Storage and warehousing services (CPC 742); customs clearance services ⁶ ; container station and depot services ⁷ , maritime agency services ⁸ ; freight forwarding services ⁹ and other supporting auxiliary transport services ¹⁰).	Trade in services and Investment
III. OTHER EXCEPTIONS		
Fisheries	A concession to acquire a fishing vessel or share in a company which owns such vessels can only be given to a Norwegian citizen or a body that can be defined as a Norwegian citizen. A company is regarded as having equal rights with a Norwegian citizen when its main office is situated in Norway and the majority of the Board, including the Chair of the Board, are Norwegian	Investment

⁵ "Maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organized independently of the stevedoring or terminal operator companies. The activities covered include the organization and supervision of:

- the loading/discharging of cargo to/from a ship;
- the lashing/unlashing of cargo;
- the reception/delivery and safekeeping of cargoes before shipment or after discharge.

⁶ "Customs clearance services" (alternatively "customs house brokers' services") means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity.

⁷ "Container station and depot services" means activities consisting in storing containers, whether in a port area or inland, with a view to their stuffing/stripping, repairing, and making them available for shipments.

⁸ "Maritime agency services" means the activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:

- marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies; acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
- acting on behalf of the companies organizing the call of the ship or taking over cargoes when required.

⁹ "Freight forwarding services" means the activity consisting of organizing and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information.

¹⁰ "Other supporting and auxiliary transport services" means freight brokerage services; bill auditing and freight rate information services; transportation document preparation services; packing and crating and unpacking and de-crating services; freight inspection, weighing and sampling services; and freight receiving and acceptance services (including local pick-up and delivery).

Sector or subsector	Reservations	Chapter to which reservation applies
	<p>citizens and have stayed in the country the last two years. Norwegian citizens also have to own a minimum of 60% of the shares and have to be authorised to vote for at least 60% of the votes.</p> <p>Ownership to the fishing fleet shall be reserved for professional fishermen. To obtain the right to own a fishing vessel, one has to have a record of active, professional fishing on a Norwegian fishing boat for at least three of the last five years.</p> <p>It is prohibited for others than Norwegian nationals or companies as specified above to process, pack or tranship fish, crustaceans and mollusc or parts and products of these inside the fishing limits of the Norwegian Economic zone. This applies to catches from both Norwegian and foreign vessels. Exceptions are granted under special circumstances.</p>	
Real Estate	Acquisition or leasing of secondary residences by non-residents is subject to a concession.	Investment
Lotteries	There are special rules for persons from the EEA Member States regarding the right to provide services related to lotteries in Norway.	Trade in services
Debt collection	Persons and companies performing professional debt collecting in Norway are obligated to have a permanent place of business in Norway and must have a special authorisation from the Norwegian government.	Trade in services

ANNEX O

RESERVATIONS BY SWITZERLAND (CHAPTER IX – INVESTMENT AND CHAPTER X - TRADE IN SERVICES)

In the reservations section, the term “unbound” shall mean that Switzerland does not commit itself with respect to the specified item.

Sector or subsector	Reservations	Chapter to which reservation applies
I. HORIZONTAL RESERVATIONS		
The level of commitments in a particular sector shall not be construed to supersede the level of commitments taken with respect to any other sector to which such activity is an input or to which it		

Sector or subsector	Reservations	Chapter to which reservation applies
	<p>is otherwise related. CPC numbers indicated in brackets are references to the UN Provisional Central Product Classification (Statistical Papers Series M No. 77, Provisional Central Product Classification, Department of International Economics and Social Affairs, Statistical Office of the United Nations, New York, 1991).</p> <p>Unbound for privatisation as regards Articles 24 and 30 of the Convention.</p> <p>Unbound for measures taken by cantonal and communal authorities including by non-governmental bodies in the exercise of powers delegated by such authorities.</p>	
All sectors	<p>The majority of the board of directors of a "joint stock company" (société anonyme/Aktiengesellschaft or société en commandite par actions/Kommanditaktiengesellschaft) must be Swiss citizens with domicile in Switzerland (except for holding companies). At least one manager of a "corporation with limited liability" (société à responsabilité limitée/Gesellschaft mit beschränkter Haftung) must have his domicile in Switzerland. The administrators of a "co-operative society" (société coopérative/Genossenschaft) must be composed of a majority of Swiss citizens with domicile in Switzerland. Joint stock companies are not prohibited to foresee in their articles of incorporation that shareholders can be denied registration in the shareholder register, inter alia in case federal law requires a certain composition of shareholders. The establishment of a branch requires a representative (natural person) with domicile in Switzerland who is duly authorized by the company to fully represent it. The establishment of a commercial presence by natural persons or in the form of an enterprise without juridical personality according to Swiss law (i.e. in a form other than "joint stock company", "cooperation with limited liability" or "co-operative society") is subject to the requirement of a permanent residency permit of the associate(s) by cantonal law.</p>	Investment
	<p>The acquisition of real estate by foreigners who are not permanently established in Switzerland and by enterprises with headquarters abroad and/or under foreign control is subject to authorization. For the purpose of personal housing needs (except the acquisition of holiday residences), professional use and business activities, authorization is granted upon verification of the purpose. Prohibited are purely financial investments, real estate business operations, acquisition, on a professional basis, of holiday apartments and facilities other than hotels (e.g. apartment houses, camps, sport areas) and acquisition of</p>	Investment

Sector or subsector	Reservations	Chapter to which reservation applies
	agricultural real estate.	
	Unbound for subsidies, tax incentives and tax credits.	Trade in services and Investment
II. SECTOR-SPECIFIC RESERVATIONS		
1. BUSINESS SERVICES		
a) Legal services, except consultancy on home country law and international law	Unbound	Trade in services and Investment
b) Accounting, auditing and book-keeping services Auditing services, excluding auditing of banks (part of CPC 86211) Auditing services related to banks	At least one person supplying auditing services to a joint stock company (société anonyme/Aktiengesellschaft) or a société en commandite par actions/Kommanditaktiengesellschaft must have a commercial presence in Switzerland. Unbound	Trade in services Trade in services and Investment
Engineering services (CPC 8672)	Swiss nationality necessary for survey activities for official public purposes (however, foreign surveyors can work under the responsibility of a licensed Swiss surveyor).	Trade in services and Investment
h) Medical and dental services (CPC 9312)	Unbound	Investment
i) Veterinary surgeons (CPC 932)	Unbound	Investment
j) Services provided by midwives, nurses, physiotherapists and para-medical personnel	Unbound. None 5 years after the entry into force of the Agreement amending the Convention establishing the European Free Trade Association of 21 June 2001.	Trade in services and Investment
D. Real Estate Services	Unbound	Trade in services and Investment
E. Rental/Leasing without Operators		
a) Relating to ships		
- For maritime transport services (part of CPC 83103)	Unbound In order to sail under Swiss flag, vessels must be 100 per cent owned and controlled by Swiss nationals, 3/4 of which having residency in Switzerland.	Trade in services Investment

Sector or subsector	Reservations	Chapter to which reservation applies
	Board of directors and management of companies owning ships sailing under Swiss flag must be composed of Swiss nationals, the majority of which having residency in Switzerland.	Investment
- For internal waterways transport on the Rhine (part of CPC 83103)	Unbound In order to sail under Swiss flag, vessels must be owned by a company which is substantially influenced (66 per cent of capital and vote) by persons domiciled in Switzerland or in a State according to the Mannheim Convention and the protocols related to it. Traffic rights including cabotage are limited on the basis of the Mannheim Convention and the protocols related to it; owner of vessels must dispose of an appropriate managing agency in Switzerland.	Trade in services Investment Investment
F. Other Business Services j) Services incidental to energy distribution	Unbound	Trade in services and Investment
k) Placement and supply services of personnel	Unbound	Trade in services and Investment
l) Investigation and security	Unbound	Trade in services and Investment
2. COMMUNICATION SERVICES		
A. Postal services	Unbound	Trade in services and Investment
B. Courier Services	Unbound	Trade in services and Investment
D. Audio-visual services	Unbound	Trade in services and Investment
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES		
C. Installation and Assembly Work (CPC 514 + 516)	Unbound for installations in the area of energy, heating, water, communications and elevators.	Investment

Sector or subsector	Reservations	Chapter to which reservation applies
	<p>can be lead-managed only by a bank or a securities dealer having a commercial presence (except representative office) in Switzerland.</p> <p>Acquisition of real estate by foreigners is limited as indicated in Part I; however, foreign or foreign-controlled banks are granted authorisation to acquire property that serves as a security for mortgage loans in case of bankruptcy or liquidation; the issue of foreign collective investment funds is subject to stamp duty.</p>	Trade in services and Investment
	Swiss franc denominated issues can be lead-managed only by a bank or a securities dealer having a commercial presence (except representative office) in Switzerland.	Trade in services
	Commercial presence of foreign financial service suppliers is subject to specific requirements relating to the name of firm and the regulations on financial institutions in the State of origin; commercial presence may be denied to financial service suppliers whose ultimate shareholders and/or beneficial owners are persons of a non-GATS Member; representative offices can neither conclude or deal business nor act as an agent.	Investment
8. HEALTH RELATED AND SOCIAL SERVICES	Unbound	Trade in services and Investment
9. TOURISM AND TRAVEL RELATED SERVICES		
Hotels and Restaurants (CPC 641 - 643) - Catering	Federal law enables cantons to grant licence for restaurants based on economic needs (assessment of economic needs is based on criteria such as population, degree of built-up area, type of neighbourhood, touristical interests, number of existing restaurants. Unbound	Investment Trade in Services
10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audio-visual services)		
A. Entertainment services	Unbound	Trade in services and Investment
C. Libraries, archives, museums and other cultural services	Unbound	Trade in services and Investment

Sector or subsector	Reservations	Chapter to which reservation applies
11. TRANSPORT SERVICES		
A. Maritime Transport Services	Unbound	Trade in services and Investment
B. Internal Waterways Transport	Unbound	Trade in services
Internal Waterways Transport on the Rhine: - Passenger and freight transportation (part of CPC 7221 and part of 7222)	In order to sail under Swiss flag, vessels must be owned by a company which is substantially influenced (66 per cent of capital and vote) by persons domiciled in Switzerland or in a State according to the Mannheim Convention and the protocols related to it. Traffic rights including cabotage are limited on the basis of the Mannheim Convention and the protocols related to it; owner of vessels must dispose of an appropriate managing agency in Switzerland.	Investment
- Rental of vessels with crew (part of CPC 7223)	In order to sail under Swiss flag, vessels must be owned by a company which is substantially influenced (66 per cent of capital and vote) by persons domiciled in Switzerland or in a State according to the Mannheim Convention and the protocols related to it. Traffic rights including cabotage are limited on the basis of the Mannheim Convention and the protocols related to it; owner of vessels must dispose of an appropriate managing agency in Switzerland.	Investment Investment
D. Space Transport (CPC 733)	Unbound	Investment
G. Pipeline Transport	Unbound	Trade in services and Investment
12. ENERGY PRODUCTION AND DISTRIBUTION; INSTALLATION OF EQUIPMENT IN THE ENERGY SECTOR	Unbound	Trade in services and Investment

JOINT DECLARATION

Investment protection in relation to third States

The Member States will aim at agreeing on common guidelines in order to protect the investments of their respective investors in third States.

*

