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Title V of the 2nd Lomé Convention Between the EEC and ACP States: A Critical Assessment of the Industrial Cooperation Regime as it Relates to Africa

INTRODUCTION

On October 31, 1979, representatives from fifty-eight African-Caribbean-Pacific (ACP)¹ and nine European Economic Community (EEC) States² signed the second Lomé Convention.³ This agreement will govern the technical, commercial, and financial relations between the two groups of countries from March 1, 1980 through February 28, 1985. Lomé II is the fifth⁴ in a series of conventions concluded between

¹ The ACP group initially comprised 46 countries:

- (1) The original 18 associates under the Convention of Association between the European Economic Community and Associated African States, *done* July 20, 1963, 7 J.O. COMM. EUR. 1431 (1964), 2 I.L.M. 971 (1963) (*entered into force* June 1, 1964) [hereinafter cited as Yaounde I]: Burundi, Cameroon, Central African Republic, Chad, Republic of the Congo, Congolese Republic, Dahomey, Gabon, Ivory Coast, Madagascar, Mali, Mauritania, Niger, Rwanda, Senegal, Somalia, Togo, and Upper Volta;
- (2) Mauritius;
- (3) 21 Commonwealth States: In Africa: Botswana, the Gambia, Ghana, Kenya, Lesotho, Malawi, Nigeria, Sierra Leone, Swaziland, Tanzania, Uganda, and Zambia; In the Pacific: Fiji, Tonga, and Western Samoa;
- (4) 6 Other African States: Equatorial Guinea, Ethiopia, Guinea, Guinea Bissau, Liberia, and Sudan.

See ACP-EEC Convention of Lomé, *done* Feb. 28, 1975, 19 O.J. EUR. COMM. (No. L25) 1 (1976), 14 I.L.M. 595, 600 (1975) (*entered into force* Jan. 30, 1976) [hereinafter cited as Lomé I]. The ACP group had grown to 52 when Lomé II was signed.

² The nine EEC countries consist of the six original signers of the Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter cited as Treaty of Rome]: Belgium, France, Italy, the Federal Republic of Germany, Luxembourg and the Netherlands, plus the three that joined in 1973: Great Britain, Ireland, and Denmark. The accession of Greece in 1981 brought the total EEC membership to 10.

³ ACP-EEC Convention of Lomé (II), Oct. 31, 1979, *reprinted in* THE COURIER, Nov. 1979 (special supplement) [hereinafter cited as Lomé II].

⁴ The preceding four were: Yaounde I, *supra* note 1; Convention of Association between the European Economic Community and the African and Malagasy States Associated with that Community, *done* July 29, 1969, 13 O.J. EUR. COMM. (No. L282) 1 (1970), 9 I.L.M. 484 (1970) (*entered into force* Jan. 1, 1971) [hereinafter cited as Yaounde II]; Agreement Establishing an Association Between the European Economic Community and the United Republic of Tanzania, the Republic

the EEC countries and the developing nations of Africa, the Caribbean, and the Pacific. Like its predecessors, Lomé II was designed "to establish a model for relations between developed and developing states,"⁵ and lay the foundation for a "New International Economic Order."⁶ Toward this end, Lomé II provided more than 5,607 million European units of account (EUA)⁷—the equivalent of \$6,924 million U.S.⁸—in trade and development assistance to the ACP states.⁹

This comprehensive aid package, together with the elaborate set of trade and industrial provisions that came with it, has been the subject of intense scholarly debate in much the same way as were the preceding conventions.¹⁰ Critical scholarship views Lomé II as the institutionalization of ACP dependency on Europe and evidence of the EEC's unwillingness either to treat ACP countries as equals or to concede the need for a New International Economic Order.¹¹ On the other hand,

of Uganda and the Republic of Kenya, July 26, 1968, *reprinted in* 8 I.L.M. 741 (1969); and Lomé I, *supra* note 1.

⁵ Durieux, *From Lomé I to Lomé II*, THE COURIER, Nov. 1979, at 2.

⁶ See generally F.A.M. ALTING VON GEUSAU, THE LOMÉ CONVENTION AND A NEW INTERNATIONAL ECONOMIC ORDER (1977); C. LUCRON, LA CONVENTION DE LOMÉ: EXEMPLE DE COOPERATION REUSSIE (1977); M. P. ROY, CONVENTION DE LOMÉ: AMORCE D'UN NOUVEL ORDRE ECONOMIQUE INTERNATIONALE (1976). For a definition of the basis, aims, and programs of the New International Economic Order, see Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201, 6 Spec. Sess. U.N. GAOR Supp. (No. 1) at 3, U.N. Doc. A/9559 (1974); Charter of Economic Rights and Duties of States, G.A. Res. 3281, 29 U.N. GAOR Supp. (No. 31) at 50, U.N. Doc. A/9631 (1975); Development and International Economic Cooperation, G.A. Res. 3362, 7 Spec. Sess. U.N. GAOR Supp. (No. 1) at 3, U.N. Doc. A/10301 (1976).

⁷ EUA was a unit made up of a basket of all nine EEC Member States' currencies and used to denominate Community aid under the Lomé Conventions. One EUA was approximately \$1.25 U.S. in January 1981. See Rajana, *The Lomé Convention: An Evaluation of EEC Economic Assistance to the A.C.P. States*, 20 J. MOD. AFR. STUD. 179, 181 n.2 (1982).

⁸ On December 18, 1980, the Council of the European Communities agreed to replace the EUA with the ECU as the currency unit to express the amounts of financial assistance under Lomé II and the previous conventions. The decision took effect on January 1, 1981. Annex XX-XII to the Final Act of the Lomé II treaty provided for the replacement of the unit of account. See ACP-EEC Council of Ministers, Mar. 1, 1980-Feb. 28, 1981, Lomé II, *supra* note 1, at 85. The ECU is identical to the EUA, and like the EUA is a unit made up of a basket of currencies comprising specific amounts of the Community Member States' currencies. The value is calculated daily on the basis of representative rates of each Community currency against the dollar as a common point of reference. *Id.*

⁹ See Young-Anawaty, *Human Rights and the ACP-EEC Lomé II Convention: Business as Usual at the EEC*, 13 N.Y.U.J. INT'L L. & POL. 63 n.2 (1980).

¹⁰ These studies have tended to take the view that any form of economic arrangement between Africa and Europe is per se suspect and cannot be anything but a cover for continued European neocolonialist control over the collective African political economy. See, e.g., Martin, *Africa and the Ideology of EurAfrica: Neo-Colonialism or Pan-Africanism?*, 20 J. MOD. AFR. STUD. 221 (1982); Faculty of Law, University of Ghana, *Special Volume: Workshop on ACP-EEC Convention of Lomé*, 13 U. GHANA L.J. 1 (1976).

¹¹ See Asante, *Will Lomé II Lead to More Dependency?*, WEST AFRICA, Mar. 30, 1981, at 688;

literature favorable to the Convention promotes it as a major breakthrough in the otherwise contentious North-South dialogue and an important building block in the emerging EurAfrican community.¹² The majority of these studies, with but a few qualified exceptions,¹³ have tended to be impressionistic and not rigorously empirical. The approach in this exercise is largely in the tradition of positivist analysis, that is, a description of ACP-EEC relations as they are, based on empirical evidence, rather than normative analysis which concerns itself with exposition of these relations as they ought to be.

To avoid either of the above extreme positions, this Comment will propose an alternative approach for assessing the achievement and shortcomings of the Lomé II convention.¹⁴ Starting from the premise that Lomé II, like any other multilateral agreement reached after long and arduous negotiations, is a compromise that of necessity cannot fully satisfy either party, this Comment will examine whether a workable document, beneficial to both sides, was the result. What matters is not how much the Convention falls short of the hoped for vision of a New International Economic Order between the developed and developing countries; rather, the focus of analysis of its major provisions should be whether they work in practice, and above all, how well they do so. Consistent with this formula, this Comment will critically examine Title V, articles 65-82 of Lomé II which cover the area of industrial cooperation (industrial regime). The assessment will be organized

Garrity, *Implications of the Lomé Convention for African Trade and Development*, 8 REV. BLACK POL. ECON. 5 (1977); Laisley, *Enter Lomé II*, 104 AFRICA 45 (1980); Madeley, *Lomé 2 Falls Way Short*, 100 AFRICA 52, 53 (1979); Muller, *EEC Neocolonialism in Action*, 24 WORLD MARX REV. 15 (1981); Mytelka & Dolan, *The EEC and ACP Countries*, in INTEGRATION AND UNEQUAL DEVELOPMENT 237 (D. Seers & C. Vaitos eds. 1980); Shaw, *EEC-ACP Interactions and Images as Redefinitions of EurAfrica: Exemplary, Exclusive and/or Exploitative?*, 18 J. COMM. MKT. STUD. 135 (1979).

¹² See ALTING VON GESAU, *supra* note 6; C. TWITCHETT, EUROPE AND AFRICA: FROM ASSOCIATION TO PARTNERSHIP (1978) [hereinafter cited as TWITCHETT 1]; I. ZARTMAN, THE POLITICS OF TRADE NEGOTIATIONS BETWEEN AFRICA AND THE EUROPEAN COMMUNITY (1971) [hereinafter cited as ZARTMAN 1]; Curtin, *Africa and the European Community: The Second Lomé Convention*, EUROPA 1980-81, at 57; Gruhn, *The Lomé Convention: Inching Towards Interdependence*, 30 INT'L ORGANIZATION 241 (1976); Twitchett, *Lomé II Signed: What it Means for the 58 Developing Countries*, 18 ATL. COMMUNITY Q. 85 (1980) [hereinafter cited as Twitchett 2]; Zartman, *Europe and Africa: Decolonization or Dependency?*, 54 FOREIGN AFF. 325 (1976) [hereinafter cited as Zartman 2].

¹³ See, e.g., Yelapaala, *The Lomé Conventions and the Political Economy of the African-Caribbean-Pacific Countries: A Critical Analysis of the Trade Provisions*, 13 N.Y.U.J. INT'L L. & POL. 807 (1981). Using available statistical data, Yelapaala provides an empirically rigorous reappraisal of the trade provisions of Lomé I and Lomé II. See also Rajana, *supra* note 7. For a balanced and comprehensive assessment of these conventions, see E. FREY-WOUTERS, THE EUROPEAN COMMUNITY AND THE THIRD WORLD (1980).

¹⁴ Lomé II, *supra* note 3.

around four key questions: (1) What did the industrial regime set out to accomplish? (2) What institutional mechanism was designed for implementing the provisions of Title V? (3) How effective have the provisions been? (4) Who has been the ultimate beneficiary of Title V? In seeking answers to these questions, this Comment will identify some of the major weaknesses of Title V and offer a few recommendations in anticipation of Lomé III.

The Comment will be organized into four sections. The conventions culminating in Title V will be reviewed in the first section. This brief historical foray will provide an appreciation of the origins of the ACP-EEC relationship and is necessary background for understanding Lomé II, as well as placing in proper perspective the critical commentaries that hailed the Convention's arrival. The first section of the Comment will attempt to underscore the problem of the imbalance of the distribution of industrial production capacity between industrialized Europe and the developing world of the ACP States.¹⁵ It is precisely because of this problem that an industrial regime was inserted in the Lomé Conventions. The second section will analyze the negotiations for Lomé II, identify the priorities of the various negotiating parties and the major issues that were raised, and explain how they were eventually resolved. As the analysis moves into the third section, the focus shifts from recounting the negotiating that went into the making of Title V of the Lomé II Convention to commenting on its provisions. Where appropriate, comparisons will be made with the Lomé I counterpart. A detailed assessment of Title V's provisions in light of the industrial needs and priorities of the African states is reserved for the fourth section which will also examine the question whether the industrial regime under Lomé II is an improvement over that of Lomé I. Quantitative and qualitative data will be marshalled to aid in the analysis. Finally, the Comment will close with an examination of Title V in the context of the search for a New International Economic Order. It will hazard a position as to whether the genre of ACP-EEC partnership typified in Title V holds out any hope for African industrial development, and if not, why not.

I. FROM PART IV OF THE TREATY OF ROME TO LOMÉ II

A. The Beginnings of Association

The 1957 Treaty of Rome established the European Economic

¹⁵ See generally UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION, *WORLD INDUSTRY SINCE 1960: PROGRESS AND PROSPECTS* (1979) [hereinafter cited as UNIDO].

Community (EEC) with Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, and the Netherlands as the founding Member States.¹⁶ At the time of negotiations for the Treaty, Belgium, France, and to some extent Italy and the Netherlands still had overseas colonies and were concerned about retaining a special relationship between themselves and their overseas territories.¹⁷ In order to accommodate the special needs of these colonial powers and in particular to satisfy French demands,¹⁸ the Community included provisions for association with the non-European colonies in the 1957 Treaty of Rome,¹⁹ covering such areas²⁰ as trade, aid, and establishment.²¹

¹⁶ Treaty of Rome, *supra* note 2.

¹⁷ See E. DJAMSON, *THE DYNAMICS OF EURO-AFRICAN COOPERATION* (1976); TWITCHETT 1, *supra* note 12.

¹⁸ It has been suggested that France set as a precondition for joining the EEC the inclusion of her vast overseas colonial empire in the new economic arrangement. This position was quite understandable given the fact that the French economy was inextricably linked to those of the colonies. Over the decades, a very closed and centralized economic system had evolved between the *métropole* and the overseas territories which could not be abandoned without severe costs to the French economy as well as France's overall philosophy of a EurAfrican community. At the more practical and immediate level, the closed trade system was beginning to weaken: (1) the colonies were producing more raw materials, notably coffee, than the French market could absorb; and (2) the huge transfers of public funds from metropolitan France to the overseas dependencies were beginning to hurt the French exchequer. The problem of the agricultural surplus would be resolved by extending the French system to the rest of the Community while contributions from the EEC partners toward the infrastructural development of the overseas dependencies would relieve the French treasury of shouldering this heavy burden alone. See Van Benthem van den Bergh, *The New Convention of Association with African States*, 1 *COMMON MKT. L. REV.* 156, 157-160 [hereinafter cited as van den Bergh]. See also TWITCHETT 1, *supra* note 12, at 12; Mytelka and Dolan, *supra* note 11, at 237. For a discussion of the centrality of the concept of EurAfrican relations in French official policy, see V. MCKAY, *AFRICA IN WORLD POLITICS* 134-49 (1963). See also COMMISSION JEANNENEY, *LA POLITIQUE DE COOPERATION AVE LES PAYS EN VOIE DE DEVELOPPEMENT* (1964); Martin, *supra* note 10; van den Bergh, *supra*, at 159 n.5.

¹⁹ It should be pointed out that France's five partners acquiesced reluctantly to the inclusion of Part IV of the Treaty of Rome. The Dutch and West Germans, in particular, were not positively committed to it and found themselves in the somewhat distasteful position of actively subsidizing French colonial adventures in Africa. See TWITCHETT 1, *supra* note 12, at 11 *passim*.

²⁰ See Treaty of Rome, *supra* note 2, pt. IV, arts. 131-36 for the provisions relating to the basic aspects of this association. In addition, a separate set of provisions, *id.* art. 238, enabled the Community to conclude agreements with a third country, a union of states, or an international organization thereby creating an "Association" which embodied reciprocal rights and obligations, joint actions, and appropriate forms of procedure.

²¹ The specific objectives of Association were set forth in Article 132.

Association shall have the following objectives:

- 1) Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to this Treaty.
- 2) Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.
- 3) The Member States shall contribute to the investments required for the progressive development of these countries and territories.
- 4) For capital investments financed by the Community, participation in tenders and sup-

The Treaty provided *inter alia* for the establishment of a free trade zone that was to apply to trade among EEC members as well as trade between the EEC and Africa, and finally to trade among the colonial African Associates.²² The Treaty also provided for the progressive elimination of trade restrictions pursuant to a complicated schedule which, over a twelve to fifteen year period, would result in the elimination of quotas on trade between any Member States.²³ The Treaty sought to multilateralize the burdens of aid for the Community by setting up a European Overseas Development Fund with approximately \$581 million to be allocated among the individual Associates by the EEC Commission on the basis of project requests.²⁴ With respect to the rights of establishment which spelled out rules covering expatriate personnel, the Treaty provided for equal conditions for nationals of all EEC Members.²⁵

The Treaty of Rome was barely three years old when a majority of Associates acceded to political independence. It was therefore necessary to revise the original Association agreement and to conclude a new one which would reflect the dramatically changed political status of the African Associates.²⁶ It is generally conceded that the Association regime established by the Treaty of Rome was an association "imposed from above,"²⁷ that is, the arrangement was imposed on the Associated

plies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or one of the countries and territories.

- 5) In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the chapter relating to right of establishment and on a non-discriminatory basis, subject to any special provisions laid down pursuant to Article 136.

Id. art. 132. These objectives were elaborated upon in Articles 133, 134 and 135 of the Treaty and its Implementing Convention.

²² Treaty of Rome, *supra* note 2, art. 132, paras. 1-2.

²³ *Id.* arts. 133-34; Implementing Convention, art. 1, annex Z, art. 3, annex B.

²⁴ ZARTMAN 1, *supra* note 12, at 16.

²⁵ The principle of nondiscrimination contained in Article 132, Paragraph 5, of the Treaty of Rome was directed at the monopoly enjoyed by French companies and enterprises in overseas France. The message in Article 132 was unmistakably clear: henceforth these colonies would no longer remain the *chasse gardée* of French entrepreneurs. TWITCHETT 1, *supra* note 12, at 26.

²⁶ See Zartman 2, *supra* note 12 (a detailed discussion of the negotiations leading to the Yaounde association). See also TWITCHETT 1, *supra* note 12 (an analysis of Yaounde I and II).

²⁷ TWITCHETT 1, *supra* note 12, at 2. See also DJAMSON, *supra* note 17, at 4 (offering a legal explanation for this apparent asymmetry in the Treaty of Rome Association by correctly pointing out that since the overseas territories had no international personality at the time of the agreement they could not possibly be signatories). Djamson's explanation is much too formalistic, for it seems to suggest that had both parties to the Treaty been sovereign states a more egalitarian arrangement would have resulted. The flaw in this line of reasoning has been amply exposed in the many critical commentaries that have been directed at subsequent conventions since the Treaty of Rome. While these agreements were concluded between independent African states and

countries and territories by their respective *métropoles* while the indigenous authorities played little or no part in its elaboration.²⁸ Its successor regime, Yaounde I and Yaounde II,²⁹ was viewed as a major improvement since it succeeded in converting the unilateral provisions of the Rome Treaty into what Professor Zartman calls, "a negotiated Association between the European Community and 18 individual African States."³⁰ The new regime, therefore, was hailed as a multilateral treaty between two groups of independent sovereign states which "laid the foundations for a different aid relationship to that existing under Rome Treaty association."³¹

In practice, the Yaounde Conventions³² continued many of the policies of the Treaty of Rome while at the same time introducing some innovations in the Association arrangement.³³ The Yaounde association, in particular that under Yaounde II, addressed for the first time an area neglected in previous conventions, the promotion of industrialization in the Associated countries.³⁴

the European Community, the thrust of these criticisms is that the structure of dependency which characterized EurAfrican relations during the Rome Treaty era has persisted into the postcolonial phase of this relationship. Notwithstanding the formality of granting political independence to, and the exercise of the attributes of sovereignty by, these erstwhile colonial territories, the fundamental structure of their relationship with Europe has not changed. It still remains an exploitative and unequal relationship. See generally S. AMIN, *NEO-COLONIALISM IN WEST AFRICA* (1973); A. EMMANUEL, *UNEQUAL EXCHANGE: A STUDY OF THE IMPERIALISM OF TRADE* (1972); K. NKRUMAH, *NEO-COLONIALISM: THE LAST STAGE OF IMPERIALISM* (1965); W. RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* (1972); Dolan, *The Lomé Convention and Europe's Relationship with the Third World: A Critical Analysis*, 1 *REVUE D'INTEGRATION EUROPEENE* 369 (1977).

²⁸ TWITCHETT 1, *supra* note 12, at 33.

²⁹ There is little basic difference between Yaounde I and II, the latter, in many respects, being a mere continuation of Yaounde I. See TWITCHETT 1, *supra* note 12, at 73; ZARTMAN 1, *supra* note 12, at 330.

³⁰ See ZARTMAN 1, *supra* note 12, at 329.

³¹ See Twitchett 2, *supra* note 12, at 94, 98.

³² The first Yaounde Convention was signed on July 20, 1963 and came into effect on June 1, 1964. Yaounde I, *supra* note 1. It was scheduled to govern relations between the six original EEC members and the eighteen independent African States for five years. It was allowed to continue in operation until 1971 when the 1969 Yaounde Convention came into force. Yaounde II, *supra* note 4. See TWITCHETT 1, *supra* note 12, at 73.

³³ For instance, under the Yaounde Convention, the Associates were free to organize their commercial relations both with each other and third countries. This was not possible under the Treaty of Rome. Also, in the area of financial and technical cooperation, the Yaounde association provided a more flexible approach to developmental aid and a wider range of financial techniques than was available under the Treaty of Rome. See TWITCHETT 1, *supra* note 12, at 99.

³⁴ *Id.* at 119. Despite the fact that previous conventions subscribed to the view of diversification of the economies of the Associates, the financial aid that was disbursed by the European Development Fund (EDF) was used mainly for infrastructural investments while "plans of a directly productive and industrial character were discouraged." FREY-WOUTERS, *supra* note 13, at 15.

B. The State of Industrial Development in Africa

The problem of the imbalance in the distribution of industrial output and production capacity between the Less Developed Countries (LDCs) and the developed countries of the North Atlantic Community has been a sore point in the numerous North-South dialogues both before and after the Yaounde conventions.³⁵ On the eve of the Yaounde regime's debut, Africa stood out as the least industrialized continent in the world.³⁶ In 1971, the continent was responsible for only 8.2% of the total industrial production of the LDCs and only 0.6% of world industrial production.³⁷ African industry is dominated by light industries such as the manufacture of food, beverages, and tobacco (43%) and the textile, wearing apparel, and leather industries (19%). Heavy industries, on the other hand, account for less than 25% of industrial production.³⁸ By way of contrast, 42.1% of total industrial production for Asia for the period 1970-75 was devoted to heavy industry, 52.3% for Latin American and 64% for the developed market economies of Western Europe and North America.³⁹

Within the African continent itself there were and still are severe geographical imbalances in the distribution of industrial production. African industry is highly concentrated with only ten countries accounting for nearly eighty percent of industrial production.⁴⁰ But even more importantly, the bulk of African industrial production—fifty-six percent of the total—is concentrated in North Africa, a region not included in the various association agreements discussed here.⁴¹ Thus, the lack of an adequate industrial base was, and continues to be, particularly problematic for sub-Saharan African countries who, without exception, were (or have since become) signatories of the Yaounde agreement and subsequent conventions.

The Yaounde association, in marked contrast to the Rome Treaty, sought to alleviate the imbalance between European and African industrial development. Under Yaounde II, investment financing in a variety of forms was made available to meet the challenge of rapid

³⁵ See UNIDO, *supra* note 15.

³⁶ Huybrechts, *Industry in Africa*, EUROPA 1980-81, at 49.

³⁷ *Id.*

³⁸ *Id.* at 49-51. The leading heavy industries are the manufacture of chemicals and petroleum, coal, rubber products, and metal products.

³⁹ UNIDO, *supra* note 15, at 66.

⁴⁰ Huybrechts, *supra* note 36, at 52.

⁴¹ EEC relations with the Maghreb are governed by a separate set of accords. See, e.g., Robert, *The EEC and the Maghreb and Mashreq Countries*, in INTEGRATION AND UNEQUAL DEVELOPMENT 261 (D. Seers & C. Vaitos eds. 1980).

industrialization of the countries associated with the EEC.⁴² The efforts were modest but were symbolic of the Community's recognition of the problem. EEC funds earmarked for industrial development jumped from less than 1.0% of total Community aid for the entire duration of the Rome Treaty to a respectable, albeit unspectacular, 7.15% during the life of Yaounde II.⁴³ This emphasis on industrial promotion was renewed and elaborated upon in the subsequent conventions that would replace the Yaounde association.

C. Industrial Cooperation Under Lomé I

The industrial regime under Lomé I⁴⁴ has been acknowledged by all the signatory states to the Convention to be one of its outstanding features.⁴⁵ The European Commission, which is the administrative arm of the EEC and clearly not an unbiased judge, believes that it is unlikely that any other EurAfrican agreement has defined with such completeness and detail the ways in which the industrialized and developing countries can cooperate in the field of industrial development.⁴⁶ Toward the attainment of this mutually desirable end, Lomé I devoted an entire chapter to setting forth the objectives of an ACP-EEC industrial development policy.⁴⁷

In an innovative departure from previous conventions, Lomé I spelled out the instruments to be used in implementing the industrial cooperation policy. A Committee on Industrial Cooperation⁴⁸ (CIC) was created and charged with the tasks of overseeing the implementation of Title III, noting any problems that might arise, suggesting solu-

⁴² Investment finance came in four forms: (1) ordinary loans from the European Investment Bank (EIB) at prevailing interest rates; (2) EIB loans with various interest rebates guaranteed by EDF grants; (3) special long-term, low interest loans from the EDF; and (4) risk capital for long-term projects. See TWITCHETT I, *supra* note 12, at 119.

⁴³ *Id.* at 136. Under Yaounde I the proportion of development aid set aside for industrial development was 5.61% of the total aid package. *Id.*

⁴⁴ See Lomé I, *supra* note 1.

⁴⁵ K. FOCKE, FROM LOMÉ 1 TOWARDS LOMÉ 2 30 (1980) (Office for Official Publications of the European Communities).

⁴⁶ *Industrial Cooperation*, THE COURIER, Mar. 1975, at 31 [hereinafter cited as *Industrial Cooperation*].

⁴⁷ Lomé I, *supra* note 1, tit. III, arts. 26-39. These objectives were: the development of infrastructures connected with industrialization (transport, energy, research, etc.); contributions to the setting up of manufacturing industries and especially the processing of local raw materials; industrial training schemes in Europe and the ACP States; measures for providing access to technology and its adaptation of local needs; a special effort on behalf of small and medium-sized firms; industrial information, promotion, and study schemes; and accompanying trade promotion measures.

⁴⁸ *Id.* art. 35.

tions, and reporting to the Committee of Ambassadors.⁴⁹ The CIC was also responsible for guiding and supervising the Center for Industrial Development (CID)—an industrial information-gathering, contact-making, and liaison organization jointly managed by the ACP-EEC countries.⁵⁰ This “unique experiment”⁵¹ in industrial cooperation was designed to serve as a catalyst for inducing the EEC private sector to invest in the ACP States.⁵² The financing of the industrial cooperation regime was left in the hands of the European Development Fund (EDF) and the European Investment Bank (EIB). During the period that Lomé I was in force, a total of 484 million EUA were allocated by the EDF and the EIB for co-financing roughly forty projects in the ACP States.⁵³ This amount represented about sixteen percent of a total multilateral investment of three billion EUA in the ACP States which included the following: 458 million EUA provided by the EEC, 582 million EUA provided by the Arab Funds, and 364 million EUA provided by the World Bank.⁵⁴

Although the Lomé I objectives in regard to industrial cooperation were acclaimed to be innovative,⁵⁵ ambitious,⁵⁶ and generous,⁵⁷ it soon became evident that the regime was unable to deliver the promises made by its sponsors. The failure of the industrial regime under Lomé I has been attributed to several factors. A problem of prime impor-

⁴⁹ The Committee of Ambassadors is one of the institutional innovations under Lomé I. It is composed of one representative from each Member State, one representative of the EEC, and one representative from each ACP State. The office of chairman is held alternately by the EEC and the ACP States. The Committee assists the ACP-EEC Council of Ministers (Council) and carries out any mandate entrusted to it by the latter, reviews the functioning of the Convention and the achievement of its objectives, accounts to the Council for its action and may submit to it resolutions, recommendations, or opinions, and supervises the work of the standing or ad hoc committees, bodies, or working groups. See Lomé I, *supra* note 1, arts. 76-79.

⁵⁰ The CID was formally established in January 1977, the third year of application of Lomé I. In each of the states which are parties to the Convention, the Center enjoys the most extensive legal capacity accorded to legal persons and is made responsible for carrying out the tasks laid down in Article 36 of the Lomé I Convention. The CID is administered by a director and a deputy director, both appointed by the CIC, and advised by an Advisory Council composed of 14 members with industrial experience chosen on an individual basis from nationals of states party to the Convention on the grounds of their qualifications and experience. See Report of the ACP-EEC Council of Ministers, Apr. 1, 1976-Feb. 29, 1980, ACP-EEC Cooperation, Analysis-Application, at 100-01 [hereinafter cited as Annual Report 1].

⁵¹ *Industrial Cooperation, supra* note 46, at 31.

⁵² *Id.*

⁵³ FOCKE, *supra* note 45, at 34.

⁵⁴ *Id.*

⁵⁵ See FREY-WOUTERS, *supra* note 13, at 58.

⁵⁶ FOCKE, *supra* note 45, at 30.

⁵⁷ ACP-EEC Consultative Assembly Working Documents, Report on behalf of the Joint Committee, Sept. 27, 1978, at 23 [hereinafter cited as Guillabert Report].

tance was the insufficient emphasis placed at the outset upon defining a "precise and meaningful policy on industrial cooperation."⁵⁸ As the Focke Report noted, this defect was one common to "practically all policies on aid for the industrial development of the developing countries."⁵⁹ Instead of formulating a coherent policy geared to the industrial development needs of the ACP States, much effort was wasted on the generation of studies on industrialization policy which for the most part were never acted upon.⁶⁰

The problem of inadequate financial resources for carrying out the ambitious industrial program also contributed to the failure of the first industrial regime.⁶¹ In a recent study by Professor Frey-Wouters, she notes that:

It would be a mistake to think that industrial cooperation on a worthwhile scale can be undertaken without finance, simply by contact and coordination, a modicum of information, or, in the last resort, visits by industrial or expert missions. The success of industrial cooperation depends on the money available. In its broadest sense, the finance it requires is considerable.⁶²

Symptomatic of financing problems were the budgetary limitations that the CID had to endure. Although the Center was charged with implementing the objectives of Article 36, its budget for the last three years that Lomé I was in force amounted to 6,389,446 EUA which was less than one percent of the sectoral allocation to industrial cooperation. Of this amount, roughly one-half (3,627,979 EUA) went to the Center's operating costs and the remainder (2,761,467 EUA) to program expenditures.⁶³ Reluctance on the part of the EEC private sector to invest in ACP countries was another factor which lessened the effectiveness of the Lomé I industrialization scheme.⁶⁴ Even though provisions were included in the Convention for establishing a suitable working environment for EEC commercial operators, fears continued to be voiced

⁵⁸ Annual Report 1, *supra* note 50, at 113.

⁵⁹ FOCKE, *supra* note 45, at 30-31; *see* FREY-WOUTERS, *supra* note 13, at 65. *See also supra* text accompanying note 46.

⁶⁰ FOCKE, *supra* note 45, at 31. Frey-Wouters points out that industrial policies promoted by the EEC have tended to favor Eurocentric models of development. FREY-WOUTERS, *supra* note 13, at 63.

⁶¹ FOCKE, *supra* note 45, at 31; FREY-WOUTERS, *supra* note 13, at 61. The problem of limited EDF aid was further compounded by the limited access to EIB resources by the ACP States. The fact that the bulk of EIB loans went to two countries—Nigeria and the Ivory Coast—only worsened the existing unevenness in the allocation of EEC aid among countries as well as among the various sectors. *See* Annual Report 1, *supra* note 50, at 113.

⁶² FREY-WOUTERS, *supra* note 13, at 61.

⁶³ Annual Report 1, *supra* note 50, at 100.

⁶⁴ FREY-WOUTERS, *supra* note 13, at 64.

about the security of their investments in the ACP States given their history of instability.⁶⁵

In addition to the aforementioned difficulties, industrial cooperation under Lomé I was also plagued with serious structural problems. The most persistent and dislocating of these problems was the lack of coordination among the different organizations—the CIC, CID, EDF and EIB—charged with implementing the objectives of Title III.⁶⁶ Since none of these institutions had an overall view of the industrial development program, they were working at cross-purposes.

Finally, the overall thrust of the Lomé I industrial regime, that is, the promotion of ACP industrialization, was also found wanting. The regime, many believed, was notably successful not in achieving its avowed objectives, but in reinforcing the orthodox division of labor which is at the base of EurAfrican relations.⁶⁷ This Eurocentric version of comparative advantage has for centuries locked Africa into the role of a primary producing hinterland while freeing Europe to engage in the most capital-intensive, technologically-advanced types of production. Lomé I continued this scheme although it did allow the ACP States to engage in some limited labor-intensive manufacturing activities such as first stage import-substitution and relatively light industries.⁶⁸ But even here, the Lomé I record is hardly a glowing one according to its critics. Such critics point to export figures in traditional import-substitution industries such as textiles where Africa's share of world manufacturing value-added decreased during the lifetime of Lomé I.⁶⁹ While world manufacturing exports peaked during this period, the African share declined both in relative and absolute terms.⁷⁰ In terms of ACP-EEC trade, manufactured exports declined as a per-

⁶⁵ See Guillabert Report, *supra* note 57, at 23. The European Commission did acknowledge the failure of Lomé I to interest the European business community in promoting industrial development in the ACP States. See European Community Commission, Information Directorate-General, Doc. 299/X75-F(E), 9/75, at 16-17. See also FREY-WOUTERS, *supra* note 13, at 64-65.

⁶⁶ FOCKE, *supra* note 45, at 31.

⁶⁷ Martin, *supra* note 10, at 230. But see C. VAN DER VAEREN, *EVALUATION GLOBALE DES AIDES COMMUNAUTAIRE 6* (1979). In this study on the impact of Community aid on the ACP States, the author concludes that without Lomé I aid, the combined incremental growth of agricultural and industrial output in the ACP would have been 0.4-0.5% less than it was between 1975-79. The study also credits the EEC intervention in the ACP with generating about 1.0-1.11% of the growth output for the same period. See also Rajana, *supra* note 7, at 213-14.

⁶⁸ See Martin, *supra* note 10.

⁶⁹ UNIDO, *supra* note 15, at 37.

⁷⁰ See L. Mytelka, *Africa: A Primary Producing Hinterland for Europe 4* (Apr. 1981) (unpublished paper prepared for the Department of State as part of its external research program). Mytelka points out that textile exports from Africa, for example, fell by \$127 million (current U.S. dollars) from 1970-71 to 1973-76. *Id.*

centage of total ACP exports to the EEC from a high of roughly twenty percent in 1974 to a low of ten percent in 1978.⁷¹ Significantly, this drop was accompanied by a corresponding decline in the ACP share of EEC imports of manufactured goods from the Third World.⁷² It was against this backdrop of ACP dissatisfaction with many features of the Lomé I industrial regime that discussions for its replacement commenced.

II. NEGOTIATING FOR THE LOMÉ II INDUSTRIAL REGIME

A. The Parties Declare Their Stance

Both parties to the Lomé Convention entered the negotiations with certain assumptions about their relative bargaining strengths. Speaking for the ACP States, Donald Rainford, the Chairman of the ACP Committee of Ambassadors, declared that "Europe needs the ACP countries as much as the latter needs the former. . . , [and the] ACP countries provide a ready source of raw materials for the Community."⁷³ Claude Cheysson, development commissioner for the Community, countered with the following:

I also hope . . . that [the ACP States] will understand that one essential characteristic of the Convention is the contract and that there are two partners to any contract. In other words, they are right to demand that we understand and be considerate towards their problems, but they too have to realize that we have our problems and they cannot forever go on making unilateral demands and refusing to let us point out that in some cases they are going too far and that we ourselves have problems that they must reckon with.⁷⁴

Leaving aside assumptions as to the parties' relative indispensability to each other, their negotiators also had quite definite ideas on what they wanted included in the new convention. The Ghanaian legal scholar, S. K. B. Asante, who represented his country during the initial phases of the negotiations, argues that the ACP States:

approached the negotiations with a view to bringing about a significant shift in the distribution of benefits in favour of the ACP members . . . [while] the EEC representatives approached . . . [the negotiations] with the limited objectives of 'consolidating' Lomé I and, if possible, improving EEC access to raw materials and obtaining guarantees on its overseas investments.⁷⁵

There were three major areas around which much of the discussion on

⁷¹ *Id.*

⁷² *Id.*

⁷³ *News Round-up*, THE COURIER, Mar.-Apr. 1979, at VI.

⁷⁴ *Interview with Claude Cheysson*, THE COURIER, Mar.-Apr. 1977, at 3, 5.

⁷⁵ Asante, *supra* note 11, at 690.

the industrial regime evolved: funding for industrial cooperation, implementing machinery, and trade on manufactured goods.⁷⁶

B. Positions on Specific Issues

1. Funding

The ACP States requested a minimum budget of at least \$10 billion to finance the entire Lomé II package, complaining that funding under Lomé I was inadequate.⁷⁷ They recommended that calculations for EDF V should take account of:

- a) finances required for the accelerated development of the ACP States;
- b) growth in the gross domestic product of the Member States of the Community;
- c) monetary erosion and world inflation; and
- d) an undertaking by the industrialized countries to commit 0.7% of their GNP to official development aid.⁷⁸

ACP States asked for a Special Industrial Development Fund to cover deficiencies in the existing ACP-EEC funding arrangements and to meet the range of needs observed in the industrial development of their nations. The special fund was also needed because existing financial institutions were not flexible enough to respond to the peculiarities of ACP industrial development. In addition, the ACP requested that an adequate and separate budget be set aside for the Center for Industrial Development.⁷⁹

In response, the EEC felt that the emphasis should be on defining the objectives for industrial cooperation and the possible difficulties that this exercise might encounter. It was not convinced that special financial provisions should be made for this purpose or any new organs established to address this issue.⁸⁰ The Community then offered the ACP a financial package of about \$6 billion, which was rejected, in a EEC offer to provide an additional \$910 million from EIB resources.⁸¹ Although EDF V funds represented an appreciable increase over EDF IV, there is no indication that funding is tied to EEC gross domestic product growth rates or world inflation as the ACP had requested.

⁷⁶ *Id.*

⁷⁷ See *News Round-up*, THE COURIER, Mar.-Apr. 1979, at III. For example, the size of EDF IV represented an EEC contribution of approximately \$2 per year per capita for the population of the ACP States.

⁷⁸ *Id.*

⁷⁹ Pagni, *Negotiations begin on new EEC-ACP Convention*, THE COURIER, Nov.-Dec. 1978, at 2, 3.

⁸⁰ *Outcome of the ACP-EEC Ministerial Conference on 21 December 1978*, THE COURIER, Mar.-Apr. 1979, at 3, 5.

⁸¹ *The New Lomé Convention*, THE ECONOMIST, Oct. 27, 1979, at 117.

2. *Implementing Machinery*

The ACP insisted on greater participation in the management and administration of the EDF.⁸² It also called for a revision in the method by which aid was channelled by the EDF to the recipient states.⁸³ To reduce the bureaucratic delays endemic to Lomé I, the ACP States requested aid to support their respective overall development programs rather than for specific projects.⁸⁴ Total aid would simply be divided up among the fifty-eight ACP States and transferred immediately to their central banks.⁸⁵ Such an approach would obviate the Lomé I method of giving aid piecemeal which inevitably led to unnecessary bureaucratic logjams.

The Commission, however, found no problem with the operations of the EDF; according to one official, it worked "pretty well."⁸⁶ As far as the Commission was concerned, the principal obstacle to aid implementation was the inefficiency of the ACP States. Project description files were often submitted to the EDF without all the relevant appraisal information and without adequate documentation.⁸⁷ The ACP States, therefore, needed to be more conscientious in the preparation of project dossiers drawing freely from the expertise provided by the EDF. The key to improving the EDF was in organizing its programs, paying particular emphasis to small and medium-sized businesses, micro-projects, and triangular co-financing (with Arab resources). The Commission also felt that regional cooperation should be encouraged and nurtured in such areas as infrastructural development, training, and industry. To meet this additional burden, the Commission recommended that the EDF V allocation for regional cooperation be increased from ten to fifteen percent.⁸⁸ To improve the roles of the Committee on Industrial Cooperation and the Center for Industrial Development, the Commission suggested setting up consultation mechanisms to better inform

⁸² *News Round-up*, *supra* note 77.

⁸³ Madeley, *supra* note 11, at 53; *see also* Rajana, *supra* note 7, at 198-99.

⁸⁴ Madeley, *supra* note 11, at 53. These delays were brought about by several factors, chief of which were: (1) the project evaluation division of the EDF Development Directorate was not only understaffed but its cadre of specialists was generally conceded by several observers to be second-rate; (2) rival interests within the EDF tended to obstruct the expeditious processing of projects; and (3) the EDF Committee lacked uniform criteria for project evaluation. Rajana, *supra* note 7, at 198; *see* Hewitt & Stevens, *The Second Lomé Convention*, in *EEC AND THE THIRD WORLD* 30-59 (C. Stevens ed. 1981).

⁸⁵ *See* Hewitt & Stevens, *supra* note 84; Madeley, *supra* note 11, at 53.

⁸⁶ *Lomé II: Cheysson Outlines Commission's Initial Proposals*, *THE COURIER*, Mar.-Apr. 1978, at VII. The official was Mr. Claude Cheysson, EEC Commissioner.

⁸⁷ *See* Rajana, *supra* note 7, at 197.

⁸⁸ *Id.* at 208-09.

both the EEC and the ACP about market trends and capacities for production, consumption, and exports in those sectors which particularly interested either organization.⁸⁹

As a consequence of the views put forth by both sides, Lomé II included a new article which spelled out with greater precision EEC and ACP responsibilities in the implementation of financial and technical aid. Despite the announced concept of equality and co-management, final decisions on financing still rest with the Commission. Within the ACP, the role of the Commission Delegate assigned to individual ACP States is still crucial in managing aid relationships.⁹⁰ And because the EEC is so concerned about closely monitoring how its funds are spent, aid under Lomé II is still geared toward specific projects rather than national development programs.

In response to the expressed concern about delays in processing and implementing aid, Lomé II sets up an ACP-EEC Committee within the ACP-EEC Council of Ministers "to study, in general terms and on the basis of specific examples, suitable measures to improve the implementation of financial and technical cooperation."⁹¹ The single most concrete measure for expediting aid delivery is Article 122(5) which provides that for all contracts under 3.5 million European units of account, decisions taken by the National Authorizing Officer shall be deemed approved by the Commission or its delegate unless disapproved within thirty days after notification to the Commission Delegate.

3. *Access to EEC Markets*

The decline in the share of ACP exports of processed goods to EEC markets was traced to the Lomé I "rules of origin."⁹² "Products originating in the ACP states shall be imported in the community free of customs duties and charges having equivalent effects."⁹³ Originating products were defined as those wholly obtained in one or more ACP countries. The product did not qualify for trade preferences, however, if the value of materials obtained outside the ACP exceeded forty or fifty percent of the value of the finished product.⁹⁴

In practice, non-ACP originating products, even for the more ad-

⁸⁹ Pagni, *supra* note 79, at 2.

⁹⁰ See Lomé II, *supra* note 3, art. 123.

⁹¹ *Id.* art. 108(6).

⁹² Lomé I, *supra* note 1, art. 2.

⁹³ *Id.* art. 2(1).

⁹⁴ McQueen, *Trade Co-operation in the Lomé Convention: The Need for Reform*, in THE RENEGOTIATIONS OF THE LOMÉ CONVENTION 45 (Catholic Institute ed. 1978).

vanced countries such as Ghana, Kenya, and Nigeria, accounted for from forty-eight to eighty-five percent of the value of the respective ACP country's products.⁹⁵ As a consequence, few African countries were able to take advantage of the ostensibly generous trade preferences. For most countries, less than fifty percent of their goods qualified for entry into the EEC under Lomé I.⁹⁶ Consequently, it was quite natural that the ACP desired a revision and simplification of the rules of origin during negotiations for Lomé II. The ACP States called for provisions which would allow all ACP originating products, regardless of the percentage of outside materials, to be imported into the Community free of quantitative restrictions, customs duties, and charges having equivalent effect, subject only to the condition that such treatment is not more favorable than that granted by the Member States among themselves.⁹⁷

The EEC responded that the ACP-EEC Council of Ministers⁹⁸ can waive the rules if there is evidence to suggest that they inhibit development or hinder existing industries or the creation of new ones.⁹⁹ It was pointed out that all five applications requesting derogations from the rules were granted. The "rules of origin" were also defended on the grounds that they discouraged the proliferation of "foot-loose offshore assembly industries . . . which do not contribute to the development" of the ACP States.¹⁰⁰ In the final analysis, the Community view prevailed and Lomé II "rules of origin" are merely minor modifications of those in Lomé I. In October 1979 when Lomé II was concluded, it brought to a close sixteen months of negotiations between the ACP and the EEC. The new industrial regime contained seventeen articles.

III. ANALYSIS OF THE PROVISIONS OF TITLE V

A. Industrial Cooperation Clauses

The provisions on industrial cooperation agreed upon in Lomé II are contained in Title V, Articles 65 to 82. Article 65 spells out the general objectives of the regime, while Article 66 narrows these down into specific areas which for analytical purposes can be grouped into

⁹⁵ *Id.*

⁹⁶ Madeley, *supra* note 11, at 55.

⁹⁷ Pagni, *supra* note 79, at 11.

⁹⁸ For a description of the composition and functions of the Council, see Lomé I, *supra* note 1, arts. 70-75; Lomé II, *supra* note 3, arts. 163-69.

⁹⁹ *The New Lomé Convention*, *supra* note 81, at 116; *see also* McQueen, *supra* note 94, at 46.

¹⁰⁰ McQueen, *supra* note 94, at 45.

eight categories.¹⁰¹ Each of these areas of industrial cooperation will be discussed in some detail in the order in which they are mentioned in Article 67.

1. Industrial Training (Article 68)

The Community undertakes to provide necessary assistance in the field of industrial training toward the goal of enabling ACP States to acquire technological skills appropriate to their industrial growth. Toward this end, the Community, on the basis of requests from the ACP States, will provide assistance in the evaluation of needs and the execution of appropriate schemes such as:

- (i) the enrolling of ACP nationals in technical and other training institutions;
- (ii) the establishment of national and regional training and research institutions to provide specialized industrial training for ACP nationals at all levels, as well as to organize practical and in-service training;
- (iii) the establishment, promotion, and consolidation of appropriate indigenous technologies; and
- (iv) the promotion of exchanges between universities and specialized institutes in the Community and in the ACP States.¹⁰²

2. Development of Small and Medium-Sized Enterprises (SMEs) (Article 69)

The Community will contribute toward the establishment and development of small and medium-sized industries identified by the ACP States as important in terms of their development objectives through:

- (i) financial and technical cooperation schemes geared to the specific needs of such industries;
- (ii) encouragement by appropriate incentives of the transfer of resources from the Community's private sector (one mode of channeling such transfers of private capital would be in the form of joint-ventures between Community and ACP SMEs); and
- (iii) technical assistance schemes aimed at: (a) evaluating the development potential of SMEs, and (b) identifying possibilities for subcontracting and facilitating the implementation of these programs.¹⁰³

3. Processing of ACP Raw Materials (Articles 70 and 73)

Article 70 acknowledges that “[i]n the framework of overall coop-

¹⁰¹ The general objective of Lomé II remains the same as that of Lomé I, namely to promote industrial development in the ACP States. Lomé II, *supra* note 3, arts. 65-66.

¹⁰² *Id.* art. 68.

¹⁰³ *Id.* art. 69(1).

eration with respect to industrial development, special emphasis [ought to] be placed on the domestic processing of ACP raw materials with a view to achieving a larger and more equitable share of processed raw materials in both production and exports of the ACP States."¹⁰⁴ To bring this about, the Community will help:

- (i) promote, develop, and finance processing industries in the ACP States;¹⁰⁵
- (ii) conduct feasibility studies;
- (iii) evaluate processing possibilities and provide information on processing technologies; and
- (iv) promote within the Community and other markets the exports of ACP manufactured products.¹⁰⁶

Furthermore, the Community will contribute toward the financing of ACP industries linked to the development of agriculture and the promotion of agricultural production,¹⁰⁷ and any other line of production which may increase "value-added locally,"¹⁰⁸ have a favorable effect on employment or the trade balance, facilitate the diversification or regional balance of industrial activities, or foster industrial or interregional cooperation between ACP and EEC firms.¹⁰⁹

4. *Transfer of Technology (Article 71)*

With a view to assisting the ACP States in strengthening their indigenous capacity for scientific and technological development and facilitating the acquisition, transfer, and adaptation of technology under the best possible terms and conditions, Article 71 commits the Community to contribute to:

- (i) the establishment and strengthening of industry-related scientific and technical infrastructure in the ACP States;
- (ii) the designing and implementation of research and development programs;
- (iii) promotion of collaboration among research institutes and undertakings of the ACP States, the Community, the individual Member States, and other countries;
- (iv) the identification, evaluation, and acquisition on favorable terms of foreign technology, patents, and other industrial property through financing and/or other suitable arrangements with firms and institutions within the Community;
- (v) the provision of advisory services to ACP States for the preparation

¹⁰⁴ *Id.* art. 70.

¹⁰⁵ *Id.* art. 70(1).

¹⁰⁶ *Id.* arts. 70(2)-(4).

¹⁰⁷ *Id.* art. 73(1)(c).

¹⁰⁸ *Id.* art. 73(1)(d).

¹⁰⁹ *Id.*

of regulations governing the transfer of technology and for the supply of information with respect to:

- a) the terms and conditions of technology contracts;
 - b) the types and sources of technology; and
 - c) the experience of ACP States and other countries with the use of certain technology; and
- (vi) the promotion of technology cooperation among ACP States and between them and other developing countries in order to make the best use of their current scientific and technical inventories.¹¹⁰

5. Industrial Infrastructure (Article 72)

Article 72 is one of the shortest clauses in the industrial regime because much of its contents appears in other sections of the regime. The Article provides that all the means available under the financial and technical cooperation titles will be mobilized in setting up the infrastructure in the ACP necessary for industrial development in such fields as transportation and communication, energy, research and adaptation of technology, industrial training, and the location of industries.¹¹¹

6. Trade Promotion (Article 74)

Because the Convention devotes a whole chapter to trade cooperation (Title III), discussion of this subject in the industrial regime is very brief. Assurances are given in Article 74 that ACP States will be able to profit from the trade arrangements spelled out in Title III. Toward this end, trade promotion schemes will be carried out to encourage the marketing of the industrial products of ACP States both in the Community and in other external markets.¹¹²

7. Cooperation in the Field of Energy (Article 76)

The provision on cooperation in the field of energy has as its goal the development of conventional and non-conventional energy resources which will in the long run help the ACP States achieve self-sufficiency. The following tasks are identified:

- (i) the preparation of inventories on energy resources and demand (commercial as well as noncommercial);
- (ii) the development of alternative energy strategies from such sources as wind, solar, geothermal, and hydro-energy sources;
- (iii) the exploration and development of national and regional energy

¹¹⁰ *Id.* art. 71.

¹¹¹ *Id.* art. 72.

¹¹² *Id.* art. 74.

- sources in tandem with the establishment of energy-intensive industry;
- (iv) strengthening the management and control of the ACP States over their energy resources along lines consistent with their development objectives;
 - (v) the establishment of a rural energy program;
 - (vi) the promotion of research adaptation and dissemination of appropriate technology as well as training needed to meet manpower needs;
 - (vii) the production of equipment for the production of energy as well as the application of energy-saving techniques;
 - (viii) monitoring the side effects of energy production on the environment; and
 - (ix) the conservation of existing and future energy resources of the ACP States.¹¹³

8. *Industrial Information and Promotion Activities (Article 77)*

Article 77 undertakes to "ensure and intensify regular information exchanges and the organization of the necessary contacts in the industrial field between the Community and the ACP States."¹¹⁴ The following goals are mentioned:

- (i) to gather and disseminate all relevant information concerning trends in industrial policies in the Community, the ACP States, and the world-at-large;
- (ii) to organize meetings to review these matters;
- (iii) to provide appropriate channels for linking up industrial policy-makers, promoters, and economic operators from the Community and the ACP States;
- (iv) to carry out studies which will identify practical opportunities for industrial cooperation with the Community; and
- (v) to set up industrial promotion bodies in the ACP and to facilitate access to and use of available data sources in the Community.

B. Institutional Machinery for Implementing Title V

1. *Administrative Framework*

Lomé II continued and expanded on the administrative structure first outlined in Lomé I. It maintained the three Lomé I institutions directly charged with the responsibility of implementing the Convention's industrial cooperation objectives. These are the Committee on Industrial Cooperation (CIC), the Center for Industrial Development (CID), and an Advisory Council.¹¹⁵

¹¹³ *Id.* art. 76.

¹¹⁴ *Id.* art. 77(1).

¹¹⁵ For a description of these institutions see *supra* note 50.

a. The Committee on Industrial Cooperation (CIC)

Articles 78(1) and 81(1) define the duties of the CIC while Article 78(2) provides that its composition and detailed rules of operation are to be determined by the ACP-EEC Council of Ministers.¹¹⁶ Generally, the CIC monitors the overall progress of industrial cooperation. More particularly, it:

- (i) will examine and evaluate problems and policy issues in the field of industrial cooperation presented to it by the Convention partners and suggest appropriate solutions;
- (ii) may organize, at the request of either the Community or the ACP States, a review of trends in industrial policies and developments in the world industrial situation; and
- (iii) guides, supervises, and controls the activities of the Center for Industrial Development, and examines and adopts CID's operational budget.¹¹⁷

The Committee, which is composed of one representative of each Member State of the European Communities, and of the Commission and eighteen ACP representatives, reports to the Committee of Ambassadors.¹¹⁸

b. The Center for Industrial Development (CID)

Article 80 specifies the functions of the CID which include the following:

- (i) gathering and disseminating information as well as organizing contacts between economic and financial operators and industrial policy-makers in the Community and in the ACP States;
- (ii) providing expert advisory services including the execution of feasibility studies aimed at accelerating the establishment of industrial undertakings in the ACP States;
- (iii) identifying and evaluating opportunities for industrial training to meet the needs of ACP States, and seeking out possibilities of acquiring, adapting, and developing appropriate industrial technology; and
- (iv) identifying possible sources of financing.

In fulfilling these duties, the Center is mandated by Article 80(2) to pay particular attention to the problems of the least developed, land-locked and island ACP States. Articles 81(1) and (2) provide that the Center shall come under the Committee on Industrial Cooperation and shall be administered by a director assisted by a deputy, both of whom are appointed by the CIC.

¹¹⁶ Lomé II, *supra* note 3.

¹¹⁷ *Id.* art. 81(5).

¹¹⁸ *Id.* arts. 171-74.

c. The Advisory Council

The Advisory Council is composed of "persons with wide experience in the industrial field especially in the manufacturing sector."¹¹⁹ They are chosen by the CIC on an individual basis, from nationals of the ACP-EEC States. The Council's tasks are:

- (i) to advise and assist the Center in the programming and development of its industrial activities; and
- (ii) when appropriate, to give its opinion on the Center's annual work program, budget, and general report.¹²⁰

2. *Financing Industrial Development*

a. Volume

With the exception of Article 81(5) which sets a ceiling on the amount the Community will contribute to the budget of the CID, no specific amount is set aside in the industrial regime for implementing its objectives. The two other clauses in the regime which touch on financing—Articles 75 and 76(2)—direct attention instead to Title VII of the Convention for specific information about the financing of industrial cooperation programs. In other words, all the opportunities offered under the financial and technical cooperation regime of the Convention, Title VII, are available for underwriting industrial cooperation programs and projects.¹²¹

Under Title VII, Community financial assistance to the ACP States for the lifetime of the Convention had been set at 5,227 million EUA,¹²² broken down as follows: 4,542 million EUA from the European Development Fund (EDF) of which 2,928 million EUA is in the form of grants, 504 million EUA in the form of special loans and 280 million EUA in the form of risk capital for a total project aid of 3,712 million EUA; 550 million EUA and 280 million EUA earmarked for STABEX¹²³ and SYSMIN¹²⁴ respectively; plus an additional contribu-

¹¹⁹ *Id.* art. 81(4).

¹²⁰ *Id.* art. 81(3).

¹²¹ *Id.* art. 105.

¹²² *Id.* art. 95. This amount was increased by 380 million European Community Units (ECUs) as a result of (a) the Community undertaking to cover the estimated 180 million ECU operating costs of the commission delegations in the ACP States out of its general budget, rather than out of the budget of the EDF; and (b) the provision for additional operations involving mining and energy investments to be financed by the EIB from its own resources at an estimated cost of 200 million ECU. The overall amount of financial assistance from the EEC will be 5,607 million ECU. See ACP-EEC Council of Ministers, Mar. 1, 1980-Feb. 28, 1981, ACP-EEC Convention of Lomé, at 85 [hereinafter cited as Annual Report 2].

¹²³ Lomé II, *supra* note 3, art. 95(1)(a). STABEX is a commodity price insurance system designed to remedy "the harmful effects of the instability of export earnings and to help the ACP

tion of 685 million EUA from the European Investment Bank (EIB) in the form of loans from the Bank's own resources with an interest rate subsidy of three percent.¹²⁵

b. Methods of Financing

Article 101 of Title VII identifies a variety of methods for financing projects or programs: grants, special loans from the EDF, risk capital, or loans from the EIB. The financing of industrial activities, however, must first be drawn from EIB loans or risk capital. Recognizing that official development aid cannot hope to mobilize sufficient funds to finance the ACP States' industrial development, cofinancing in the form of joint public and private capital is encouraged.¹²⁶ At the request of an ACP State and with the agreement of the other parties concerned, the Commission or the EIB may act as a coordinating agency for projects partially financed by them.¹²⁷ Finally, there is a further contribution of up to 200 million EUA from the EIB for energy and mining in the form of standard loans without interest rebates.¹²⁸

The choice of priorities in the allocation of these funds, and hence the sectoral distribution of the aid, is left entirely up to the ACP States.¹²⁹ The Convention also leaves to ACP States the responsibility for submitting requests for financing to the Community.¹³⁰ The Community may, however, provide technical assistance for drawing up the dossiers of projects and programs if requested by the ACP States.¹³¹

States overcome one of the main obstacles to the profitability and sustained growth of their economies;" the system is operated "to guarantee the stabilization of earnings derived from the ACP States' exports to the Community of products on which their economies are dependent and which are affected by fluctuations in price or quantity or both of these factors." *Id.* art. 23.

¹²⁴ *Id.* art. 95(1)(a). SYSMIN does for mining products what STABEX does for agricultural products. *Id.* art. 49. It provides two types of aid: (1) aid to maintain capacity for the production of certain mining products, comprising financial and technical aid for projects and programs through a "special financial facility," and (2) technical and financial assistance from the Community for the development of new mining and energy resources in the ACP States. *Id.* arts. 49, 51, 57, 58.

¹²⁵ *Id.* art. 95(2).

¹²⁶ *Id.* arts. 96-99.

¹²⁷ *Id.* art. 100.

¹²⁸ See *Lomé II Dossier*, THE COURIER, Nov. 1979, at 31 [hereinafter cited as *Lomé II Dossier*].

¹²⁹ *Lomé II*, *supra* note 3, art. 108(2).

¹³⁰ *Id.* art. 108(2)(b).

¹³¹ *Id.* art. 108(3).

IV. DETAILED ASSESSMENT OF TITLE V

A. Financing and Implementing Industrial Development

The ACP States viewed the financial package under Lomé II as "an acceptable minimum,"¹³² although it fell somewhat short of the \$10 billion they had requested. The roughly \$6 billion in Lomé II aid spread over five years represents five percent of the EEC's total official development assistance and a hefty sixty-five percent increase over Lomé I at current prices. Generous as this package appears to be, its putative improvement over Lomé I quickly vanishes when inflation is taken into account.¹³³ In real terms, the increase adds up to only twenty percent assuming annual world inflation of eight percent.¹³⁴ And when the funds are divided among the now sixty-one ACP States¹³⁵ instead of forty-six as in 1975, the aid is in fact less per capita and less in purchasing power than under Lomé I.¹³⁶

The Community did not set aside a specific amount for financing industrial cooperation, but instead provided that all the opportunities offered under the Convention for financial cooperation could be tapped for this purpose. An examination of the resources made available to the EDF, EIB and CID should provide some idea of the Community's commitment to the goal of industrial development in the ACP States.

1. *The Fifth European Development Fund (EDF)*¹³⁷

The Lomé II allocation to the EDF represents a fifty-five percent increase over Lomé I.¹³⁸ A substantial portion of the allocation is re-

¹³² See Laishley, *supra* note 11, at 46. The comment is attributed to Michael Anchouey, Gabon's Planning Minister and the ACP chairman through much of the Lomé II negotiations.

¹³³ See Madeley, *supra* note 11, at 53.

¹³⁴ See C. GOYBET, *THE SECOND CONVENTION OF LOMÉ 4* (1982).

¹³⁵ The accession of Zimbabwe, St. Vincent, and Vanuatu brought the total number of ACP States to 61.

¹³⁶ See Madeley, *supra* note 11, at 53.

¹³⁷ The EDF is made up of contributions from the Member States outside the framework of the Community budget and over 50% of it is grant aid, primarily intended for projects with little prospect of a sufficient rate of return to attract funds from the capital markets. EDF funding is available on particularly favorable terms, and includes grants to which the *least* developed ACP countries have priority access, and forty-year special loans which bear an interest rate of only one percent (0.75% for the least developed countries) with repayment commencing after a ten-year grace period. The first EDF, under the Treaty of Rome, ran from 1958 to 1963. The second EDF coincided with the lifetime of the first Yaounde Convention (June 1, 1964-May 31, 1969); the third EDF corresponded to Yaounde II (Jan. 1, 1971-Jan. 31, 1975); the penultimate fund, the fourth EDF, covered the first Lomé Convention (Apr. 1, 1976-Dec. 31, 1980). See GOYBET, *supra* note 134, at 1-2.

¹³⁸ EDF allocation under Lomé I was 2,980 million EUA compared to 4,636 million EUA under Lomé II. GOYBET, *supra* note 134, at 5. "In connection with Zimbabwe's accession to the

served for the two traditional forms of aid—grants and repayable special loans—which increased by forty-five percent and sixteen percent respectively.¹³⁹ Grants are non-repayable and are primarily intended for the financing of economic and social infrastructures that are not likely to show any return in the short term. Part of the 2,986 million EUA earmarked for grants, however, will be used to subsidize interest rates on EIB loans.¹⁴⁰ This is worthy of note since the Convention provides that financing for industrial development must first be procured in the form of loans from the EIB or risk capital.¹⁴¹

Overall, the total EDF resources under Lomé II as well as the allocations for grants and special loans are proportionally less than the allocations for Lomé I.¹⁴² For instance, the fourth EDF accounted for 86.2% of total resources delegated to both EDF and EIB, of which grants made up 59.6% and special loans 12.9% of the total.¹⁴³ However, under Lomé II, EDF's share of total delegations dropped by five percentage points while the decrease for grants and special loans was 7% and 3.8% respectively.¹⁴⁴ The proportional reduction in EDF grants and soft loans is offset by the new insurance system designed to stabilize the ACP States' mining and mineral exporting capacity (SYSMIN) and the large increase in the amount of risk capital available.¹⁴⁵

The breakdown of aid by sectors shows that at the end of 1980, 328.8 million ECU,¹⁴⁶ or 13.1% of total EDF aid, had been allocated to the industrial sector. This amount was the fourth largest EDF V allocation, exceeded only by the allocations to economic infrastructure (23.3%), rural production (20.2%), and social development (15.2%).¹⁴⁷ When both EDF and EIB allocations are combined, however, the share for industrial development (28.2%) is the largest for all the sectors, while the other three major sectors drop to 19.1%, 16.5%, and 12.4% respectively.¹⁴⁸ The sectoral distribution of EEC funds clearly establish

Convention, the Member States signed an internal agreement amending the 1979 internal financial agreement on 16 December 1980. The amendment increases the Fifth EDF's funds by 85 million EUA raising them from 4,636 million EUA to 4,721 million EUA." See Annual Report 2, *supra* note 122, at 112.

¹³⁹ GOYBET, *supra* note 134, at 5.

¹⁴⁰ See Lomé II, *supra* note 3, art. 104(4).

¹⁴¹ *Id.* art. 101(2).

¹⁴² See GOYBET, *supra* note 134, at 5.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ See *supra* note 124 and accompanying text.

¹⁴⁶ See *supra* note 8 and accompanying text.

¹⁴⁷ See Annual Report 2, *supra* note 122, at 103-08.

¹⁴⁸ *Id.*

the preeminence of industrial development in Lomé II.¹⁴⁹

In order for this substantial financial commitment to have an impact on industrial development the money has to be spent, and it must be spent quickly. This is particularly important if the real value is to be insulated from the vagaries of inflation. But in the past, the EDF has acted with something less than alacrity in disbursing aid.¹⁵⁰ By July 1979, for example, only one-third of the Lomé I aid budget had been actually spent.¹⁵¹ The delay in spending has been traced to the fact that the EEC's "procedures are tortuous."¹⁵² Despite claims to the contrary, the Second Lomé Convention did little to streamline these procedures.¹⁵³ ACP States in need of financing are still required to submit their requests in the form of a project dossier. The dossiers undergo extensive appraisal in the appropriate Commission department in Brussels before they are forwarded to the EDF Committee or EIB Committee for approval, both of which are made up of representatives of the EEC Member States. The proposal then moves up the "project pipeline"¹⁵⁴ to either the Commission (in the case of grants and soft loans) or to the EIB's Board of Directors (in the case of subsidized loans and risk capital), who draw up a financing agreement which is then submitted to the ACP State for signature.¹⁵⁵

Although the time lag between presentation and the actual disbursement of fund monies and start of work on the project is substantially less than the two years under the first EDF,¹⁵⁶ nevertheless, the process remains quite protracted.¹⁵⁷ The Community has justified this cumbersome procedure on the ground that it needs to have some control over the aid it dispenses to the ACP States; yet, this seeming obsession with accountability appears to the ACP States to reveal the

¹⁴⁹ *The European Community's Development Cooperation Policy 1980*, THE COURIER, Sept.-Oct. 1981, at 55 [hereinafter cited as *Development Policy 1980*].

¹⁵⁰ See *The New Lomé Convention*, *supra* note 81, at 117.

¹⁵¹ See *Inefficient, Unfair and Un-British*, THE ECONOMIST, May 9, 1979, at 81.

¹⁵² *Id.* One commentator has observed that pushing a project to the approval phase is "like climbing a greasy pole; no sooner has some progress been made than another requirement is presented and the project seems no nearer approval." Rajana, *supra* note 7, at 197. See Hill, *The European Development Fund Proposals for Renegotiation*, in THE RENEGOTIATIONS OF THE LOMÉ CONVENTION 1, 2 (Catholic Institute ed. 1978); see also *supra* notes 82, 86 and accompanying text.

¹⁵³ See *Lomé II Dossier*, *supra* note 128, at 34. An ACP-EEC Committee was forced to investigate causes of delay and to recommend more expeditious procedures.

¹⁵⁴ See TWITCHETT 1, *supra* note 12, at 43.

¹⁵⁵ See Lomé II, *supra* note 3, arts. 109-18.

¹⁵⁶ See TWITCHETT 1, *supra* note 12, at 43.

¹⁵⁷ Madeley apparently exaggerates when he suggests that the time lag under Lomé I was between two and three years. See Madeley, *supra* note 11, at 53.

Community's fundamental distrust of them.¹⁵⁸ The ACP finds this attitude somewhat ironic in view of the well-orchestrated attempts by the EEC to promote the Lomé Convention as a "partnership of equals."¹⁵⁹

Although the ACP position evokes sympathy, it is nonetheless flawed in two respects. First, it fails to recognize that as a practical matter, aid donors expect some accountability from their recipients and will impose certain institutional constraints on how funds are spent. Donors are entitled to know whether their funds are being used properly or diverted for other purposes. Secondly, the ACP States have misconceived the nature of their relationship with the EEC. In reality, a strikingly lopsided arrangement is revealed when stripped of the "partnership" veil. Dr. Twitchett, who cannot be accused of anti-Lomé bias, has described Lomé II as an arrangement in which the ACP States "were confronted with a stark alternative—they could either accept or reject EEC offers. . . . [The] agreement underlines that the EEC imposed its conception of the partnership on the ACP States."¹⁶⁰ This assessment suggests that criticism of Lomé II by ACP sympathizers should take as a point of departure the essential asymmetry of the ACP-EEC partnership.

2. *The European Investment Bank (EIB)*

Industrial mining or energy investment projects are principally the responsibility of the EIB. In order to help it meet this task, the Convention allocated 685 million EUA—a 76% increase over Lomé I—in loans from the Bank's own resources with interest rate subsidies of three percent.¹⁶¹ Furthermore, the Bank may commit, on a case-by-case basis, an additional 200 million EUA of its own resources to mining and energy investment projects of mutual interest to the ACP countries and the Community.¹⁶² When this provision is taken into account, the Bank has access to 885 million EUA of funds, an increase of 126.9% over Lomé I, and a boost of its share of total Community resources

¹⁵⁸ *Id.*

¹⁵⁹ See, e.g., Madeley, *supra* note 11, at 53. If it is a partnership, the ACP States reason, then *a fortiori* there ought to exist a mutuality of trust between the parties or, at the very minimum, a willingness to learn to trust each other. *Id.* See also P. COFFEY, *THE EXTERNAL ECONOMIC RELATIONS OF THE EEC* (1976). Coffey maintains that the Community should be held to its own description of its aid package as a "cooperative venture." *Id.* at 74, 94. See also Rajana, *supra* note 7, at 193.

¹⁶⁰ See Asante, *supra* note 11, at 690.

¹⁶¹ See GOYBET, *supra* note 134, at 5.

¹⁶² See Lomé II, *supra* note 3, art. 59, annex XXXI. See also EUR. INVESTMENT BANK, 1981 ANN. REP., at 53 [hereinafter cited as EIB ANN. REP.].

from 11.3% to 15.5%.¹⁶³ Since the EIB also manages EDF risk capital, it is responsible for administering roughly 23.8% of Lomé II resources, as compared to 16.9% under Lomé I.¹⁶⁴ How the EIB handles these resources will have a significant impact on the industrialization process now underway in the ACP States.

Under Lomé I approximately 65% of EIB's *own* resources was invested in industry and agroindustry, 33% in electricity production and distribution, and about 2% in tourism.¹⁶⁵ Almost all (about 92%) of the risk capital operations were for industrial investments, 6% went to services (such as tourism, 5%, feasibility studies and technical assistance, 1.2%), and the remaining 2% to holdings in ACP development banks.¹⁶⁶ In the first year of operation of Lomé II, the Bank granted twelve loans totalling 118.4 million ECU and was involved in eighteen risk capital operations for an aggregate of 49.5 million ECU subsidized by the EDF.¹⁶⁷ The Bank also advanced a nonsubsidized loan for 40 million ECU.¹⁶⁸ Certain trends with respect to sectoral distribution are already emerging based on an analysis of the Bank's first year of operation. The bulk of its financing went into mining and quarrying (36.7%), energy (30.7%), manufacturing industry (25.2%, of which 13.4% was for smaller businesses), and transport infrastructure and services (6.9%).¹⁶⁹ The high concentration of Bank financing in the mining and energy sectors is quite consistent with the prominence given these two areas in the Convention.¹⁷⁰ This stems in large measure from the recognition that protection and expansion of the energy and mining sectors is basic to industrial development in the ACP States.¹⁷¹

A major thrust of the industrial regime is the call for an expanded industrial base which would, in the long run, have a favorable impact on the employment situation. Job creation for ACP nationals is thus given prominence in Article 73. The EIB estimates that the funds invested so far in nineteen African countries should help to create directly about 5,000 jobs, the majority of which will be in the industrial sector.¹⁷² Thus, about 570,000 ECU have been spent per job.¹⁷³ The

¹⁶³ See GOYBET, *supra* note 134, at 5.

¹⁶⁴ *Id.* at 6.

¹⁶⁵ See *Lomé II Dossier*, *supra* note 128, at 34.

¹⁶⁶ *Id.*

¹⁶⁷ See EIB ANN. REP., *supra* note 162, at 53.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 55.

¹⁷⁰ See *Lomé II*, *supra* note 3, art. 76.

¹⁷¹ See *Lomé II Dossier*, *supra* note 128, at 34.

¹⁷² See EIB ANN. REP., *supra* note 162, at 55.

¹⁷³ *Id.*

high average investment cost needed to create one new job in industry is largely "a reflection of the preponderance of major mining and energy projects and conversion and modernization schemes within the sum total of financing channelled into individual projects."¹⁷⁴ The high cost per job also confirms ACP fears that the capital intensive, labor saving approach to industrialization may not provide productive employment for the vast majority of the African labor force. Estimates by the United Nations Economic Commission for Africa show that the shift toward heavy industry will result in an annual growth rate of employment in the manufacturing sector of only four percent.¹⁷⁵ Given the present share of manufacturing in the African labor force of eight percent of total employment, by the year 2000 employment in this sector would account for only ten percent of the total labor force.¹⁷⁶ Of an estimated 225 million people who will be added to the labor force, only twelve percent, or 27 million people, will find employment in the manufacturing sector by the end of the century.¹⁷⁷

3. The Center for Industrial Development (CID)

A pivotal institution in stimulating industrial development is the CID, first set up in 1977. Among its many responsibilities is ensuring that aid to the industrial sector is properly implemented. To meet its operating and programmatic activities, the Center can draw a separate allocation of up to 25 million EUA "from the resources earmarked under Article 133 for the financing of regional cooperation projects."¹⁷⁸ The Center's allocation supplements the normal support for industrialization provided by the EDF and the financial and technical cooperation provisions of the Convention.

The CID was designed to act as a conduit between the ACP States and European industrialists. In the performance of this role, the CID was required to concentrate on collecting data on the possibilities of industrial cooperation, facilitating consultations on the transfer of appropriate technology, organizing seminars, and establishing contact between prominent EEC and ACP industrialists.¹⁷⁹ Through the CID's intervention, nineteen firms were set up and eight expanded in the first

¹⁷⁴ *Id.*

¹⁷⁵ Adedeji, *Development and Economic Growth in Africa to the Year 2000: Alternative Projections and Policies*, in *ALTERNATIVE FUTURES FOR AFRICA* 279, 293 (T. Shaw ed. 1982).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See Lomé II, *supra* note 3, art. 81(5).

¹⁷⁹ See *id.* arts. 80-81.

year of application of Lomé II.¹⁸⁰ The Center has also been involved in negotiating fifty-one investment agreements which are in various stages of completion.¹⁸¹

These statistics do not reveal much in terms of the CID's achievements. For instance, they tell us little with respect to the significance that ought to be accorded the number of new firms established or expanded under the Center's prodding. The CID has not identified the optimum number of firms that must be established as a prelude to the industrial take-off in the ACP States; nor has it indicated how many firms have left the ACP for more salubrious investment shores. Another problem is that of trying to measure how well the CID has performed in the area of technology transfer given the absence of a base which would permit comparisons. But even without these bases one can, after examining the African situation, draw some conclusions with respect to the formidable obstacles confronting the CID in its role as a conduit for technology transfer.

Two examples will suffice. It is generally accepted that the transfer of industrial property is a legitimate means of spreading technical information and a vital means of transferring technology from the industrialized to the non-industrialized world.¹⁸² With respect to Africa, the evidence indicates that this asset is not only in short supply, but the potential for growth is quite minimal. This conclusion is dramatically revealed in the decline in Africa's share of patents in force and applications for patents between 1975 and 1978.¹⁸³ To the extent that the transfer of industrial property also involves a corresponding transfer of industrial skills, the African situation is far from encouraging. When one examines the total stock of scientific and technical manpower available for Africa's industrial revolution, again the picture that emerges is not hopeful. From 1970-77, Africa's share of the worldwide stock of scientists and engineers was 1.6% and 0.1% for technicians.¹⁸⁴ Of the total supply of scientists and engineers, and technicians in Africa, only 3.5% and 1.2% were actively engaged in research and development.¹⁸⁵ In contrast, Cuba freed 8.2% of its scientists and engineers

¹⁸⁰ See *Development Policy 1980*, *supra* note 149, at 59.

¹⁸¹ See *id.*

¹⁸² Mezieres, *Patents and Technology: The Work of the European Patents Office*, THE COURIER, May-June 1979, at 85. See also P. CATEORA & J. HESS, INTERNATIONAL MARKETING 196 *passim* (1979); F. ROOT, FOREIGN MARKET ENTRY STRATEGIES 96 *passim* (1982).

¹⁸³ See U.N. STATISTICAL Y.B. 1979/80 ST/ESA/STAT/SER.S/7 at 859-61 [hereinafter cited as U.N.Y.B.].

¹⁸⁴ *Id.* at 867-75.

¹⁸⁵ *Id.*

for research and development during this same period.¹⁸⁶

B. Nonofficial Assistance

It was recognized during the life of Lomé I that official aid on its own did not go far enough in financing development in the industrial sector. For instance, Lomé I accounted for no more than 4% to 6% of Member States' total aid to the developing world while Community aid as a whole represented between 7.5% and 10% of total official development assistance.¹⁸⁷ By comparison, Lomé II accounts for only 5% of the Member States' total aid to all developing countries and this amount is likely to decline during the life of this convention.¹⁸⁸

Meanwhile, costs for projects are becoming quite prohibitive. For example, the estimated cost of financing the West Africa Cement Company is 249 million ECU and the Bardheera Dam in Somalia will cost an estimated 433 million ECU.¹⁸⁹ For the expansion of their construction sector and the development of hydroelectric power, these African states cannot rely on official development assistance (ODA) because this source of funding is becoming increasingly scarce. The European economies themselves are caught in a recessionary cycle and are struggling to regain their economic momentum.¹⁹⁰ Consequently, resources that would have gone toward assisting in the development of the ACP States are being diverted into domestic production systems in an effort to revive them. This shrinking of the resource pool from whence ODA has sprung is very much evident in the official contributions to the two Lomé Conventions. This is one reason that the EEC and ACP countries, in a joint declaration, recognized "the need to tap additional financial resources that would make available substantial capital resources for industrial development."¹⁹¹

1. Co-financing¹⁹²

The Convention, therefore, placed much emphasis on co-financing involving the ACP-EEC and other multilateral agencies like the World

¹⁸⁶ *Id.* Out of 541,328 scientists and engineers in Brazil, 13,678 or 0.025% were engaged in research and development. And of India's 697,600 scientists and engineers, 28,233 or 0.040% were similarly involved. *Id.* at 869. Clearly the problem of inadequate scientific and technical manpower is not uniquely African. The Center for Industrial Development clearly should not be held responsible for this state of affairs.

¹⁸⁷ See GOYBET, *supra* note 134, at 8.

¹⁸⁸ *Id.* at 3.

¹⁸⁹ *Id.* at 28.

¹⁹⁰ See Mytelka & Dolan, *supra* note 11.

¹⁹¹ Lomé II, *supra* note 3, annex X Final Act.

¹⁹² *Id.* arts. 54, 58, 76, 96-100.

Bank. Particular emphasis was placed on Arab funds which were actively sought under Lomé I and which accounted for 17.5% of all EDF and EIB operations, next only in order of volume to the EEC and self-financing by ACP countries.¹⁹³ Overall, over 28% of the Fourth EDF Project resources and 44% of EIB administered funds were involved in co-financial operations.¹⁹⁴ This feature of Lomé I was continued under Lomé II. The Commission has developed a long list of regional and national projects in West and East Africa it intends to co-finance. These include projects in the priority industrial sectors as well as infra-structural development.¹⁹⁵

2. *Private Investments*

Given the limits of official aid, the signatories to the Convention wisely concluded that additional resources can come only from private investment. To attract private capital, a uniform investment code was included in the Convention.¹⁹⁶ It provides that the ACP States will treat companies that are nationals of the EEC Member States on a non-discriminatory basis. This means that each ACP State is required not to give preferential treatment to any EEC country at the expense of other EEC countries; thus, removing the old colonial preferences, and opening up the ACP markets and investment opportunities to EEC Member States which never possessed colonies.

There is little indication that private EEC firms are responding. Such a conclusion can be reached from an examination of figures on transfers of both tangible and intangible resources from the EEC to Africa. With respect to the latter, the argument can be made that where the investment climate is conducive, domestic European companies will be most willing to make available their *intangible* assets, such as patents, trade secrets, know-how, and trademarks, to foreign companies in Africa in return for royalties and/or other forms of payment.¹⁹⁷ Conversely, where the foreign market offers little or no guarantee against pirating or infringing upon such valuable assets, the domestic firm would be hesitant to expose its industrial properties.¹⁹⁸ For a variety of reasons,¹⁹⁹ the flow of industrial properties to Africa has consti-

¹⁹³ See GOYBET, *supra* note 134, at 29.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 31.

¹⁹⁶ See Lomé II, *supra* note 3, arts. 60-64, annex IX.

¹⁹⁷ See ROOT, *supra* note 132.

¹⁹⁸ *Id.*

¹⁹⁹ It could be argued that the African share is so small because these valuable industrial assets have been appropriated and profitably exploited in many of these countries without benefit of

tuted little more than a trickle. For the period 1970-75, Africa's share of the total world applications for patents as well as patents in force stood at 0.4% and 8.8% respectively.²⁰⁰ By 1978, the continent's share in both categories decreased even more, to 0.3% and 0.5% respectively.²⁰¹ In this same year, by way of contrast, Japan accounted for a little over one-fifth of total world applications for patents and one-tenth of the patents in force.²⁰²

Turning now to the transfer of tangible assets, available figures confirm the aforementioned pattern of distribution. The direction of investment appears to be toward other parts of the Third World. Africa's share of the total net flow of private investments from the Development Assistance Committee²⁰³ to the LDCs for the period 1973-79 averaged only 9.2%.²⁰⁴ More significantly, Africa's share, which was at its peak in 1975 when Lomé I was signed, plummeted to 6.9% in 1979, the year that Convention expired.²⁰⁵ If this is any indication of what awaits the new Convention, it is clear that Africa will have to contend with the competition coming from other LDCs in attracting private investment from the EEC. Private firms will venture into foreign markets to obtain raw materials, to acquire manufacturers at a lower cost, and to penetrate local markets.²⁰⁶ The decision to invest in a particular country is arrived at after careful evaluation of both the investment climate in the target country and the nature of the intended investment project. Investment climate embraces all the environmental factors and forces—political, economic, and sociocultural—that can have a significant influence on the profit margins and safety of the proposed investment project.²⁰⁷ When the present and future risks outweigh the probable gains, investors will prefer to go elsewhere.

Private investors, it would seem, are attracted only to those Third

license. However, the fact that the majority of African States are signatories to any one of a number of multilateral treaties designed to protect industrial property weakens this argument. See Haseltine, Lake & Walters, *New Patent Systems: What They Offer, How They Differ*, BUS. INT'L, Apr. 9, 1976, at 116-17.

²⁰⁰ See U.N.Y.B., *supra* note 183.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ The Development Assistance Committee is made up of the following states: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Federal Republic of Germany, Italy, Japan, Netherlands, New Zealand, Norway, Sweden, Switzerland, the United Kingdom, and the United States. Note that seven members of DAC belong to the European Economic Community.

²⁰⁴ See OECD, *Geographical Distribution of Financial Flows to Developing Countries 1976/1979 (1980)*.

²⁰⁵ *Id.*

²⁰⁶ See generally ROOT, *supra* note 182, at 138, 142 *passim*.

²⁰⁷ *Id.*

World countries which already have a solid foundation: an industrial fabric, a credit network, services, experienced executives, skilled and semi-skilled workers, high worker productivity, and political stability.²⁰⁸ Few African countries possess these crucial basics. Any assessment of the reluctance of European private capital to venture into the African markets must include these structural constraints in the calculus.

Unfortunately Lomé II provides no solid guarantees against these noncommercial risks.²⁰⁹ Articles 60 through 64, which address this area, merely provide for the extension of individual ACP investment protection agreements with one EEC Member State to include all new EEC investments.²¹⁰ Protecting private investments is left to bilateral intergovernmental investment agreements.²¹¹ In failing to establish machinery to protect private investment, the Lomé II industrial regime will likely not reverse the trend in the flow of private capital from the EEC to Africa. This failure is partly because of the resistance of the ACP States against what they perceive to be encroachments on their sovereignty. The ACP States believe that decisions bearing on private investments should be left to the state. Because they are economically vulnerable, the ACP States are wary, from bitter experience, of giant multinational firms which have ridden rough shod over their economies behaving much as if they are the new sovereigns.²¹² The ACP States were understandably reluctant to accord these global behemoths any status in the Convention.

²⁰⁸ See GOYBET, *supra* note 134, at 62.

²⁰⁹ These fears are apparently greatly exaggerated. The right of states to freely use and exploit their natural wealth and resources is an inherent attribute of their sovereignty. See generally Resolution on Permanent Sovereignty Over Natural Resources, G.A. Res. 1803, 17 U.N. GAOR Supp. (No. 17) at 15, U.N. Doc. A/5217 (1963), *reprinted in* 2 I.L.M. 223 (1963); Charter of Economic Rights and Duties of States, G.A. Res. 3281, 29 U.N. GAOR Supp. (No. 31) at 50, U.N. Doc. A/9631 (1975), *reprinted in* 14 I.L.M. 251 (1975). States are, nonetheless, bound by the law of nations to respect private property and may not derogate from this principle except for reasons of public utility in time of peace and requisition in war. See G. VON GLAHN, *LAW AMONG NATIONS* 233-34 (3d ed. 1976). The vast majority of the ACP States have elected not to tamper with foreign capital investment, even at the expense of their political independence. See O. UDOKANG, *SUCCESSION OF NEW STATES TO INTERNATIONAL TREATIES* 463-78 (1972).

²¹⁰ See Lomé II, *supra* note 3, arts. 60-64.

²¹¹ *Id.* art. 2(a), annex IX.

²¹² Foreign firms have dominated the economies of Third World countries and in the process have created the international equivalent of old American "company towns": United Fruit (Honduras, Guatemala, Costa Rica, El Salvador, Nicaragua); Firestone (Liberia); Union Minière (Zaire). See, e.g., L. TURNER, *MULTINATIONAL COMPANIES AND THE THIRD WORLD* (1975); see also *THE WORLD AS A COMPANY TOWN* (A. Soven ed. 1978).

C. The Problem of Decapitalization

No discussion of private capital flows into the Third World can be complete without mention of the problem of decapitalization—the outflow of capital from the recipient states back to its place of origin. This phenomenon occurs in several forms: through repatriated profits, debt service, and interest and amortization costs. Debt service tends to increase concomitantly with an increase in borrowing.²¹³ Calculations by the United Nations Industrial Organization (UNIDO) indicate that the relative increase in private sector ODA sources has resulted in a rise in the average rate of interest on the debt of Third World countries from 4.5% in 1974 to 6.4% in 1977.²¹⁴ In the same period the rate of amortization increased by about 42%.²¹⁵

The total service costs of nonguaranteed private debt for 1976 stood at 34.4%.²¹⁶ When this debt service is added to profits on foreign capital stock and quasi-profits in the form of royalties, Third World countries experienced an estimated outflow of \$49.3 billion compared with a total inflow in 1976 of \$59 billion; or put differently, enjoyed a net transfer gain of only \$9.7 billion.²¹⁷ Furthermore, it has been estimated that twenty-seven percent of foreign capital now entering the non-oil exporting Third World countries—including all of sub-Saharan Africa with the exception of Nigeria, Angola, Gabon and Cameroon—will go toward refinancing maturing debts.²¹⁸ This figure is likely to rise to sixty-five percent by 1985.²¹⁹

Unfortunately, data is not readily available for calculating the magnitude of new private capital inflows and reverse flows for Africa alone. This prevents any meaningful discussion on the real impact of EEC private capital transfers on African industrial development during the tenure of Lomé II. However, one can still extrapolate from the data presented thus far that: (1) Africa, like the rest of the Third World, will on the average spend significantly more of its private funds on service costs than on its socio-economic development, and (2) if the trend as forecast continues, these costs are likely to rise to almost two-thirds of

²¹³ See TURNER, *supra* note 212.

²¹⁴ See UNIDO, *supra* note 15.

²¹⁵ The actual rate of amortization increased from 9.1% to 13.3%. *Id.* at 299.

²¹⁶ *Id.* at 301.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *The Euromarkets in 1978*, EUROMONEY, Mar. 1978, at 54; see also UNIDO, *supra* note 15, at 301. The concentration of maturing external debt is a result of the "steady shortening of the average life of syndicated credit." *Id.* To repay the short-term nonguaranteed private debts, the LDCs must borrow even more from the developing countries. *Id.*

Africa's external borrowings during the next three years. Indeed in the first two years of Lomé I, about seventy percent of Community aid was repatriated to the EEC in the form of capital or as fees for services.²²⁰ Such massive financial drains, especially for a continent that is financially anemic, raise very serious and fundamental questions about the proper role of foreign capital, and the wisdom of relying so heavily upon it in African industrial development. More concerned with protecting its private investors, the EEC chose not to confront this issue when it was raised by the African partners during the negotiations for Lomé II.²²¹ As a result, a problem with such far-reaching implications for African development was accorded no recognition in a Convention dedicated to the achievement of that very goal.

D. Recommendations in Anticipation of Lomé III

1. *Regional Industrial Development Banks*

The project by project method of dispensing aid which offended ACP sensibilities during Lomé I was adopted with few modifications in the successor Convention.²²² However, the interests of both parties can still be accommodated through the establishment of regional industrial development banks (RIDB) in Africa.²²³ The RIDBs could be funded from part of the resources allocated to the European Development Fund as well as some of the European Investment Bank funds destined for national development banks.²²⁴ In addition, the RIDBs would be able to mobilize resources within the regions for investment in priority industries. The management of such banks should be drawn from among ACP nationals familiar with the structure and dynamics of critical industries within their respective regions, and the manpower, technology, marketing, and financial requirements specific to their regions. Bank lending policies would be tailored to the industrial development priorities and policies of each region. Thus, the establishment of such banks would remove the need to have the ACP States submit their

²²⁰ The figure was cited by Mr. Gérard Kango Ouédraogo, ACP co-chairman of the joint committee of the ACP-EEC Consultative Assembly during its meeting in Bordeaux (France) from January 29 to February 1, 1979. See *The Convention at Work*, THE COURIER, Mar.-Apr. 1979, at 1-11.

²²¹ *Id.*

²²² See *supra* notes 84-85 and accompanying text.

²²³ See ECON. COMM'N FOR AFRICA, BIENNIAL REP. OF THE EXECUTIVE SECRETARY OF THE ECON. COMM. FOR AFRICA 1977-78, E/CN.14/695 1979, at 1-16.

²²⁴ The premise here is that industrial development cannot be successfully prosecuted from the parochial confines of the nation-state. Given the formidable obstacles of development, only a massive Pan-African effort can begin to make some headway. Short of this continent-wide commitment, the next best approach would appear to be a regional one.

projects to bureaucrats in Brussels for processing; bureaucrats who may not have an appreciation for the nuances and subtleties lurking in the interstices of ACP underdevelopment. Bureaucratic delays in aid implementation would also be reduced.

Since the RIDB's resources will come from within the ACP as well as from the EEC, this limits the likelihood of ACP mismanagement. The Community could take comfort from this fact, enough to want to relax its current hold over EDF funds. This framework would also reduce the cost of administering EEC aid as fewer bureaucrats would be needed on the EDF payroll.

2. *Private Investment Insurance Program*

In order to encourage EEC firms to invest in the ACP States, the Member States would have to provide concrete inducements in the form of officially backed assurance against noncommercial risks. One approach would be to have the Member States establish a scheme for foreign investors to purchase insurance against particular risks.²²⁵ Alternatively, the Community could limit or withhold official development assistance to those ACP States which have expropriated EEC-controlled property without adequate compensation. The insurance approach could be along the lines of the United States Export-Import Bank (Eximbank) which financially underwrites international trade and investment activities of American firms and also provides, for cost, guarantees against certain kinds of political risks.²²⁶ In addition to the Eximbank approach, a broader-risk insurance coverage to companies investing in the Third World is provided by the Overseas Private Investment Corporation (OPIC), which began operations in 1971.²²⁷

As an alternative measure, both partners to the Lomé Convention

²²⁵ See Okolie, *The Multilateral Investment Insurance in the Context of International Law and the New International Economic Order*, 6 GA. POL. SCI. A. J. 77 (1978) discussing the concept of international multilateral investment insurance. Although Okolie's comments are directed to the establishment of a United Nations-type multilateral investment treaty, they nonetheless apply with equal force to the ACP-EEC context. Basic to Okolie's concept is the need to provide an international machinery for guaranteeing private foreign investments in the Third World. The concern here is the same although the machinery envisaged would span only a fraction of the family of nations.

²²⁶ See CATEORA & HESS, *supra* note 182, at 167-69.

²²⁷ Wheelock, *What Is the Direction of U.S. Political Risk Insurance?* 8 COLUM. J. WORLD BUS. 59 (1973). See also CATEORA & HESS, *supra* note 182, at 168-69. OPIC now operates in more than 100 developing countries around the world. In the last decade OPIC has written more than \$10 billion in political risk insurance, provided more than \$265 million in financing commitments and paid, guaranteed, or provided indemnities for more than \$373 million to settle 111 insurance claims. See Kammert, *Overseas Private Investment Corporation*, in W. BAUGHN & MANDICH, INT'L BANKING HANDBOOK 301 (1983).

could establish a joint ACP-EEC investment insurance scheme along the lines of OPIC. A leading scholar in this area has suggested that capital for the reserve fund to back up such an insurance scheme could come from contributions from the signatory states.²²⁸ This could take the form of a fixed percentage of the GNP of the individual ACP-EEC States taking into account the disparities in their respective economic strengths, for example, a lower GNP would result in a lower contribution. Private EEC firms wishing to invest in the ACP States would be required to pay a premium for insurance which would vary in amount depending upon factors such as the type and size of firm, the particular project being undertaken, and the relative degree of political stability in the target country.²²⁹

The fund's compensatory feature would be triggered whenever an EEC-based firm suffered a loss in its investments in an ACP State because of contract default by way of expropriation or nationalization. In cases of repeated defaults by a participating ACP State "causing the fund to pay off upon a policy, its membership fee would be increased. Any nation that failed to pay its share of the proposed policy would be penalized under the penalty clause" in the insurance treaty.²³⁰ The proposed ACP-EEC investment insurance regime could take the form of a multilateral treaty or be included as a separate title in the next Lomé Convention.

Such a proposed investment insurance regime does not, to be sure, resolve the problem of insufficient private capital inflows to the African states. While it holds out some promise for reducing noncommercial risks, its implementation would still leave unresolved the fundamental problem of inadequate infrastructure in ACP States. To its credit, however, the Lomé II industrial regime has anticipated this problem. Various provisions have acknowledged the compelling need to erect an infrastructure capable of attracting as well as retaining private foreign investments.²³¹ Yet it will take some time before this goal becomes a reality. If the experience of countries in Asia and Latin America—India, Singapore, Taiwan, Argentina, Brazil, and Mexico—hold out any lesson for other Third World countries in the throes of industrialization, it is that the process of infrastructural development is a protracted affair indeed.²³² Few African countries will be poised for an

²²⁸ See Okolie, *supra* note 225, at 81.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ See Lomé II, *supra* note 3, arts. 71-72 (transfer of technology and industrial infrastructure respectively).

²³² Still, such analysis does not require the conclusion that Africa will develop along the lines

industrial boom a few years hence when Lomé II expires. This point deserves mentioning since most critics of the Convention seem to confuse it with a *deus ex machina* capable of working miracles where mortals have failed.²³³ The Lomé II industrial regime cannot and should not be expected to transform overnight Africa's crusty infrastructure into a smoothly running industrial machine. It can only lay the groundwork, and in this respect some of its provisions give reasons for hope.

3. *Indexing Aid Against World Inflation*

Community aid should be indexed against a world inflation rate that has been on the increase throughout much of this and the last decade.²³⁴ In light of the long delays before Community approval for ACP projects is given, indexing protects the purchasing power of development funds. It is important that when these funds are finally released, recipient states should still be able to complete their projects, even though costs would most likely have been pushed up by inflation.

4. *Measurable Goals and Identifiable Targets*

The goals of the institutions responsible for implementing industrial cooperation must be stated in such a way that they are measurable. Targets and time tables must be identified so as to allow for evaluation of performance against a baseline, in the absence of which no meaningful comparisons can be made. An approach that holds out much promise is that adopted by both the Lagos Plan of Action (LPA)²³⁵ and UNIDO's Lima Declaration.²³⁶ The LPA grew out of the 1980 Organization for African Unity Economic Summit which was entirely devoted

followed by any of these countries. Every society has its own dynamics of change and each develops at its own pace. In any event, the attainment of industrial and agricultural revolutions for the currently industrialized nations of the world did not occur in one generation. On this point both classical (Rostow, Hirschman, Nurkse) and non-classical (Amin, Arrighi, Furtado) theorists of underdevelopment are in agreement. For various theories of underdevelopment and economic development, see generally S. AMIN, ACCUMULATION WORLD SCALE: A CRITIQUE OF THE THEORY OF UNDERDEVELOPMENT (1974); G. ARRIGHI, ESSAYS ON THE POLITICAL ECONOMY OF AFRICA (1973); G. BECKFORD, PERSISTENT POVERTY: UNDERDEVELOPMENT IN THE PLANTATION ECONOMIES OF THE THIRD WORLD (1972); C. FURTADO, DEVELOPMENT AND UNDERDEVELOPMENT (1964); A. HIRSCHMAN, THE STRATEGY OF ECONOMIC DEVELOPMENT (1958); R. NURKSE, PROBLEMS OF CAPITAL FORMATION IN UNDERDEVELOPED COUNTRIES (1967); W. ROSTOW, THE STAGES OF ECONOMIC GROWTH (1962); T. SZENTES, THE POLITICAL ECONOMY OF UNDERDEVELOPMENT (1971).

²³³ See *supra* notes 10-11 and accompanying text.

²³⁴ See Adedeji, *supra* note 175, at 287.

²³⁵ See *Blueprint for Survival*, AFRICA, June 1980, at 14.

²³⁶ See UNIDO, *supra* note 15.

to the discussion of the continent's economic problems and their resolution.²³⁷ The Plan set short, medium, and long-term targets to boost the level of industrial production in Africa. It hoped in the short-term period (to 1985), to increase African production to at least one percent of world industrial production while laying the foundation for the development of basic industries essential for self-reliant development. The medium-term (1985-90) goal would be to increase the African share to 1.4% of world industrial production and establish regional self-sufficiency in food, building materials, clothing, and energy. The long range goal (post 1990) is geared toward meeting the Lima target for Africa of two percent of world industrial production by the end of this century.²³⁸ This modest goal was considered achievable since it was based on a realistic assessment of world development trends. Should the Lomé industrial regime institutions adopt a modified version of the LPA timetable with its well-defined targets, a base would be provided for mounting any meaningful assessment of their overall performance.

CONCLUSION

The focus of this inquiry has been on Title V of the Second Lomé Convention. Despite Lomé II's increased attention to the industrial sector, the industrial regime that was forged out of the negotiations is not likely to have a major impact on African industrialization. Like any agreement involving multiple parties, the compromises that had to be made in order to get it accepted by all sides succeeded in emasculating much of Title V's strength. But even if the Community had acquiesced in all ACP demands, the ensuing industrial regime would still not have been adequately equipped for combatting the fundamental problems of African underdevelopment. Because the obstacles are many and varied, their eventual eradication requires a massive commitment not only of financial, but of political and moral capital.

Africa needs a new internal politico-economic order as much as it does a New International Economic Order. The will to change must and can come only from *within* the continent. From the outside, Africa should ask for, and expect no more than the assistance with which to lay the foundations for its collective, self-reliant and self-sustained growth and development. Imperfect as it is, the Lomé industrial re-

²³⁷ See *Blueprint for Survival*, *supra* note 235, at 14 *passim*.

²³⁸ *Id.* The estimate for achieving the rather modest goal is \$250 billion. See *The Hurdles Ahead*, AFRICA, June 1980, at 18.

gime is a model of such external commitment to African industrial development.

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