COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

on the mid-term review of
the Association of the overseas countries and territories with
the European Community

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of Council Decision 91/482/EEC of 25 July 1991
on the association of the OCT with the EEC

EXPLANATORY MEMORANDUM

On 25 July 1991 the Council adopted Decision 91/482/EEC on the association of the overseas countries and territories (OCT) with the European Economic Community.[1]

Like the fourth Lomé Convention with the ACP States, the Decision was adopted for a period of ten years, starting on 1 March 1990, with provision for a review before 1 March 1995. This review is the subject of this communication.

The Commission's proposals for amendments are set out in Part II, while Part I, the explanatory memorandum, contains:

- a brief description of the OCT in terms of their social and economic situations and their status vis-à-vis the Member State concerned and Community law;
- an overview of the provisions of the Association Decision;
- a statement of the principles underlying the mid-term review.

I GENERAL DESCRIPTION OF THE OCT

There are 20 OCT (see Annex 1, Tables A to D), of which:

- 11 are linked to the United Kingdom (Table A)
- 6 are linked to France (Table B)
- 2 are linked to the Netherlands (Table C)
- 1 is an autonomous region of Denmark (Table D)

A. The social and economic characteristics of the OCT vary enormously, as regards not only culture and language but also geographical location, surface area, size of population and degree of development (see Annex 1 to Part I).

Note that statistics concerning the OCT (Annex 1 to Part II) should be treated with extreme caution.

B. As to their status, the common feature is the existence of a constitutional link with an individual Member State of the European Union. But the nature of the link varies from one Member State to another and sometimes differs even for OCT of the same Member State (Annex 1 to Part III).

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[1] OJ L 263, 19.9.1991, pp 1 to 153.

Analysis of these links throws light on the constitutional, legal or political reasoning behind some of the OCT authorities' requests this year for changes in the Association Decision in response to the completion of the single market or other aspects of European union.

C. In terms of Community law, the status of the OCT is governed, pursuant to Article 227(3) of the Treaty, by the special arrangements provided for in Articles 131 to 136a of that Treaty. These arrangements are implemented by Council Decision 91/482/EEC, which is the sole legal framework for Community-OCT relations.

The situation can be summed up as follows:

- the OCT are covered by the arrangements laid down in the Association Decision but not by the general provisions of the Treaty or legislation derived from those provisions;

- as individuals the inhabitants of the OCT are, however, natioanls of Member States of the European Union (with the exception of a few British OCT) and are thus citizens of the Union. Understandably, therefore, they are anxious that the Association Decision should mention the rights deriving from this citizenship, and this is one of the new elements to come up in this review of the Decision.

II OVERVIEW OF THE PROVISIONS OF THE ASSOCIATION DECISION

Apart from the general and final provisions, Decision 91/482/EEC falls into four parts:

- areas of cooperation;
- instruments of cooperation;
- provisions on establishment and services;
- the Commission/Member State/OCT partnership arrangements.

These provisions can be summarized as extremely liberal trade arrangements (see below) combined with EDF and EIB financing on similar terms to that accorded to the ACP States. But a number provisions in force over the past four years, including those pertaining to establishment and services, break with the traditional parallelism between the Association Decision and the Lomé Convention because of the fact that the OCT are linked to Member States.

The Decision that was adopted at the end of July 1991 after lengthy debate within the Council was based on a Commission proposal of 19 September 1990.[2]

The new features introduced as a result of Lomé IV were:

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[2] COM(90) 387, 2 August 1990.

- extension of the duration from five to ten years (with the exception of the financial provisions, which remained at five);
- improved terms of financing (all projects financed with grants);
- the start-up of decentralized cooperation involving local communities;
- greater stress on the environment, the role of women, the promotion of business and services, and improvements to the working of Stabex and Sysmin;
- insistence on regional cooperation between ACP States and OCT within the same geographical area.

In addition, some innovations were introduced because of the special status of the OCT, breaking with the traditional parallelism between the OCT and the ACP States. Some of these innovations were proposed by the Commission and others were added at the insistence of certain Member States within the Council.

A. Partnership

Commission/Member State/OCT partnership arrangements were set up (Articles 234 to 236 of the Decision).

In proposing these arrangements the Commission made good the clear lack of provision for democratic dialogue in the previous six Association Decisions governing relations since 1957. Giving locally elected representatives a say was a move towards democracy and dialogue that greatly pleased the OCT local authorities.

Thus in 1992, for the first time, the EDF indicative programme of each country or territory was signed by a local representative as well as the Member State and Commission representatives. There have also been a great many tripartite meetings on various aspects of implementation of the Association arrangements.

B Establishment and services

The arrangements for establishment and the provision of services in the OCT by nationals, companies and enterprises of Member States (Articles 232 and 233) was amended to promote or maintain local employment. Since 1991 OCT local authorities have been able, with the Commission's agreement, to take measures in respect of establishment and services in sensitive sectors of their economies to protect local inhabitants and undertakings.

C. Centre for the Development of Industry

For their industrial development, the OCT may, as before, call on the services of the Centre for the Development of Industry (CDI), which was set up under the Lomé Convention, and (an innovation introduced in 1991) the Euro-Info Centres, which were set up as part of the Community's policy to develop businesses (Article 48). Here again, the choice of these two possibilities places the OCT somewhere between the ACP States and regions of the Community.

The Council laid down that recourse to these bodies would entail a financial contribution from the EDF resources allotted to the country or territory's indicative programme.

D. Trade arrangements

Here there have been a good many innovations, in relation to both past decisions and to other association agreements or conventions: Decision 91/482/EEC gives free access (i.e. no customs duties, levies or quotas) for all OCT originating products (Article 101). Before this provision, OCT agricultural products enjoyed the same preferences as ACP products.

This completely new departure took the form of much larger concessions than the Community had ever accorded before in its many agreements with non-member countries.

The concessions included:

- the lifting, without quantitative limits (except for rum), of import duties previously levied on the OCT and still applying to the ACP States (abandonment of parallel treatment for the OCT and ACP countries);

- changes in the rules of origin introduced under Lomé IV, and also specific amendments to the OCT rules of origin;

- introduction of a transhipment system giving free access to goods from third countries transiting through a country or territory in the unaltered state (not applicable to certain circumstances or to CAP products) as long as customs duties or levies at least equivalent to the Community's protection are levied on entry into the country or territory. A new certificate to accompany such goods has been created.

III. PRINCIPLES UNDERLYING THE MID-TERM REVIEW

Under Article 240(3) of the Association Decision, 1 March 1995 is the deadline for three objectives:[3]

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[3] Article 240(3): "Before the end of the first five years, the Council, acting unanimously on a proposal from the Commission, shall, in addition to the financial assistance referred to in Article 154(1), establish:

(a) where necessary, any amendments to provisions following notification to the Commission by the relevant authorities of the OCT not later than 10 months before expiry of this five-year period;

(b) where necessary, any amendments proposed by the Commission in the light of its own experience or as a result of amendments under negotiation between the Community and the ACP States;"

(i) decision on the amount of the eighth EDF package for the period 1 March 1995 to 29 February 2000;
(ii) changes resulting from the requests of the relevant OCT authorities;
(iii) changes resulting from the proposals of the Commission itself.

A. EDF five-year package

The amount available to the OCT under the EDF is negotiated at the same time as that for the ACP States. It would therefore be premature to broach this issue now since the EDF is traditionally one of the last items negotiated with the ACP Group and any decision is thus some months off. The Council itself remarked in the negotiating directives for the mid-term review of Lomé IV dated 7 February 1994 that "it is not, at this stage, possible to decide on the financial allocation for the eighth EDF."[4]

B. Memorandums from the Member States

By 1 May 1994 (ten months before the 1 March deadline), the Commission had received the opinions and requests of the relevant OCT authorities via the three Member States concerned.[5]

There followed meetings to explain the issues, sometimes at high level within the framework of the Commission/Member State/OCT partnership arrangements and in the presence of local elected representatives.

What emerged from these memorandums and discussions was that it would be useful to clarify some of the rules in force and make a few additions when revising the text. The additions are called for by the very nature of relations between the OCT and the European Union, namely that:

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4 Council document 4750/94 ACP 18/FIN40 of 9 February 1994, p.20.

5 France: memo to the European Commission of 5 May 1994 (letter of 2 May from His Excellency P. de Boissieu, Permanent Representative, to Mr Marín).

Netherlands
Memorandum from the Prime Minister of the Netherlands Antilles of 29 April 1994 (letter from Dr R.S.J. Martha, Minister Plenipotentiary for the Netherlands Antilles, to the Dutch Permanent Representation, 2 May 1994).

Memorandum from Aruba on Article 240(3) of the Association Decision (letter from Dr R.S.J. Martha of 16 June 1994).

Letter of 27 July 1994 from Mr Lubbers, the Dutch Foreign Minister, to Mr Delors (letter of 11 August from His Excellency B.R. Bot, Permanent Representative).

United Kingdom: UK proposed amendments, under letter of 30 April 1994 from Baroness Chalker of Wallasey, UK Minister of Overseas Development, to Mr Marín.

- the OCT are not part of the single market and secondary legislation does not apply directly to them;
- the OCT are linked to, or are sometimes an integral part of, Member States of the Union: in many cases the constitution of the Member State concerned means that their citizens are also European citizens.

But, as is explained in greater detail in Annex 1, citizenship of the Union confers on them rights and obligations that are not taken into account in the current association provisions. Of course, some of these issues were raised in the past, and this is why certain parts of Decision 91/482/EEC no longer mirror the Lomé Convention and why Annex VIII was added to the Decision (Declaration by the Government of the Kingdom of the Netherlands), which annex has been referred to in correspondence concerning the review.

Since 1991 we have had the signing and ratification of the Treaty on European Union, following which Article 8 of the EC Treaty lays down: "Every person holding the nationality of a Member State shall be a citizen of the Union." In view of this provision, representatives of the OCT concerned (all except some UK OCT, see Annex I) wanted fuller and more detailed provisions in the Decision on the application to their citizens of some Community policies affecting individuals.

This is behind the general tendency in the requests to ask for aknowledgement that the OCT's status is closer to the Union than that of other non-member countries. Hence the two new themes broached in this communication:

- giving OCT citizens access to certain Community programmes aimed at individual citizens of the Union;

- more detailed, liberal and reciprocal arrangements for the OCT in respect of Community law regarding establishment and the provision of services in certain sectors: diplomas, banks, insurance, investment funds.

C. The Commission's experience

Drawing on its own experience as manager of the EDF, the Commission has also proposed amendments to the Decision.

In this context, its experience of financial cooperation with the OCT is comparable to that of the ACP States: the proposals it formulated in September 1993, "Proposal for a Decision of the Council and of Representatives of the Governments of the Member States meeting within the Council authorizing the Commission to open negotiations with the ACP States party to the fourth ACP-EEC Convention for the review of certain provisions of the Convention", and the conclusions it drew there, are generally equally valid for the OCT.[6] So, in the interests of greater consistency and effectiveness, the changes proposed for relations with the ACP States in the Council directives of 7 February 1994 should also be fully implemented for the OCT.

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[6] SEC(93) 1167 final of 21 September 1993.

However, the proposals concerning dialogue with the ACP States and structural adjustment are neither politically nor legally called for in the case of the OCT, since they have links to Member States. For the same reasons,these elements of Lomé IV did not figure in Decision 91/482/EEC.

COMMISSION PROPOSALS

This communication puts forward ideas rather than formal proposals for legal provisions: pending the conclusion of the Lomé IV mid-term reviewnegotiations in areas where reference will have to be made to the ACP provisions.

For areas that are not linked to the negotiations with the ACP Group, draft articles giving a clearer idea of what is proposed have been annexed.

The Commission has followed the same approach it used in its proposal to the Council on the Lomé IV review, namely a division of each subject area into two parts: (i) the experience or reasons behind the proposals; (ii) the proposed amendments.

At a later date further drafting will be needed to send a formal Commission proposal to the Council. After 1 March 1995 this proposal could be attached to the proposals for the allocation of eighth EDF resources to the OCT (see III.A above).

I. PARTNERSHIP

A. Present situation

The Commission/Member State/OCT partnership was, as explained in the explanatory memorandum, proposed by the Commission and established by Decision 91/482/EEC (Articles 234 to 236).

Local- and regional-level meetings have been held on the spot and at Commission headquarters, and OCT representatives have been highly appreciative of the system.

A number of memorandums have been received praising the partnership arrangements and calling for their strengthening. Such a strengthening would mirror institutional relations with other partners, including the many joint ACP-EC bodies, the partnership arrangements set up with Community regions following the reform of the Structural Funds in 1989 and the specific schemes for the extremely remote areas (the French departments, the Canaries, the Azores and Madeira), known as POSEIDOM,[7] POSEICAN AND POSEIMA.

B. Proposed amendment

References in Articles 234 to 236 to the optional nature of the partnership should be deleted (see Annex 2).

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[7] Council Decision 89/687/EEC of 22 December 1989 establishing a programme of options specific to the remote and insular nature of the French overseas departments, OJ L 399, 3012.1989, p. 39.

II. COOPERATION STRATEGY, GREATER CONSISTENCY AND INCREASED EFFECTIVENESS

As noted in the explanatory memorandum, in the Commission's experience implementation of the EDF is similar for the ACP countries and the OCT.

Naturally, there are a number of things in the Commission's communication of September 1993 on directives for the negotiations with the ACP countries (incorporated into the Council negotiating directives of 7 February 1994) that do not apply to the OCT, both for institutional reasons (the OCT are linked to Member States) and the nature of their circumstances (human rights, democratic principles and the rule of law are adhered to). It is therefore proposed not to apply to the OCT Part A of the Council directives, apart from decentralized cooperation.

It is proposed to apply, *mutatis mutandis*, everything in the directives designed to further:

- greater dialogue and an enhanced Community cooperation strategy (Part B);
- greater consistency and increased effectiveness of instruments and procedures (Part C): the structural adjustment proposals are not applicable to the OCT.

A. Promotion of local initiatives and decentralized cooperation

1. The Commission notes that the implementation of decentralized cooperation has not given the results hoped for and believes that amendments are needed to the decision-making procedures, which, as they stand, do not allow the instrument to be developed as it should be.

   Experience shows the need for more streamlined procedures that balance the OCT authorities' participation in the various decision-making stages with a greater scope for initiative by the final beneficiaries of such operations and more direct access to financing.

2. To ensure greater coherence of decentralized-cooperation and NIP operations, the country or territory will specify the amount it intends allocating to decentralized-cooperation operations, the principles and terms governing the release of funds and the categories of possible beneficiaries when the indicative programme is drawn up.

   Applications for financing may be sent directly to the Commission as soon as a financing agreement setting out the framework for decentralized-cooperation operations is signed by the country or territory, the Member State and the Commission. The Commission will appraise them on the basis of criteria agreed jointly with the relevant OCT authorities and, having checked compliance with these criteria and the project's viability, will notify the Local Authorizing Officer of the conclusions of the appraisal. Unless there is opposition from the LAO within a specified period, the Commission will then proceed to finance and manage the operation.

These arrangements will be set out in Article 9 of the Association Decision.

3. To enable agents of decentralized cooperation to have direct access to financing procedures, such agents will have to be made eligible under Article 285 and thus included in the list of possible recipients in Article 191.

4. In addition, enterprises should be deleted from the list of possible beneficiaries of decentralized-cooperation operations in Article 7 since there will be specific provisions for market enterprises.

B. More intensive dialogue and an enhanced Community cooperation strategy

1. Programming Community aid

The Commission proposes that the Community reaffirm the great importance it attaches to programming as an means of dialogue on policies but at the same time draw the attention of the OCT authorities to the inflexibility of the present system, which means that funds allocated to them sometimes lie idle.

It proposes the following changes to the system.

(a) Prior to drawing up the indicative programme, the Commission and the Member State would give the country or territory an indication of the total financing it could draw on during the second period covered by the Association Decision. This provisional amount would be regarded by the two parties as a target figure.

There would not, however, be any legal obligation to disburse the funds automatically. It would merely give the OCT authorities a predictable basis on which to plan their development.

(b) On conclusion of the indicative programme, the Commission and the Member State concerned would notify the country or territory of the funds available to it for implementing the first tranche of the indicative programme, which would be substantial and, in any event, enough to implement the indicative programme over a three-year period on the basis of the timetable of commitments provided for in Article 188(2)(c).

(c) The second tranche of the indicative programme would be allocated when the programme is reviewed three years after its signing in the partnership framework provided for in Articles 235(1). After dialogue within this framework the amount of the second tranche would be decided taking into account the five-year target figure and the nature of the projects and programmes to be financed. Account would also be taken of the

specific circumstances of each country and territory and any domestic factors affecting execution of its indicative programme.

The procedures for awarding the second tranche will be laid down in the Internal Agreement.

Articles 187, 188 and 190 of the Association Decision will have to be amended accordingly.

(d) Furthermore, in view of the widely differing take-up of the EDF regional resources allocated to each of the three groups of OCT (British, French and Dutch), the same system of tranches could be used here.

2. *Economic development aid*

The Commission proposes that the Community emphasize the importance of promoting the private sector, which should have a greater role in the OCT's development.

(a) Centre for the Development of Industry (CDI)

Under the two Association Decisions covering the last ten years[x] the OCT have been able to call on the services of the CDI, financing the cost of its work from their EDF indicative programme resources.

Indeed, the economies of many OCT call for the use of such an instrument:

- some OCT devote a large proportion of their indicative programme to trade, services or enterprise development (for instance, the Netherlands Antilles' Business Development Scheme financed under the sixth and seventh EDFs and the training of apprentices and entrepreneurs in New Caledonia);
- a number of the CDI's regional operations for the ACP countries embraced OCT.

The legislative framework is as follows:

- the CDI is a joint ACP-EC institution and its operational and administrative financing comes from the EDF;

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x Council Decision 86/283/EEC of 30 June 1986, Article 29 (OJ L 175, 1.7.1986). Council Decision 91/482/EEC of 25 July 1991, Article 48 (OJ L 263, 19.9.1991).

- since the OCT may not use ACP funds, the Council made explicit provision that any expenses incurred by the CDI when used by the OCT would be financed from the resources allocated for whichever of the three groups the OCT in question belong to.

But no application has ever been received. The reason may be the local authorities' lack of information on the subject or the fact that the limited amount available under the indicative programmes is fully spent on other activities.

Therefore, to ensure that potential beneficiaries are fully aware of the possibilities, the relevant provisions should spell out the objectives of the CDI and what it does (at present the Decision merely refers to the relevant articles of Lomé IV).

Thus, Article 48 of the Decision should be amended, and others amplifying it added, on the lines of Articles 87 to 95 of Lomé IV (see Article 48 *et seq.* in Annex 3).

(b) EIB operations

It is proposed that the Community introduce greater flexibility in the terms and conditions of risk-capital operations (by abolishing the mandatory interest-rate ceiling for quasi-capital operations directly concerning the private sector) and in the granting of automatic, flat-rate interest-rate subsidies for loans from the Bank's own resources.

C. Greater consistency and increased effectiveness of implementation instruments and procedures

1. *Stabex*

(a) Reduction of the transfer basis following "significant changes" (Article 129 of the Association Decision).

It is proposed to:

- make provision for a reduction in the transfer in all cases of a significant change in marketed or exported production in the application year by comparison with the reference period (unless there is a satisfactory explanation for this change) and to drop the reference to "demand in the Community" in Article 129;
- exempt the least-developed OCT from such reductions if the transfer basis is less than ECU 1 million.

(b) The implementation of the frameworks of mutual obligations (FMOs) in relation to the use of transfers (Article 135 of the Association Decision)

The sums paid into blocked accounts would be returned to the system wherever:

- a country or territory did not submit a draft FMO to the Commission within 12 months of the transfer decision;
- a significant proportion of the FMO had not been implemented within 12 months of the expiry of the period laid down in the disbursement timetable set out in the FMO.

2. *Rehabilitation*

It is proposed that recourse to the procedures provided for in Article 206 (post-emergency assistance contracts) be extended to the rehabilitation operations referred to in Article 167 of the Association Decision.

A request by the relevant OCT authorities for recourse to Article 206 procedures would be submitted to the competent authorities for authorization.

Article 206 of the Decision would be amended accordingly.

3. *Procedures*

The following amendments are proposed:

(a) With regard to the preparation, appraisal and evaluation of projects and programmes, the relevant OCT authorities will continue to establish, in liaison with the Commission, the terms of reference of studies for the implementation of cooperation under the Association Decision. The Commission will be responsible for proposing, on that basis, who should be awarded the contract for the study and, having obtained the agreement of the relevant OCT authorities, for drawing up and administering the study contract. The relevant OCT authorities will then approve the study's findings or ask for them to be amended.

To this end, the Community will amend as necessary Articles 145(2)(c) and 145(3)(c) (attribution of responsibilities), Articles 192 and 193 (role of the relevant OCT authorities and of the Commission), Articles 217 and 219 (roles of the chief authorizing officer and of the local authorizing officer) and Article 226 (application of these procedures to evaluation).

(b) With regard to the management and execution of projects/programmes, the relevant OCT authorities will be given the opportunity to set up a technical management unit where such a unit appears necessary, taking into account the specific nature and size of the project or programme. The request would be made by the Commission to the local authorizing officer. The unit will be headed by a local government official appointed by the local authorizing officer, who will officially delegate to him the management powers provided for in Article 219(2).

Should the management unit require back-up, the Commission will provide appropriate technical assistance personnel.

Articles 217 (chief authorizing officer) and 219 (local authorizing officer) will have to be amended accordingly.

(c) To enable the direct implementation of the above measures, the Community will ask that a specific amount be reserved for that purpose within each indicative programme. The amount, which will be administered in accordance with the rules laid down in the articles referred to in paragraphs (a) and (b), will be established by reference to requirements estimated on the basis of the indicative programme and notified to the relevant authorities of the country or territory at the same time as the financial allocations for the implementation of the first and second tranches of the indicative programme.

Article 187 (programming) will have to be amended accordingly.

4. *Supply contracts*

To plug a loophole in Decision 91/482/EEC, the rules on the origin of supplies eligible for EDF contracts should be spelled out in the same way as those for the ACP States. It is therefore proposed to add to Article 200(b) "in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community customs code".[9]

III. HEALTH AND DRUGS

A. The situation at present

In recent years the fight against drug trafficking at regional and inter-regional level has assumed growing importance.

This is why the Community decided to aid the OCT in their efforts by mentioning this objective in the context of regional policy (Article 93(j) of the Association Decision, which is identical to Article 159(k) of Lomé IV).

It is not, however, backed up by a listing of operations in the health sector eligible for support on the lines of Article 154 of Lomé IV; Title XI "Cultural and social cooperation" merely cites this sector among others (Article 88). In view of the scale of the problem, it would be useful to specify what kind of operations will be aided.

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[9] OJ L 302, 19.10.1992, p. 1.

B. Proposed amendment

A "health and nutrition" article on the lines of Article 154 of Lomé IV should be added (see Article 88a in Annex 4).

IV. ENVIRONMENT

At present the Decision's only provisions on the matter concern the export of hazardous waste from the Community to the OCT, prohibiting such exports but allowing a Member State to re-export waste to a country or territory after having imported it from that same country or territory, the same arrangements as applied to the ACP States under the Lomé Convention.

But the Community's import arrangements are not spelled out and the application *mutatis mutandis* to OCT waste of the "internal" rules adopted in 1993 is ruled out by the fact that the Council did not adopt them on the basis of Article 136 of the Treaty (Association Decision). This lacuna in Community legislation should be plugged by making Regulation (EEC) No 259/93 applicable to this trade (see Article 16(2a) in Annex 4.

V. TRADE ARRANGEMENTS

A. General arrangements

1. Overview of the current provisions

By Decision 91/482/EEC the Council accorded much larger concessions than the Community had ever accorded before in its many agreements with non-member countries. They included:

- free access (without customs duties, levies or quotas) to all products originating in the OCT;
- special flexible provisions on the rules of origin;
- introduction of a transhipment system.

Nevertheless, the Council retained the principle of cumulation of ACP and OCT products, which means that ACP products can acquire OCT origin following even a simple form of working in a country or territory. It is worth noting that this is the first and only example of a cumulation rule applying to two different sets of preferential arrangements.

Aware of the novelty of this situation, the Council asked the Commission to report back to it on the implementation of the trade machinery before the end of 1993 so that it could be reviewed if necessary (Article 240(2)).

2. *Effects in practice*

These concessions, combined with the maintenance of the cumulation rule, caused disruption of the Community's agriculture sector in 1992-93; the Commission was therefore forced to adopt safeguard measures in 1993, then to soften and finally repeal them.[10]

In November 1993 the Commission reported to the Council and proposed an amendment of Article 101 of Decision 91/482/EEC.[11] This proposal, which has to be approved unanimously (Article 136 of the Treaty), has not yet won consensus among the Member States.

As the Decision is now undergoing a mid-term review, it is worth recalling the two main concerns set out in the conclusions of the report which prompted the Commission's proposal for an amendment (see point 55 of the report), namely:

"- that the trade arrangements adopted in mid-1991 should be retained to enable what are still new mechanisms to continue operating and thus further the development aims of the association between the OCT and the Community;

- that there is a fundamental clash between two Community policies arising from the fact that free access is being given to products originating in the OCT which would, in the Community, be governed by market organizations."

To deal with this clash between two Community policies - OCT development and maintenance of guarantees given to producers under the common market organizations - the Commission canvassed a number of approaches (see point 35): abolition of ACP-OCT cumulation, full levies across the board, a reduced levy, and the creation of machinery enabling the Commission to set reference prices for imports with the aim of avoiding safeguard measures. This last solution was its preferred option.

3. *Proposed amendment*

The Commission is still intent on finding an option "compatible both with the aims of the CAP (by ensuring price stability on the market) ad with the aims of development policy (by providing OCT exporters with stable, predictable and advantageous market-access conditions)" (point 35).

This is why it stands behind the proposal put forward in November 1993 (see amended Article 101 in Annex 5).

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10 Decision 93/127/EEC, OJ L 50, 2.3.1993, p. 27.
Decision 93/211/EEC, OJ L 90, 14.4.1993, p. 36.
Decision 93/356/EEC, OJ L 147, 18.6.1993, p. 28.

11 COM (93) 555 final of 25 November 1993.

Since the Commission formulated its proposal it has gradually become apparent that initiatives are afoot to process in the OCT other ACP products that are very sensitive from the Community's point of view (e.g. sugar and beef and veal). In view of this, the Commission is reserving the right to supplement the proposed machinery by a suitable amendments, where necessary, to the OCT rules of origin in respect of ACP-OCT cumulation and the minimal working required to obtain OCT origin.

B. Rum

Annex V to Decision 91/482/EEC on rum lays down the quantities of rum originating in the OCT which may be imported exempt from customs duties in the period up to 31 December 1995.

Article 2(b) of this Annex provides that "for the arrangements applicable from 1996, the Council, acting by a qualified majority on a proposal by the Commission, shall establish, before 1 February 1995, on the basis of a report that the Commission will send to the Council before 1 February 1994, the arrangements for the projected abolition of the Community tariff quota, taking into account the situation and prospects on the Community rum market and of the exports of the OCT and ACP States."

The Commission has recently sent this report to the Council, proposing in conclusion that the quota be duly abolished on 1 January 1996, without prejudice to the Community's right to review the arrangements during the second half of the period covered by Decision 91/482/EEC should imports of OCT rum increase to the extent that they adversely affect Community production, particularly of traditional rum.

The mid-term review offers an opportunity to amend Annex V to the Decision on these lines (see Annex 5).

C. Technical amendment to the cumulation rules

Taking advantage of the mid-term review, the Commission proposes, without touching the principle of ACP-OCT cumulation, to clarify the rules by amending Article 6 of Annex II to the Association Decision (see Annex 5).

VI. EXTREMELY REMOTE REGIONS OF THE EUROPEAN UNION

A. Situation at present

In both the Association Decision and the fourth Lomé Convention the Community emphasizes the need for greater regional cooperation.

The same policy is enshrined in the provisions concerning the French overseas departments since the adoption of Council Decision 89/687/EEC of 22 December of 1989 establishing the POSEIDOM.[12]

Since this recognition of the specific characteristics of the overseas departments within the Union, the Council has offered similar options to the Canary Islands, the Azores and Madeira, all far-flung island regions now given the label of "extremely remote areas". June 1991 saw the adoption of Decision 91/314/EEC establishing a programme of options specific to the remote and insular nature of the Canary Islands (POSEICAN),[13] Regulation (EEC) No 1911/91 on the application of Community law to the Canary Islands,[14] and Decision 91/315/EEC establishing a programme of options specific to the remote and insular nature of Madeira and the Azores (POSEIMA)[15].

Like the fourth Lomé Convention (Article 156(4)), the Association Decision (Article 90(4)) lays down that "regional cooperation shall transcend the concepts of geographical location"; such thematic rather than geographically restricted regional cooperation can perfectly well apply to cooperation between the OCT, the DOM, the Canary Islands, the Azores and Madeira.

B. Proposed amendment

It is proposed that:

- the Canary Islands, the Azores and Madeira be mentioned alongside the DOM in Articles
  - 90(4), second subparagraph (regional cooperation);
  - 91(1), third indent (participants in regional cooperation);
  - 92(1)(d), economic diversification;
  - 92(1)(h), expansion of markets;
- Annex II to the Decision concerning the rules of origin be amended to include the Canary Islands in the Community customs territory (see Annex 5, trade arrangements).

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12 OJ L 399, 30.12.1989, p. 39.

13 OJ L 171, 29.6.1991, p. 5.

14 OJ L 171, 29.6.1991, p. 1 (amended by Regulation (EEC) No 284/92, OJ L 314, 7.2.1992, p. 6).

15 OJ L 171, 29.6.1991, p. 10.

VII. ACCESS OF OCT CITIZENS TO CERTAIN COMMUNITY PROGRAMMES

A. Situation at present

It is quite clear (see Annex 1 "Impact on Community law") that secondary legislation does not apply to the OCT unless there is a specific reference to it in Council legislation adopted pursuant to Part IV of the EC Treaty (Association Decision).

On the other hand, OCT citizens have the nationality of the Member State to which they are linked (though this must be qualified in the case of the British OCT, apart from the Falkland Islands) and, during the consultations held by the Commission, elected representatives of the OCT expressed astonishment at the lack of any reference in the Decision to the consequences of this fact.

In the light of Article 8 of the amended EC Treaty in particular, it is odd that there is no reference in the Decision to a number of Community programmes aimed at individuals, which cover all Community citizens in principle.

The most obvious example is that of access to the ERASMUS programme:[16] should not a student with the nationality of a Member State - France or the Netherlands, for example - have the right, having embarked on a course of study in Papeete or Curaçao, to apply for an ERASMUS placement in the United Kingdom or Germany?

In the affirmative, legal provision for this possibility should be made in the Association Decision.

B. Proposed amendment

In response to this problem, Commission officials made an exhaustive list of Community programmes that together constitute a raft of measures to promote human, technical and economic development though the European Union and enhance the mobility and communications of its citizens.

Some 80 programmes are running currently. Of these:

- programmes financed under the structural funds (the ERDF, the ESF and the EAGGF) can be excluded since by definition they do not apply to the OCT (which have their equivalent in the EDF);

- also excluded are programmes that have EDF equivalents in various areas of cooperation: this applies to many programmes in the fields of energy (ALTENER, SAVE and THERMIE) and the environment (LIFE).

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[16] Even though there is now the wider framework of SOCRATES (see Annex 6).

Programmes which, it is proposed, should be applicable to OCT citizens enjoying the full nationality of a Member State are those that apply to:

- Community citizens as individuals (i.e. ERASMUS);

- small and medium-sized enterprises (SME) and handicraft businesses. Note that some SME programmes already cover SME in some non-member countries (EFTA and Central and Eastern Europe) and SME in the OCT would fail to understand why they should not be covered as well.

Community programmes meeting these criteria (SOCRATES, LEONARDO, LEI, LEDA, POVERTY III, ERGO III, HELIOS II, BC-Net, Euromanagement, Europartenariat, Euroleaders, Interprise, Seed Capital, Venture Consort, COST, IMPACT 2, SPRINT, TIDE, KALEIDOSCOPE, MEDIA, FESTIVALS, HRTP and KAROLUS) are listed in Annex 7.

It is also proposed that it be agreed that new programmes meeting these criteria also cover OCT citizens.

This addition to the current provisions would obviously be a big political step - justifiable and appreciated - towards recognizing the democratically-made choices of OCT citizens.

Concretely, this would be done by inserting articles before the provisions applicable to establishment and the provision of services (Article 232) and adding annexes describing the programmes in question.

The programmes fall into different categories:

A. Education and training: SOCRATES and LEONARDO

B. Employment and social affairs: LEIs (local employment initiatives), LEDA (Local Employment Development Action Programme), POVERTY III, ERGO II (the long-term unemployed), HELIOS II (Handicapped people in the European Community Living Independently in an Open Society).

C. SMEs: BC-Net (Business Cooperation Network), Euromanagement, Europartenariat, Euroleaders, Interprise, Seed Capital, Venture Consort and measures specifically targeted at small businesses and handicraft businesses.

D. Research/development/innovation: COST (scientific and technical research), IMPACT 2 (Information Market Policy Action), SPRINT (Strategic Programme for Innovation and Technology Transfers) and TIDE (Technology Initiative for Disabled and Elderly People).

E. Culture and audiovisual media: KALEIDOSCOPE, MEDIA, FESTIVALS and FILMS.

F. Japan: HRTP (Human Resources Training Programme in Japan), which is obviously potentially applicable to European citizens in the Pacific.

VIII. ESTABLISHMENT AND SERVICES

As in the previous section, the issue here is to clarify the provisions laying down the conditions governing the right of establishment and the provision of services in relations between the Community and the OCT.

A. Present arrangements

The present arrangements derive from Article 132(5) of the EC Treaty, which lays down that this right is accorded on a non-discriminatory basis, in accordance with the provisions of the Treaty on the right of establishment, subject to any special provisions adopted pursuant to Article 136 (Association Decision). Decision 91/482/EEC covers only those cases where individuals, companies or firms of a Member State wish to establish themselves in a country or territory. It also affirms the principle of non-discrimination between Member States and provides for the possibility, with the Commission's authorization, of OCT aid for local inhabitants and activities in derogation from the rules normally applicable (Article 232(a)).

Furthermore, the OCT authorities are not bound to accord non-discriminatory treatment "if a Member State is not bound under Community law, or else national law, to accord non-discriminatory treatment for a given activity to inhabitants of an OCT who are nationals of a Member State" (Article 232(b)).

These rules are the upshot of successive rounds of amendments every five years and leave much room for uncertainty.

B. Requests received and proposed amendments

All the memorandums received pointed to the need for clarification, the main thing being to spell out that the fact that non-discriminatory treatment works both ways. Another point is to ensure that the OCT enjoy at least the same advantages as those accorded to third countries in the negotiations on the GATS (General Agreement on Trade in Services).

It is proposed to add an article to the Association Decision which would extend to the OCT the Community's GATS offer in return for an undertaking on non-discrimination on their part (see Article 233a in Annex 6).

In addition, the Netherlands Antilles has made specific requests regarding certain sectors.

1. Banks, insurance companies and investment funds

Requests have been made here for the extension of the Community arrangements to enable banks and insurance companies established in the OCT to establish themselves and provide services within the Community under the same conditions applied to Community institutions.

Extending the advantages of Community arrangements to the OCT without also applying the *acquis communautaire* to financial institutions established in the OCT cannot be contemplated. If such institutions were not obliged to comply with the same rules as Community establishments but could still profit from the considerable advantages of the single market (for example, the single licence) the proper functioning of the single market would be threatened by the presence of rules laying down different minimum standards, especially as regards establishment. This could create a serious distortion of competition. Furthermore, surveillance of the single market would be endangered, as would consumer protection.

Checks could be made to see whether some OCT might be prepared to apply Community legislation on financial services or the whole of the acquis communautaire to financial institutions established on their territory which proposed to start operating in the Community; we would, however, point out that the single market constitutes a whole where there is a common approach in different areas and an intertwining of policies. For example, financial services are closely linked to company law and rules on the surveillance of the financial system. It would therefore be difficult to embark on "à la carte" arrangements that would open the door to partial participation in the single market by some OCT. Furthermore, the Community arrangements are largely based on mutual recognition of the surveillance carried out by the supervisory authorities in the Member State where the financial institution has its head office. Close cooperation between Member State authorities is needed to do this, and a climate of trust is created at the same time. We cannot be sure that the same standards will be adhered to by the authorities of each country and territory.

2. *Professional qualifications*

There is a request for recognition of professional qualifications acquired in the OCT or third countries on completion of a course of study satisfying the minimum Community requirements.

(a) There is limited scope for acquiring professional qualifications in the OCT, some offering no possibilities at all. Nor, by and large, have there been major problems resulting from a refusal to recognize such qualifications. There does not seem to be any need, therefore, for specific measures on the matter at present.

Nevertheless, it would be quite possible to do some preparatory work with a view to establishing a list of professional qualifications acquired in the OCT by OCT citizens that would be recognized in the Member States as long as they satisfy the training requirements laid down by the Community (see Article 233b in Annex 6).

(b) Specific Community directives on a given profession do not apply to the recognition of qualifications acquired in a third country. The Member States may recognize these qualifications or not, and recognition by one Member State does not automatically entail recognition by the others. A derogation just for OCT citizens would upset the balance and very nature of the system and cannot be envisaged.

(c) As to professions for which the Community has not laid down minimum qualifications, this is an area where the Member States have kept the right to lay down requirements. The provisions on recognition of qualifications acquired in third countries in Directive 89/48/EEC call for a system of cooperation between the Member States that would be difficult to implement for the OCT. In these circumstances, no steps can be taken.

3. Maritime cabotage

The last request is for application to OCT vessels of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage).[17]

The Commission sees obstacles to the application to the OCT of this Regulation, which was the subject of lengthy debate before adoption. The beneficiaries of the cabotage Regulation are "Community shipowners operating vessels registered in, and flying the flag of, a Member State" as long as they comply with all the conditions for carrying our cabotage in that Member State. This last condition (which is suspended until 1997) was included with the express intention of restricting the participation of vessels in certain Member States" second registers because these vessels have much lower operating costs that those on the registers of other Member States and could therefor distort competition in the European cabotage market.

The cabotage rules thus remained outside the scope of the acquis extended to the EFTA countries under the agreement of the European Economic Area. On accession, these countries be will covered by the regulation but not vessels on Norway's second register.

A legal appraisal of the Antilles' request took in ships registered in the Kerguelen Islands (France) and in the Netherlands Antilles (Netherlands) in relation to the various proposed Regulations on the subject (Euros, cabotage and Community shipowners). The conclusion is that "register of a Member State" covers registers in the territory of the Member State to which the Treaty, with all its rights and obligations, applies. This is not true, however, of the OCT, where there are also different manning rules in force.

The Commission is therefore not presently proposing any amendments on the subject of cabotage.

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[17] OJ L 364, 12.12.1992, p. 7.

ANNEX 1: GENERAL SITUATION OF THE OCT

I. Socio-economic features

A. The only thing the twenty OCT have in common is the fact that, with the exception of Greenland and the British and French Antarctic Territories, they are all islands, in many cases archipelagoes.

The OCT can be divided into those situated in the tropics (such as the French Pacific OCT, the Dutch OCT and the British islands in the Caribbean), and those in the far north (Greenland and St Pierre et Miquelon) and the far south (the Falklands and the Southern and Antarctic Territories).

B. Apart from Greenland, which? with a land mass of 2 175 600 $km^{2?}$ is larger than the European Union, New Caledonia (19 000 km^2), the Falkland Islands (12 000 km^2) and French Polynesia (4 200 km^2), the OCT are very small.

C. They are scattered around the world

- the eleven British OCT are widely scattered: five are in the Caribbean region, three of them in the Lesser Antilles (Anguilla, Montserrat, British Virgin Islands) and two in the Greater Antilles (Cayman Islands, Turks and Caicos Islands); there are a number of islands in the southern Atlantic, some on the latitude of Tierra del Fuego (Falklands, Sandwich), others on the latitude of Angola (St Helena); Pitcairn is isolated in the Pacific, and the British Indian Ocean Territories are situated to the south of the sub-continent.

- the six French OCT are also very scattered: French Polynesia, New Caledonia and Wallis et Futuna are in the Pacific, Mayotte and the three Southern Territories in the Indian Ocean, and St Pierre et Miquelon off Newfoundland.

- the Dutch OCT are all situated in the Caribbean, with three islands off the coast of Venezuela (Aruba, Bonaire, Curaçao) and three in the Leeward Islands (Saba, St Eustatius and St Maarten).

- Greenland covers a huge expanse in the Atlantic, in the Labrador Sea.

D. The population of the OCT totals around 900 000, broken down as follows:

- 85 000 in the British OCT;
- 483 000 in the French OCT;
- 262 000 in the Dutch OCT;
- 55 000 in the Danish OCT.

Only three of the OCT have more than 150 000 inhabitants (Netherlands Antilles, French Polynesia, New Caledonia), and most of them are sparsely populated, in many cases with fewer than 10 000 inhabitants (Anguilla, St Helena, Falklands, St Pierre et Miquelon).

E. The above features inevitably have economic repercussions. Investment projects are hampered by distance-related costs and the small surface areas involved, production costs are higher than in the Community, and investment and repayment costs have to be borne by a limited number of taxpayers.

Per capita GDPs vary considerably. Subject to the remarks made in point II below, six OCT are substantially more developed than the rest: the Cayman Islands, with a per capita GDP of USD 30 511; Greenland (USD 16 679); Aruba (USD 15 866); French Polynesia (USD 15 270); New Caledonia (USD 13 400); and the British Virgin Islands (USD 10 882). The other OCT have per capita GDPs ranging from USD 1 500 to 7 000.

F. OCT trade balances are generally negative, in many cases badly so. OCT trade is tightly bound up with the Community and, in spite of a series of association decisions designed to open up Community markets to OCT products, there has been little diversification in trade with their Member States.

II. Statistics: a word of warning

Statistical data on the OCT must be approached with a considerable degree of caution.

There is a dearth of detailed, recent figures, and it is by no means certain that the basic data that *are* available are technically consistent and hence comparable. Given this situation, the EC Statistical Office was obliged to turn to a number of sources, such as the World Bank and the Caribbean Development Bank, in its efforts to produce as accurate a picture as possible. The main economic indicators thus collated are given in Annex 1, Tables A-D.

In any case, any analysis of economic indicators such as per capita GDP and trade balances is rendered highly contentious by the fact that most OCT are small in both surface area and population (often around 10.000 inhabitants): for example, a one-off import or export can throw the entire year's balance of trade figures out of kilter. One would also expect the trade balance figures of service-based economies to include invisibles, but they are not itemized in the figures available.

III. Status of the OCT with regard to the Member States concerned

Leaving aside the specific features of the constitutions of individual territories and the related legislation adopted by their Member States, the OCT generally enjoy a considerable degree of administrative autonomy, except where foreign affairs, defence, monetary policy and, in some cases, justice are concerned.

Their status is a matter of democratic choice, in many cases made on the basis of referendums conducted by universal suffrage. The governments of the Member States concerned each have a ministerial portfolio devoted to relations with their OCT.

The constitutional status of the OCT varies considerably, and as such is liable to entail different consequences *vis-à-vis* Community legislation, as we shall see below.

A. British OCT

The British OCT are subject to the jurisdiction of the Crown, and their Head of State is Queen Elizabeth II. They have all freely chosen to remain UK dependencies, lacking full autonomy.

1. They are administered locally by a mixed system consisting of elected representatives and appointed officials. They all enjoy a very considerable degree of autonomy, but some powers remain the exclusive province of Governors appointed by the Foreign Minister. These powers usually comprise foreign affairs, defence, internal security and justice. Some Governors are also in charge of personnel administration, and in the Caribbean they are also responsible for off-shore financial arrangements. Other administrative tasks are performed by locally elected ministers.

The key governing body is the Executive Council, generally chaired by the Governor and consisting of elected Ministers and senior appointees such as the Attorney-General.

Most of the Territories have a single Assembly which passes territorial legislation, in compliance with UK and international legislation.

The OCT have their own budgetary resources, but the UK government also provides development aid and technical cooperation in most cases.

2. The citizenship status of OCT inhabitatants - which can have repercussions in respect of Community legislation - varies.

The UK has on two occasions defined its interpretation of the term "nationals" with regard to Community legislation, once when the UK joined the EEC, and again with the adoption of the British Nationality Act of 1981:

- in most cases, OCT nationals are "British subjects" (rather than "British citizens") with the right of abode in the UK;

- the people of the Falkland Islands are defined as "British Dependent Territories citizens", a status they have shared with the people of Gibraltar since the Falklands Islands Act of 1983.

B. French OCT

The French OCT are divided into two different types: the four *Territoires d'Outre-Mer* (TOM - Overseas Territories) and the two *Collectivités Territoriales* (Territorial Communities).

1. The TOM (New Caledonia and dependencies, French Polynesia, Southern and Antarctic Territories, Wallis et Futuna) are each covered by a basic law establishing their institutions and delegating extremely varied degrees of power to the territorial authorities.

French Polynesia is the most independent, its territorial government and assembly being endowed with legislative autonomy. The French state is represented by a High Commissioner,

who promulgates the laws adopted by the territorial government after they have been debated by the territorial assembly.

Since the national referendum of November 1988 conducted in the wake of the Matignon Agreements, New Caledonia has been governed by an interim law that will remain in force until the self-determination referendum scheduled for 1998. Under the current arrangements, the Territory's institutions consist of a Congress comprising the Assemblies of the three Provinces (North, South, Islands), with a High Commissioner in the role of executive.

The Wallis et Futuna Islands are governed by a Senior Administrator appointed by the State, assisted by a Territorial Council operating on the basis of opinions delivered by the Territorial Assembly.

The Southern and Antarctic Territories (the islands of St Paul and Amsterdam, the Crozet Islands, the Kerguelen Islands and Adélie Land) are governed by a Senior Administrator appointed by the State and assisted by an Advisory Council.

2. Although the two *Collectivités Territoriales* (Mayotte, St Pierre et Miquelon) are each governed by specific laws on their organization, their status is much closer to that of a full *département*. The French government designates a representative with the rank of Prefect, and the Territories have a General Council elected by direct universal suffrage.

3. Regardless of the administrative status of the Territory from which they come, French OCT nationals enjoy full French citizenship, and thus hold European passports like any other French citizen.

They are eligible to vote for, and be elected to, the French National Assembly (one or more members per OCT), the Senate (one or more senators per OCT) the French Presidency, and (unique among the OCT) the European Parliament (the recent elections returned one Polynesian and one New Caledonian member).

C. Dutch OCT

The Charter of the Kingdom of the Netherlands of 22 October 1954 established a tripartite realm, with the Sovereign of the Netherlands as Head of State. Under this new constitutional order, the Netherlands, the Netherlands Antilles and Suriname (now independent) deal with their domestic affairs autonomously, and handle matters of common interest jointly, on an egalitarian basis. In other words, the Netherlands Antilles are associated with the Netherlands with equal rights.

This basic text governs the relations of the Netherlands and the Netherlands Antilles, of which Aruba was an integral part until 1 January 1986, when, under an amendment made to the Charter on 22 July 1985, the island was accorded separate status, placing it on an equal footing with the Netherlands Antilles (the five islands of Curaçao, Bonaire, Saba, St Eustatius, St Maarten) in terms of its relations with the Netherlands.

1. Aruba and the Netherlands Antilles each have their own constitution, and enjoy domestic autonomy with their own government and parliament.

The Charter rests on two essential principles:

- the association of the two "overseas countries" with all affairs of State (the term "kingdom" is used in the Charter with regard to affairs of common interest);

- autonomy in the administration of internal affairs.

The Charter provides for reciprocal representation in the administrative and political bodies of the Netherlands and the overseas countries; this provision plays an important role.

The Crown "member countries" are associated with the affairs of the kingdom which are administered "in cooperation". The plenipotentiary ministers of the associated countries sit on the Council of Ministers of the Kingdom, and take part in the Council's deliberations and all its special meetings on matters of common interest having an impact on their country. Mirroring the representation of the overseas countries in The Hague, the Dutch sovereign is represented in the Antilles and Aruba by a Governor who exercises executive power jointly with the local Council of Ministers, with the assistance of an Advisory Council.

As regards constitutional and legislative organization, Article 41 of the Charter lays down the principle of autonomy in the conduct of the internal affairs of each of the kingdom's components, although there are some restrictions concerning those of the kingdom's affairs held to be "of common interest".

This list is not exhaustive, and can be added to with the consent of all the parties. Thus, any matter not explicitly recognized as being "of common interest" is held to be an "internal affair".

2. Citizens of the two Dutch OCT have full Dutch nationality, and therefore, like French OCT citizens, have the same European passport whether they are from The Hague, Curaçao or Aruba.

The citizens of each of the three parts of the kingdom can vote for, and be elected to, their own parliaments.

Netherlands Antilles and Aruba nationals residing in the Netherlands or abroad, in say the USA or Spain, are eligible to vote and stand for the European Parliament, but not those residing in the two OCT.

D. Greenland

When the Danish constitution was revised in 1953, Greenland ceased being a colony to become an integral part of the Kingdom of Denmark.

On Denmark's accession to the EC in 1973, Greenland, unlike the Faroe Islands, which had obtained "home rule" in 1948, therefore became a part of the Community in the same way as "metropolitan" Denmark. However, Greenland's relationship with the Community was very controversial, with 70% of Greenlanders voting against accession in the Danish referendum of 1972.

On 1 May 1979, Greenland acquired the status of a "distinct community within the Kingdom of Denmark", along the same lines as the "home rule" granted to the Faroe Islands in 1948. This new status was confirmed in a referendum held in February 1982.

The home rule system is based on the principle of preserving the unity of the Kingdom of Denmark; the constitutional status of the "home rule authority" is governed by Danish law, under which the national parliament delegates some of its authority to Greenland.

Local administration is the preserve of the Greenland authorities, while broader issues are handled by representatives of the Kingdom or by the Danish government. Environmental protection was transferred to the home rule authority on 1 January 1989, and the country's mineral resources are the joint property of Denmark and Greenland, but defence, finance, private law and international relations remain the province of central government, although in the case of the latter Greenland is consulted on matters that concern it.

Under the home rule system, Greenland elects two members to the Danish parliament.

IV. Repercussions for Community legislation

Depending on whether or not OCT form an integral part of their Member States, their citizens may have differing personal status as regards the application of Community legislation.

Precedent dictates that only the Council, through an association decision adopted on the basis of Article 136 of the Treaty, can apply a given provision of the Treaty or the secondary legislation to the OCT, a fact that sets them apart from the French *Départements d'Outre-Mer* (DOM). That having been said, citizens of OCT that form an integral part of a Member State (Denmark, France, Netherlands) are perfectly within their rights to query this arrangement, and their elected representatives duly broached this issue with the Commission during the preparatory consultations conducted in line with Article 240 (3) of Decision 91/482/EEC.

By way of illustration of these queries and rights, we will use the words of Professor Jacques Ziller, one of the world's leading specialists in Community law, in a paper inspired by the Kaeffer/Procci case brought before the Court of Justice.[18]

"The French and Dutch OCT and Greenland form an integral part of the French Republic, the Kingdom of the Netherlands and the Kingdom of Denmark respectively, with significant variations in the extent of their internal autonomy, from none at all for Wallis et Futuna and the French Southern and Antarctic Territories, to legal autonomy on an equal footing with that of the Netherlands in Europe for Aruba and the Netherlands Antilles. The law on citizenship in these countries makes no distinction between metropolitan and OCT nationals, a fact which has significant repercussions with regard to the application of Community legislation.

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[18] From "Champ d'application du droit communautaire", Prof. J. Ziller, Editions Techniques Juris-Chasseurs, No 470, 1991-11.

The British OCT, on the other hand, do not form an integral part of the United Kingdom. Regardless of whether they are colonies, associated countries, or territories, and irrespective of the extent of the internal autonomy they enjoy, they must be considered as territories whose external relations are managed by the United Kingdom. British law on citizenship distinguishes between UK and OCT nationals, a fact which has significant consequences with regard to the application of Community legislation.

The repercussions of these differences in status are illustrated by the cases brought jointly by Kaefer and Procacci.[19]

According to the United Kingdom, the administrative tribunal of Papeete, which issued the preliminary rulings brought before the Court of Justice in this case, does not qualify as a "court or tribunal of a Member State" within the meaning of Article 177 of the Treaty. The first problem to be solved with regard to this assertion was to establish whether or not the tribunal concerned, the judicial nature of which was not contested, was a "court or tribunal of a Member State". It is not surprising that this matter should have been raised by the UK government, since the constitutional status of British OCT entails that their tribunals are *not* tribunals of the United Kingdom of Great Britain and Northern Ireland, even though their Court of Appeal is the Judicial Committee of the Privy Council, a body that has no judicial function in the UK's internal affairs.

The situation as regards the Dutch OCT is more complex. They form an integral part of the Kingdom of the Netherlands, a tripartite State created in 1953 and comprising (since 1986) Aruba, the Netherlands Antilles and the Netherlands. Aruba and the Netherlands Antilles have their own tribunals, but they dispense justice in the name of the Sovereign,[20] and - more importantly - their Court of Appeal is the High Council of the Netherlands,[21] which is thus the Supreme Judicial Court for all three parts of the Kingdom. We can therefore deduce that the tribunals of Aruba and the Netherlands Antilles are "courts or tribunals of a Member State", on an equal footing with those of the Netherlands proper.

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19 Court of Justice of the European Communities, 12 December 1990, P. Kaefer and A. Procacci vs French State, Case Nos C-100/89 and C-101/89, Reports Vol. 1, p. 4647.

20 Article 97 of the Constitution of the Netherlands Antilles (*Staatsregeling van de nederlandse Antillen*, Official Journal (*Staatsblad*) 1955/136, and Article VI.1 of the Constitution of Aruba (*Staatsregeling van Aruba*), Official Journal (*Afkondigingsblad van Aruba*) 1985/26.

21 *Hoge Raad der Nederlanden*, Article 23 of the Constitution of the Kingdom of the Netherlands (*Statuut voor het Koninkrijk der Nederlanden*).

Greenland's internal autonomy status, obtained on 1 May 1979, makes it a "distinct community within the Kingdom of Denmark", but justice remains the province of the Kingdom's central authorities. We can therefore conclude that Greenland's courts and tribunals are also those "of a Member State".

One would imagine that the UK's intervention was in fact not so much concerned with the administrative tribunal of Papeete *per se*, as with putting down a marker with regard to the status of British OCT tribunals; in which case, the Court's ruling in this matter was presumably acceptable to the UK government, in that it merely observed that the Papeete tribunal's status as a French court was not contested after the Advocate-General had specified that this status was based on Articles 2, 72 and 74 of the constitution, and on the law of 6 September 1984 concerning the status of the Territory of French Polynesia. It is therefore clear that the concept "tribunal of a Member State" must be understood in relation to the internal legislation of the Member State concerned, while the jurisdiction *ratione materiae* of such tribunals must be defined in terms of Community legislation."

Territory	Population 1992	Surface area (Km2) 1992	Density (Pop /Km2) 1992	GNP Million USD 1992	GNP per Capita USD 1992	Imports Million USD 1991	Exports Million USD 1991	Balance of Trade 1991
Anguilla	9 000	91	98,9	66,3	6 834	32,6	0,4	-32,2
Cayman Islands	30 000	264	113,64	836,0	30 511	271.0	3,0	-268,0
Falkland Islands	2 000	12 173	86,96	n/a	n/a	(1989) 13 867	(1989) 17 692	(1989) 3 825
South Sandwich Islands	-	-	-	-	-	-	-	-
British Virgin Islands	13 000	150	86,67	185,0	10 882	135.0	3,3	-131,7
Montserrat	12 000	102	117,65	63,3	5 976	35,2	1,0	-34,2
Pitcairn	(1993) 55	(1993) 35,5	1,54	-	-	-	-	-
Saint Helena and dependencies	7 000	308	22.73	15,3	2 804	10.2	0,2	-10
British Antarctic Territories	-	-	-	-	-	-	-	-
British Indian Ocean Territories	-	-	-	-	-	-	-	-
Turks and Caicos Islands	12 000	417	28.78	78.8	6 252	45,0	4,0	-41,0
T O T A L	85 000	13 540,5						

Source: UN Population and Vital Statistics Report, April 1994
Caribbean Development Bank Annual Report 1993
St. Helena and Dependencies Yearbook

Note: GNP Figures were only available for British Virgin Islands (USD164.9m in 1989) and for St Helena and Dependencies (GBP 9.67m in 1990/91).

Base EUROSTAT A 5

(10)

ANNEX 1

TABLE A

FRENCH OCT -

Territory	**Population** 1991	Surface area **Km2** 1991	Density Pop/**km2** 1991	GNP Million USD 1991	GNP **per Capita** USD 1991	Imports Million USD 1992	Exports Million USD 1992	**Balance** of Trade Million USD 1992
Mayotte	94 410	374	252	476	5 041	(1990) 38,55	(1990) 4,42	(1990) -34,13
New Caledonia	(1990) 169 900	19 103	8,89	(1989) 2 223	(1989) 13 400	(1988) 839,89	(1990) 424,45	(1990) -414,45
French Polynesia	199 031	4 167	47,76	(1990) 3 007	(1990) 15 270	(1990) 882	(1990) 106	(1990) -776
St-Pierre-et-Miquelon	(1990) 6 392	242	26,4	-	3 200	47,5	15 77	-31,73
Southern & Antarctic Territories	-	-	-	-	-	-	-	-
Wallis et Futuna	(1990) 13 705	274	50	-	(1986) 1 500	(1985) 13,04	(1985) 0,002	(1985) -13,038
T O T A L	483 438	24 160						

Source:

Mayotte: Préfecture. Dzadoudi.

New Caledonia: Institut Territorial de la Statistique et des Etudes Economique, Noumea

French Polynesia: Institut Territorial de la Statistique, Papeete

St-Pierre -et-Miquelon: Préfecture place du Lieutenant, St Pierre

Wallis et Futuna: Europa World Yearbook 1994

FAO Production Yearbook 1992

Base EUROSTAT A 5

(13)

ANNEX 1

TABLE B

	Population 1992	Surface area (Km2) 1992	Densjty (Pop /Km2) 1992	GNP Million USD 1992	GNP per Capita USD 1992	Imports Million USD 1992	Exports Million USD 1992	Balance of Trade Million USD 1992
Aruba	71 233	193	369	1 130.16	15 866	387.3	22.8	-364.5
Netherlands Antilles	191 311	800	239	(1988) 1 407	(1988) 7 395	(1990) 2 093	(1990) 1 776	(1990) -317
T O T A L	262 544	993						

Source: Centraal Bureau Voor de Statistiek. Curaçao
Bank Van de Nederlandse Antillen, Curaçao

Base EUROSTAT A 5

ANNEX 1 TABLE C

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GREENLAND

Territory	Population 1993	Surface area (Km2) 1993	Density (Pop /Km2) 1993	GNP Million USD 1991	GNP per Capita USD 1991	Imports Million USD 1992	Exports Million USD 1992	Balance of Trade Million USD 1992
Greenland	55 117	2 175 600	0,025	919,32	16 679	415,37	304,82	-110.55

Source: Greenland Bureau of Statistics
Europa World Yearbook 1994

Base EUROSTAT A 5

ANNEX 1

TABLE D

ANNEX 2: COMMISSION/MEMBER STATE/OCT PARTNERSHIP

Delete terms <between brackets>

Article 234

Community action shall be based <as far as possible> on close consultation between the Commission, the Member State responsible for a country or territory and the relevant local authorities of such countries of territories.

This consultation shall hereinafter be referred to as 'partnership'.

Article 235

1. Partnership shall cover the programming, preparation, financing,monitoring and evaluation of operations carried out by the Community under this Decision, and any problem arising in relations between the OCT and the Community.

2. To this end, working parties in association with the OCT, of an advisory nature and made up of the three partners referred to in Article 234, <may be> shall be set up either on the basis of geographical area or by group of OCT under the responsibility of a single Member State, notably at the request of the OCT concerned. These working parties shall be set up:

- on an *ad hoc* basis to deal with specific problems, or

- on a permanent basis for the period remaining of the life of this Decision. <in this case they shall meet at least once a year to examine progress in implementing this Decision or deal with other matters arising under paragraph 1.>

3. The Commission shall chair the working parties. A representative of the Bank shall be present at meetings when matters concerning it are on the agenda.

The general expenses of these meetings and the expenses incurred by OCT representatives in attending meetings shall be borne by the relevant authorities of the OCT.

Article 236

1. Other OCT shall be notified by the Commission of recommendations made by a working party.

2. The opinions of working parties shall be duly taken into account by the Commission, notably in its role of administrator of the Fund. Where relevant, they shall form the basis of proposals from the Commission to the Council with a view to bringing into force, under Article 136 of the Treaty, new provisions concerning the application of the association of the OCT with the Community, with particular regard to the effects on the OCT of the completion of the single market.

[redacted]

ANNEX 3: CENTRE FOR THE DEVELOPMENT OF INDUSTRY

Article 48

At the request of their relevant authorities, the OCT may be eligible for the services of the Centre for the Development of Industry (CDI) referred to in Articles 87-96 of the fourth Lomé Convention, the objectives and activities of which are described below, or those of the Euro Business Information Centres set up under the Community's business promotion policy.

Any costs resulting from services provided by the CDI or the Euro Business Information Centres for the benefit of the OCT shall be financed from the funds provided for in Article 154 for whichever of the three groups those OCT belong to.

Article 48a

The CDI shall help to establish and strengthen industrial enterprises in the OCT, notably by encouraging joint initiatives by economic operators of the Community and the OCT.

In the interests of effectiveness, the CDI shall focus its efforts on OCT that have identified support for industrial development, or the private sector in general, as a focal sector for Community aid in their indicative programmes.

In these OCT the CDI's shall carry out its activities inthe framework of industrial-development or private-sector support programmes established for the implementation of the ndicative programmes, and shall direct its activities to small and medium-sized enterprises.

The CDI shall exercise selectiveness in undertaking the tasks referred to above, laying emphasis on opportunities for joint ventures and sub-contracting.

Article 48b

1. In undertaking the tasks referred to in Article 48a the CDI shall operate by giving priority to viable projects. In particular, it shall:

(a) identify, appraise, evaluate, promote and assist in the implementation of economically viable industrial projects of the OCT;

(b) carry out studies and appraisals aimed at identifying practical opportunities for industrial cooperation with the Community in order to promote the industrial development of the OCT, and facilitating the implementation of appropriate schemes;

(c) supply information and also specific advisory services and expertise, including feasibility studies, with a view to expediting the establishment and/or restoration of industrial enterprises;

(d) identify potential partners of the OCT and the Community for joint investment operations and assist in the implementation and follow-up;

(e) identify and provide information on possible sources of financing, assist in the presentation for financing and, where necessary, assist in the mobilization of funds from these sources for industrial projects in the OCT;

(f) identify, collect, evaluate and supply information and advice on the acquisition, adaptation and development of appropriate industrial technology relating to specific projects and, where appropriate, assist in the setting up of experimental or demonstration schemes.

2. In order to improve the attainment of its objectives, the CDI, in addition to its main activities, may also pursue the following:

(a) carry out studies, market research and evaluation work and gather and disseminate all relevant information on the industrial cooperation situation and opportunities and notably on the economic environment, the treatment which potential investors may expect and the potential of viable industrial projects;

(b) help, in appropriate cases, to promote the marketing of OCT manufactures on their domestic markets and the markets of other OCT, the ACP States and the Community in order to encourage optimum exploitation of installed or projected industrial capacity;

(c) identify industrial policy-makers, promoters and economic and financial operators in the Community and the OCT, and organize and facilitate contacts and meetings of all kinds between them;

(d) identify, on the basis of needs indicated by the OCT, opportunities in industrial training, chiefly on the job, to meet the requirements of existing and planned industrial undertakings in the OCT and, where necessary, assists in the implementation of appropriate schemes;

(e) gather and disseminate all relevant information concerning the industrial potential of the OCT and trends of industrial sectors in the Community and the OCT;

(f) promote the subcontracting and also the expansion and consolidation of regional industrial projects.

ANNEX 4: HEALTH AND NUTRITION

Article 88a

1. The Community recognizes the importance of the health sector to ensuring the sustainable and self-reliant development of the OCT. The aim of cooperation shall be to facilitate the right of access of the greatest number of people to adequate health care, thus promoting equity and social justice, alleviating suffering, reducing the economic burden of disease and mortality, and promoting the effective participation of the community in operations to improve health and well-being.

The attainment of these aims calls for:

- a systematic, long-term approach to the improvement and strengthening of the health sector,
- the definition of comprehensive national health guidelines and programmes,
- improved management and use of existing human, financial and physical resources.

2. To this end, cooperation in this sector shall seek to support functional and sustainable health services which are financially affordable, culturally acceptable, geographically accessible and technically competent. It shall seek to promote an integrated approach to the creation of health services based on the extension of preventive care, the improvement of curative care and complementarity between hospital-based and basic-level services, in accordance with primary health care policy.

3. Cooperation in the health sector may provide support for:

- the improvement and extension of basic health services and also the strengthening of hospitals and maintenance of equipment, acknowledged as essential for the smooth operation of the health systems a whole,
- health-sector planning and management, including the strengthening of statistical services, and the formulation of health-financing strategies at territorial, regional and district levels, this last level being the focal point for coordination of basic services, provision of specialist services and implementation of programmes to stamp out widespread diseases,
- schemes to integrate traditional medicine in modern health care,
- essential drug programmes and strategies, including local production units for basic drugs and consumables, taking account of traditional pharmacy, in particular the use of medicinal plants, which is something that should be studies and developed,
- training of staff in the context of an overall programme, from public health planners, administrators management staff and specialists, down to the personnel working in the field, this training being tailored to the actual responsibilities borne at each level,
- support for training and information programmes and campaigns aimed at stamping out endemic diseases, improving environmental hygiene, combating the use of narcotic drugs, the spread of transmitted diseases and other health scourges in the framework of integrated health systems,

- the building up of research institutes, university departments and specialist schools in the OCT, notably in the field of public health.

ENVIRONMENT

Article 16(2) (second subparagraph)

Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community[22] shall apply to imports into the Community of hazardous waste from the OCT.

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[22] OJ L 30, 6 February 1993, p.1.

ANNEX 5: TRADE ARRANGEMENTS

1. Article 101(1) is replaced by the following:

"Products originating in the OCT shall be imported into the Community free of import duty".

2. The following subparagraphs are added to Article 101(3):

"Where it is found that trade between the OCT and the Community in products covered by institutional price arrangements under the common agricultural policy is threatneing to disruptthe market, the Commission may, after consulting the authorities involved, as called for by the partnership arrangements provided for in Article 235, set a reference price such products.

In setting the reference price, account shall be taken of the economic and social development objectives of the OCT; the price shall not exceed the level strictly necessary to comply with the objectives of Article 39 of the Treaty, and shall allow products originating in the OCT more favourable conditions than those applying to imports of the same product originating in a third country enjoying preferential treatment in trade with the Community.

The reference price arrangements and measures to ensure compliance with them shall be introduced in accordance with the procedure provided for in Article 38 of Regulation (EEC) No 136/66[23], or the corresponding articles of other Regulations establishing the common organization of agricultural markets, as appropriate."

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[23] "on the establishment of a common organization of the market in oils and fats", OJ L 172 of 30 September 1966.

TECHNICAL MODIFICATION ON CUMULATION
(Annex II to Decision 91/482/EEC)

The word "however", followed by the entire text of the former Article 7, is added to Article 6(4). Article 7 is deleted. The new Article 6 now reads as follows:

"

Article 6

Cumulation

1. For the purpose of implementing this Title, the OCT shall be considered as being one territory.

2. When products wholly obtained in the Community or in the ACP States undergo working or processing in the OCT, they shall be considered as having been wholly obtained in the OCT.

3. Working and processing carried out in the Community or in the ACP States shall be considered as having been carried out in the OCT when the materials undergo working or processing in the OCT.

4. Paragraphs 2 and 3 apply to any working or processing carried out in the OCT, including the operations listed in Article 3 (3). However, originating products made up of materials wholly obtained or sufficiently processed in two or more OCT or in one or more ACP States and in one or more OCT shall be considered as products originating in the OCT or ACP States where the last working or processing took place, provided this working or processing exceeded the insufficient operations listed in Article 3 (3) or a combination thereof.

CANARY ISLANDS
(Annex II to Decision 91/482/EEC)

In Title IV of Annex II, "CANARY ISLANDS, CEUTA AND MELILLA", and in Article 31, of which this Title consists, all references to the "Canary Islands" are deleted.

RUM
(Annex V to Decision 91/482/EEC)

From 1 January 1996, Annex V is replaced by the following text:

"1. The arrangements applicable to imports of products coming under CN codes 2208 40 10, 2208 40 90, 2208 90 11 and 2208 90 19 originating in the OCT may be revised should such imports increase to an extent liable to cause injury to Community rum production, particularly as regards traditional rum.

2. Acting by a qualified majority on a proposal from the Commission, the Council shall, where necessary, establish the provisions required for the implementation of Article 1."

ANNEX 6: PROVISIONS RELATING TO ESTABLISHMENT AND SERVICES

Article 232

(proposed amendments are underlined)

As regards the arrangements applicable to establishment and provision of services, in line with Article 132(5) of the Treaty and subject to paragraphs 1 and 2 of this Article,

- the Member States shall treat nationals and companies or enterprises of the OCT on a non-discriminatory basis,
- the relevant authorities of the OCT shall treat nationals and companies or enterprises of Member States on a non-discriminatory basis.

1. The relevant authorities of an OCT may, however, adopt regulations to aid their inhabitants and local activities in derogation from the rules normally applicable to nationals, companies or enterprises of all Member States as long as such derogations are confined to sensitive sectors of the OCT's economy and are intended to promote or support local employment.

(a) Such derogations may be granted by the Commission at the request of the relevant authorities of the OCT concerned and after consultation in the framework of the partnership provisions of Articles 234 to 236.

(b) Such a request must be accompanied by reasons indicating in particular the sectors concerned, the duration and other procedures envisaged. It shall be notified to the Commission, which shall inform the Member States and take a decision within three months. If the Commission has not acted within that period, the derogation shall be deemed to have been approved.

(c) Such derogations shall be published in the Official Journal of the European Communities.

2. If a Member State is not bound under Community law, or else national law, to accord non-discriminatory treatment for a given activity to inhabitants of an OCT who are nationals of a Member State or enjoy a legal status specific to an OCT, or for companies or enterprises established in an OCT and covered by the definition in Article 233, the authorities of that OCT shall not be bound to accord such treatment.

Article 233a

1. Community undertakings made on the basis of the Most-Favoured-Nation clause in the framework of the General Agreement on Trade in Services (GATS) shall be extended to the OCT.

2. As regards the arrangements governing trade in services, the OCT shall afford nationals, companies or enterprises of the Member States treatment that is no less favourable than that which they extend to nationals, companies or enterprises of third countries.

Article 233b

With a view to the ultimate recognition of professional qualifications acquired in the OCT, the Commission and the Member States concerned shall start work with a view to producing a list of professional qualifications acquired in the OCT by OCT nationals that would benefit from being recognized in the Member States, with the proviso that such qualifications must comply with the minimum training levels required by the Community.

[redacted] 55

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