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## DISSERTATION

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Topic:

*“Trade Relations between the EU and South Africa/the ACP countries”*

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## Dissertation

Topic: Trade Relations between the EU and South-Africa/the ACP countries

### A. THE EU

#### I. Historical background and development of the EU

The starting point from which the EU has evolved must be marked as the end of the Second World War. This war left nearly all of Europe devastated and the Malta Agreement led to a division of Europe which had never been experienced before.<sup>1</sup> Experiences after the first World War<sup>2</sup> and the growing antagonism among the victorious Allies brought the western Allies to the conclusion that the reconstruction and the recreation of those parts of Europe which were under their control was essential for both keeping peace in Europe and avoiding an expansion of the influence of the USSR in Europe.

The reason for the creation of the ECSC was the desire to ensure that war would never again ravage the continent of Europe in the same way that it had done on two occasions in the first half of the century. By joining together, sharing resources and decisions in these two crucial industries, it was hoped that former enemies would become partners. As European states in those days lacked the necessary means for such far-reaching plans it was the US which provided the essential economic and financial support in the Marshall Plan which was accepted by 16 European countries. In order to comply with the US's request for an agreement among the European states the Organisation of European Economic Cooperation was founded in 1948.<sup>3</sup> From the beginning an urgent need was felt that in order to "recreate the European family...the first step must be a partnership between France and Germany"<sup>4</sup> which had spent the last century in constant rivalry.

Therefore, Robert Schuman<sup>5</sup> suggested placing the whole Franco-German coal and steel production under one joint High Authority, in an organisation open to participation by other European countries.

#### Different steps

A treaty establishing the European Coal and Steel Community was signed in 1951 by France, Germany, the Netherlands, Belgium, Luxembourg and Italy. It entered into force after ratification by the national parliaments in 1952. In the following period two additional

<sup>1</sup> The *Yalta agreement* was concluded between the Allied Forces in 1945 regulating the territories over which the different forces shall obtain control after the end of the war.

<sup>2</sup> Germany was made subject to a very harsh reparations policy by the *Treaty of Versailles*. This, in connection with the *World Economic Crisis*, led to immense social tensions resulting in the rise of Hitler.

<sup>3</sup> In 1961, it became the *Organisation for Economic Co-operation and Development* (OECD) with the participation of the U.S.A. and Canada.

<sup>4</sup> *Winston Churchill*, extract from a speech at Zurich University held on 19 September 1946.

<sup>5</sup> At that time the French Foreign Minister.

proposals for close cooperation in the form of a European Defence Community and a European Political Community failed.<sup>6</sup>

The next two treaties which helped to pave the way towards the EU were the European Economic Community Treaty (EEC) and the European Atomic Energy Community Treaty (Euratom) which were signed on 25 March 1957 in Rome and which entered into force on 1 January 1958. In 1965 the institutional set-up of the Communities was simplified by the Treaty establishing a Single Council and a Single Commission of the European Communities. On its entry into effect on 1 July 1967 there was only one Council, one European Commission, one European Court and one Assembly for all three Communities.

The Customs Union became fully operative in the EEC on 1 July 1968. This meant that tariff and quota restrictions between Member States had to be completely abolished by then and there was one common external tariff.

On 22 January 1972 the Treaty of Brussels was signed relating to the accession of the United Kingdom, Ireland, Norway and Denmark. It entered into force on 1 January 1973 (except for Norway which did not ratify). Greece, Portugal and Spain were the next countries with which Treaties of Accession were concluded and by 1986 the Member States totalled 12. Finally in 1995, Sweden, Finland and Austria came on board, to bring the total number of members to 15; the present number. This process of 'enlarging' the European Union looks set to continue in the early part of the next century, as countries in Eastern Europe have applied for membership. In June 1985, the Commission sent a White Paper to the European Council entitled "Completing the Internal Market".<sup>7</sup> It laid down a comprehensive programme and timetable for the abolition of barriers of all kinds in inter-state trade, the harmonisation of rules, the approximation of legislation and tax structures and the strengthening of monetary cooperation. To complete the internal market, the White Paper provided for removal of physical, technical and fiscal barriers. It was inter alia to implement this comprehensive programme that the Member States decided to amend the existing Treaties in the Single European Act.<sup>8</sup>

This treaty was signed in 1986 and entered into force in 1987. Its objective is the completion of the so-called "internal market" defined as "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured".<sup>9</sup> Its objective was to create the largest frontier-free market in the works and so increase the Community's competitiveness by stimulating business through competition and economic growth through increased trade.<sup>10</sup>

The Single European Act made reference to a treaty on economic and monetary union and to cooperation in the sphere of foreign policy and set 1992 as the deadline for the completion of this aim. The Act provided the necessary institutional arrangements by expanding qualified

<sup>6</sup> Mathijsen *"A Guide to European Union Law"*, 6 ed, 1995 at 14.

<sup>7</sup> White Paper from the Commission to the European Council (Milan, 28-29 June 1985), COM (85) 310 final.

<sup>8</sup> The Act was designated as "Single" because it combines two different instruments: the first one provides for modifications to the three European Treaties and the second constitutes an agreement between the Member States to jointly formulate and implement a European foreign policy.

<sup>9</sup> Art. 7a E.C.

<sup>10</sup> Bronitt/Burns/Kinley *"Principles of European Community Law"*, 1995 at 43.

majority voting in the Council and improving cooperation with Parliament. The Treaty on European Union (Maastricht Treaty) was signed in Maastricht on 7 February 1992 and came into force on 1 November 1993. It contains seven parts and came out of two intergovernmental conferences held between 1990 and 1991—one on economic and monetary union and the other on political union.<sup>11</sup> Title I of the Treaty provides for a European Union, sets out its objectives, inter alia, the establishment of an economic and monetary union ultimately including a single currency, a common foreign and security policy including the eventual framing of a common defence policy, the introduction of a citizenship of the Union, cooperation on justice and home-affairs, the maintenance of the *acquis communautaire*<sup>12</sup> and the respect of the principle of subsidiarity.<sup>13</sup> It also institutionalises the European Council, which shall provide the necessary impetus and define the general political guidelines, and it indicates that to be a member of the Community a State's government must be founded on the principles of democracy, while fundamental rights are considered to be general principles of Community law. Titles II, III and IV contain amendments to the three European Treaties.<sup>14</sup> Of those amendments the main novelties are the following.

**Economic policy:** The European Council defines broad guidelines and the Council monitors and assesses the economic development in the Member States (multilateral surveillance procedure), possible financial assistance, excessive public budgetary deficits must be avoided and the Council may make recommendations and impose fines in case those recommendations are not put into practice.

**Monetary policy:** The primary objective of this policy is to maintain price stability within the European Union. This would be the main task of the European System of Central Banks (ESCB) and the European Central Bank (ECB). The objective must be attained in three stages. The first stage started on 1 January 1990 and ended on 31 December 1993. It provided for convergence and co-ordination of the economic policies of the Member States.

The second stage, which started on 1 January 1994, saw the setting up of the European Monetary Institute (EMI) whose task it was to strengthen the cooperation between central banks and the monetary policies of the Member States, monitor the functioning of the European Monetary System (EMS) and facilitate the use of the ECU. The third stage should start at the latest on 1 January 1999 and should see the ECU established, first as a currency in €uro its own right, and later as the single currency of the Member States.

<sup>11</sup> *ibid* at 45.

<sup>12</sup> Defined by Toth in "The Oxford Encyclopedia of European Community Law", Vol 1, 1990 at 9 as "The Community's patrimony: the whole body of rule, principles, agreements, declarations, resolutions, positions, opinions, objectives and practices concerning the European Communities, whether or not binding in law, which has developed since their establishment and which has been accepted by the Community institutions and the Member States as governing their activities."

<sup>13</sup> n 6 at 20.

<sup>14</sup> *ibid*.

Apart from these main topics the Maastricht Treaty goes beyond merely restructuring the three communities' powers by creating what is, in effect, a new supranational construct, the EU. In addition to the consolidation of existing areas of competence (e.g. in respect of social policy) powers in respect of a number of new areas are provided such as education and training, culture, public health, consumer protection, trans-European networks, industry and development cooperation.<sup>15</sup>

The Amsterdam Treaty has so far been the latest development in amending existing treaties in order to achieve European integration. Since March 1996, representatives of EU governments negotiated a new Treaty for Europe. The outcome was the Amsterdam Treaty in June 1997 although it does not fully achieve all the aims set out in March 1996. It provides new powers for the EU in a range of areas to protect the citizens of Europe and to improve living standards. New powers will be allocated to the EU to combat discrimination. The cooperation between custom, judicial and police authorities of the Member States in the fight against crime and drugs shall be reinforced. The fight against unemployment shall be placed at the heart of EU policy. The Amsterdam Treaty was to come into force on January 1st 1999, if all the Member States agree to it.<sup>16</sup>

## **II. External relations of the EU**

The external relations of the European Union are based, almost exclusively, on the enormous body of agreements (either bilateral or multilateral) to which the European Community is party, and so in formal terms it is in the name of the Community and not the Union that such agreements are concluded.<sup>17</sup>

### **1. Commercial Policy**

The EU's capacity to play a leadership role in global negotiations to liberalise world trade over the last 30 years has been crucially shaped by its common commercial policy. The founding Treaty of Rome required Member States to adopt common tariffs, liberalisation, export promotion and trade protection policies.

They have had to speak with one voice during all of the most important developments in international trade over the last 30 years. Other countries have listened. Now the Union is the world's largest trade grouping, accounting for just over 20% of total global trade in goods. Free trade has always been one of its main aims because it is heavily dependent on international commerce - more than the US is, for example. This broad objective has been pursued multilaterally - first in the GATT, now in the World Trade Organisation - through regional agreements and in bilateral relations with other countries, in recent years most notably with Japan and South Korea. Since the EU has sole responsibility for trade policy, the European Commission negotiates all external trade agreements on its behalf in virtually all

<sup>15</sup> n 10 at 45.

<sup>16</sup> See *www.europeanmovement.ie*. It now appears that it may come into force on May 1 st 1999.

<sup>17</sup> n 10 at 188.

forums where trade issues are discussed.<sup>18</sup> The Commission's task is rarely easy because Member States frequently have different view about what the detailed outcome of major negotiations should be. Before beginning a key negotiation, the Commission usually proposes its own mandate to the Council of Minister which will discuss, amend and finally settle, in agreement with the Commission, what the mandate should be. Eventual agreements with trading partners must be endorsed by the Council.<sup>19</sup>

#### **a. The Common Commercial Policy (CCP) instruments and import and export arrangements**

The CCP is provided for under Title VII of the EC Treaty. Although there is no genuine, comprehensive policy in existence, the context in which the CCP is set is provided by the objective expressed in Art 110 of the EC treaty: that "*by establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers*".<sup>20</sup>

The CCP stands on two legs: one effectively supports its external dimension (Art. 113)<sup>21</sup>, the other its internal organisation (Art. 115)<sup>22</sup>.

There is a necessary inter-dependency between the internal and external aspects of the CCP as both products originating from third countries -as soon as they have entered the internal market- as well as products originating from Member States are in free circulation within this market. Free movement of these goods as well as those originating from Member States can be fully maintained only if the import as well as the export regime of Member States is broadly identical not only in the matter of customs tariffs (the common customs tariff), but on other points as well.<sup>23</sup>

#### **The Common Customs Tariff**

The EU is a customs union because its Member States apply the same tariff on goods entering their country. This ensures that all goods enter on the same terms whether in Liverpool or Marseilles. No Member State can derive a competitive advantage by applying lower tariffs because no Member State has independent legal authority over the tariffs to be charged on imports. These are fixed on an EU-basis through the Common Commercial Policy.

<sup>18</sup> The *exclusivity* of Community competence in this matter has been unequivocally stated by the Court of Justice. In Opinion 1/75 (11 November 1975), ECR (1975) 1355 at 1364, the Court pronounced: "quite clearly...this conception is incompatible with the freedom to which Member States could lay claim by invoking a concurrent power, so as to ensure that their own interests were separately satisfied in external relations, at a risk of compromising the effective defence of the common interests of the Community."

<sup>19</sup> See [www.europa.eu.int/pol](http://www.europa.eu.int/pol).

<sup>20</sup> n 10 at 196.

<sup>21</sup> As amended by Art G(28) TEU.

<sup>22</sup> As amended by Art G(30) TEU.

<sup>23</sup> Gormley "Introduction to The Law of The European Communities", 2 ed, 1989 at pp 799-800.

### **Export promotion**

The Commission supplements Member States export promotion efforts with a programme based on fairs, trade forums and co-ordinated EU initiatives. Under guidelines adopted in 1993, it is currently giving priority to promoting exports to the Gulf and Asian countries with special attention given to China and Japan.

### **Trade protection**

An anti-dumping policy is directed against exporters selling into the EU at discriminatory prices which injure domestic producers.

The EU's anti-dumping procedures have been extensively modified to bring them into line with the Uruguay Round agreements of December 1993. Usually, goods judged to be breaching the Union's anti-dumping rules have special duties imposed on them. Examples in 1995 included colour television receivers from Malaysia, China, South Korea, Singapore and Thailand, ammonium nitrate from Russia and Lithuania and photocopiers from Japan. An anti-subsidy policy aims to prevent the sale of imported goods in the EU whose prices may be unfair because their production benefits from a state subsidy. In cases where unfair subsidies have been identified, countervailing duties may be imposed on the products.

### **Trading partners and commercial agreements**

In addition to full participation in the multilateral negotiation and management activities of the WTO, the EU also has a broad range of commercial agreements of differing types with its many partners:

- it has agreements creating customs unions with Turkey, Malta and Cyprus;
- free trade agreements have been made with the four members of the European Economic Area;
- 'Europe agreements' (also known as association agreements) have been struck with nine Central and Eastern European Countries. These aim to integrate their economies with the Union's as quickly as possible;
- preferential agreements with Mediterranean countries and, through the Lomé Convention, with 69 African, Caribbean and Pacific countries. These arrangements give their exports privileged access to the EU as well as financial and technical assistance;
- non-preferential commercial and economic cooperation agreements with many countries of Latin America and Asia sectoral agreements such as in textiles and clothing guaranteeing Third World producers access to the EU market.

#### **b. Trade relations with non-members**

One has to distinguish trade relations between the EU and prospective Member States and those relations which do not aim at the enlargement of the EU.

**(i) Prospective membership relations**

The most conspicuous and most recent agreement which is not only centred on trade links but also aims at a wider compatibility concerning economic, political and social matters is the establishment of the *European Economic Area* (EEA) which creates an area of common ground between the European Community and the *European Free Trade Association* (EFTA).<sup>24</sup>

This agreement was signed on 2 May 1992 by the European Community and the EFTA countries (Austria, Finland, Liechtenstein, Iceland, Norway, Sweden, and Switzerland) and it was ratified by all signatories except Switzerland.<sup>25</sup> It entered into force on 1 January 1994. The EEA supersedes all prior agreements between the EC and the EFTA countries and covers a wide range of economic issues with the aim "to promote a continuous and balanced strengthening of trade and economic relations between the contracting parties with equal conditions of competition, and respect of the same rules, with a view to creating a homogenous European Economic Area".<sup>26</sup> The agreement requires that the EFTA countries embrace the communautaire of the Community which in practice necessitates the incorporation of a substantial body of Community legislation.<sup>27</sup>

Reflecting the fact that even before 1993 the economic and social conditions of the EFTA countries already closely matched those of the Community States, the establishment of the EEA was considered to be in effect a "waiting room for candidates for accession to the Community".<sup>28</sup> Indeed, four EFTA countries<sup>29</sup> applied for and were accepted to membership of the Union in 1994 and Austria, Finland and Sweden joined the Union on 1 January 1995.<sup>30</sup> The fact that the only remaining EFTA members of the EEA are Iceland, Liechtenstein and Norway must cast doubt on the viability (or even necessity) of the Agreement. It nevertheless can be said that its broad purpose of forging greater unity amongst the states involved was substantially fulfilled by the very act of its coming into being and it may have a lasting effect as a model for the establishment of future closer relations with other European states or groups of states.<sup>31</sup>

**(ii) Relations with other (non-EFTA) European countries**

There has existed for some time close relationships between the Community and the states of Cyprus, Malta and Turkey which include individual Association Agreements with each

<sup>24</sup> n 10 at 188.

<sup>25</sup> Such action was narrowly rejected by the Swiss citizens in a referendum on 6 December 1993.

<sup>26</sup> Art 1 (1) of the EEA.

<sup>27</sup> Around 1400 pages of legislation or 1700 acts as *Christophe Reymond* has reported in "*Institutions, Decision-making Procedure and Settlement of Disputes in the European Economic Area*", in *Common Market Law Review* (1993), at 451.

<sup>28</sup> O'Keefe "*Legal Issues of European Integration I*", 1992 at 26.

<sup>29</sup> Finland, Austria, Norway and Sweden.

<sup>30</sup> The Norwegian citizen turned down the proposal to join the Union in a referendum.

<sup>31</sup> n 10 at 190.

country. These are amongst the oldest such agreements concluded by the Community.<sup>32</sup> In addition Customs Union Agreements have been signed in each case and all three countries have formally applied for membership of the Union. Due to the fact that these countries do not share or entirely share the Union's (other than the EFTA countries) background it was reluctant to seek endorsement of these applications. Apart from the stringent economic criteria that each state has yet to satisfy fully, the other significant reasons for the Union's reluctance in respect of Turkey and the fully politically divided island of Cyprus, are concern over the human rights record of the former and its long-standing feud with a current member of the EU-Greece- over the sovereignty of the latter.<sup>33</sup>

### *(iii) Relations with Central and Eastern Europe*

The Union's broadest association with its Eastern European neighbours is fostered through its PHARE programme<sup>34</sup> which provides economic assistance to a number of Eastern European states<sup>35</sup>. This programme is an *"economic aid programme which funds technical assistance for the process of economic and social reform in Central and Eastern Europe, helping these countries achieve market economies based on free enterprise and private initiative"*.<sup>36</sup>

Although future membership is contemplated by the Union, the programme is more based on paternalistic grounds-namely the granting of aid, which clearly distinguishes it from the EEA agreement.<sup>37</sup>

Additionally the EU has established closer relations with all of these countries except Albania. Agreements establishing free trade areas have been concluded with Estonia, Latvia and Lithuania. Ten Europe Agreements<sup>38</sup> have been concluded so far which are association agreements of a special type, including provisions not only for trade relations and economic and financial cooperation, but also political and cultural dialogue and cooperation.<sup>39</sup> In contrast to aid measures in the framework of PHARE and the G-24, the economic and political conditions of Europe Agreements not only require a firm commitment to reform but also first concrete steps towards a market economy and pluralist democracy.<sup>40</sup> These agreements constitute the basis of an orderly and long-term relationship between the Union and the states of Eastern Europe. The trade component of the present agreement is a series of interim free-trade area agreements between the EU and each of the ten states, although the Visegrad four

<sup>32</sup> With Turkey in 1964, with Malta in 1971 and with Cyprus in 1972

<sup>33</sup> n 10 at 190.

<sup>34</sup> Poland and Hungary Assistance for the Restructuring of the Economy.

<sup>35</sup> The number of countries currently involved stands at 11: *Albania, Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.*

<sup>36</sup> *Phare Assistance Programme* (1994), published by the PHARE Information Office, Directorate-General for External Relations of the European Commission at 1.

<sup>37</sup> n 10 at 191.

<sup>38</sup> With Bulgaria, Estonia, the Czech Republic, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia.

<sup>39</sup> Kramer *"The European Community's Response to the 'New Eastern Europe'"*, in *Journal of Common Market Studies* (1993), at 228.

<sup>40</sup> *ibid.*

(Czech Republic, Hungary, Poland and Slovakia) have their own free-trade area agreement. At the moment these states have difficulty in making full use of the tariff quotas made available to them due to their economic situation but they are expected to be better able to take advantage of these trade concessions as their economies develop. The more economically (and politically) advanced of these economies are expected to join the EU within the next ten years.<sup>41</sup>

### *(iii) Future perspectives for Europe*

One future perspective could be the eventual formation of a Europe-wide free-trade area, involving not only the existing EU (and EEA) and the Central and East European Countries, but the other European states left out of the present arrangements (Switzerland, Albania, and the other states of the former Yugoslavia and the former USSR). One scenario for the year 2010 is for the EU to form the hub of a number of free trade areas embracing a European Free-Trade Area, a Mediterranean Free-Trade Area, a North-Atlantic Free Trade Area (embracing say the EU, the USA and Canada) and a free-trade area successor agreement to Lomé IV.

### **c. Trade relations with ACPs<sup>42</sup>**

The main feature of the Community policy towards developing countries is the ACP-EEC Agreement, better known as the Lomé Convention.<sup>43</sup> At the moment the fourth generation of the Lomé Conventions is in existence. The first ran from 1975, the second from 1980, the third from 1985 and the fourth, which is scheduled to be valid until 2000, came into force in 1990.<sup>44</sup> The Lomé Conventions are themselves the successors of two Yaoundé Conventions (1963 and 1969) which served as samples for both the form and structure. These two conventions were drawn up between the European Community, at this time comprising 6 Member States, and the so-called AASM (Associated African States and Madagascar) in an effort to stimulate the

<sup>41</sup> McQueen, Phillips, Hallam, Swinbank "ACP-EU Trade and Aid Co-operation Post Lomé IV" Chapter 7 Future Prospects for ACP Exports to the EU for Agricultural and Horticultural Products covered by the CAP, Paper prepared for the Summit of ACP Heads of State and Government, <http://www.oneworld.org.acpsec> at 31.

<sup>42</sup> 1. Angola, 2. Antigua & Barbuda, 3. Bahamas \*, 4. Barbados, 5. Belize, 6. Benin, 7. Botswana, 8. Burkina Faso, 9. Burundi, 10. Cameroon, 11. Cape Verde †, 12. Central African Republic, 13. Chad, 14. Comoros \*, 15. Congo, Democratic Republic of, 16. Congo, 17. Côte d'Ivoire, 18. Djibouti, 19. Dominica, 20. Dominican Republic, 21. Equatorial Guinea \*, 22. Eritrea \*, 23. Ethiopia †, 24. Fiji, 25. Gabon, 26. Gambia, 27. Ghana, 28. Grenada, 29. Guinea, 30. Guinea-Bissau, 31. Guyana, 32. Haiti, 33. Jamaica, 34. Kenya, 35. Kiribati \*, 36. Lesotho, 37. Liberia \*, 38. Madagascar, 39. Malawi, 40. Mali, 41. Mauritania, 42. Mauritius, 43. Mozambique, 44. Namibia, 45. Niger, 46. Nigeria, 47. Papua New Guinea \*, 48. Rwanda, 49. Samoa †, 50. Sao Tomé & Príncipe \*, 51. Senegal, 52. Seychelles †, 53. Sierra Leone, 54. Solomon Islands, 55. Somalia \*, 56. South Africa, 57. St Kitts & Nevis, 58. St Lucia, 59. St Vincent & The Grenadines, 60. Sudan †, 61. Suriname, 62. Swaziland, 63. Tanzania, 64. Togo, 65. Tonga †, 66. Trinidad and Tobago, 67. Tuvalu \*, 68. Uganda, 69. Vanuatu †, 70. Zambia, 71. Zimbabwe

All countries listed are also WTO member nations, except:

† denotes countries with WTO observer status only, all of which have applied to join the WTO as members except Ethiopia and Cape Verde

\* denotes countries which are neither WTO members nor WTO observers see Panos Briefing No.31 section 2 at

economies of the latter.<sup>45</sup> Their impetus came principally from the gaining of independence by so many of France's African colonies in the immediate post-war years. Having cut their ties with the former imperial power with respect to political sovereignty, these new nations were concerned not to cut economic relations as well.<sup>46</sup> The transition from Yaoundé to Lomé Conventions was prompted by the accession to the European Community in 1973 of the United Kingdom, another former imperial power. The Lomé Conventions differ from the Yaoundé Conventions in that they aim to establish a kind of partnership between the developing countries and the Community whereas the Yaoundé Conventions still bore the marks of the paternalistic approach most European countries nourished towards their former colonies.<sup>47</sup> Those partnership principles seek to place primary responsibility for development on the government of ACP countries, with the EU providing assistance to government designed and implemented policies and programmes.<sup>48</sup>

The current Lomé Convention, like the three before it, is essentially an aid programme; indeed it is the largest single aid programme in the world, with some ECU 12 billion budgeted for the period 1990 to 1995.<sup>49</sup> The size of the grant allocated by the second financial protocol for 1996-2000 is some 13 billion ECU. The term "aid" is used in the broadest sense, for the Convention is in fact built upon three pillars, namely trade, aid and cooperation. Financial assistance is provided under the programme by means of grants, so-called soft loans and interest-rates subsidies.<sup>50</sup>

#### **d. Scope of the Lomé Convention**

In respect of trade cooperation, the ACP countries enjoy, without reciprocity for the Member States, free entry into the Community for most of their agricultural products and for all industrial products originating in ACP countries.<sup>51</sup> This means that ACP exports gain preferential access to EU markets without having to grant the same preferences to EU exports in return. The European Commission estimates that about 94 percent of total ACP exports to EU markets enter duty-free (100 percent in the case of industrial and fish products, almost 80 percent for agricultural products).<sup>52</sup> The EU Member States only have the guarantee that they will be treated not less favourably than any other industrialised country and that all of them will be treated equally. An entirely new feature of the Lomé Conventions is the Stabilisation of Export Earnings (STABEX) and SYSMIN systems. STABEX is a mechanism assuring those ACP countries whose revenues derive mainly from a single product, a certain level of export earnings.

<sup>45</sup> *ibid.*

<sup>46</sup> *ibid.*

<sup>47</sup> n 6 at 391.

<sup>48</sup> Tomlinson "EU-ACP Co-operation: The Lomé Convention", in *EU Development Issue*, <http://www.poptel.org.uk> at 2.

<sup>49</sup> n 10 at 205.

<sup>50</sup> *ibid.*

<sup>51</sup> n 6 at 391.

<sup>52</sup> *Panos Briefing No.31* section 2 at 3.

To this end they are protected from income fluctuations due to the play of the markets or production hazards.<sup>53</sup> In 1992 this represented transfers to the amount of 330 million ECU. The second system, in the form of special (soft) loans, aims at remedying the harmful effects to the national economy of the situation in the mining sector. The Lomé Conventions also provide for an undertaking by the Community to purchase from certain ACP countries, at guaranteed prices, e.g. cane sugar for an indefinite period and an undertaking from those countries to supply specific quantities annually.<sup>54</sup> Additionally to the Sugar Protocol there exist other protocols for bananas, beef, veal and rum. Another important element is the place assumed by industrial cooperation, with its Industrial Cooperation Committee and Industrial Development Centre whose purpose it is to integrate firms and entrepreneurs into EEC-ACP cooperation.<sup>55</sup> Furthermore, the Convention devotes considerable resources to regional cooperation and infrastructure projects such as road building and harbour development. It contains provisions designed to encourage ACP States towards greater solidarity, with the ultimate goal of genuine regional integration.<sup>56</sup>

#### **e. Mid-term review**

Lomé IV, unlike earlier Conventions was signed for 10 years rather than 5 years. This 10 years time frame was adopted to ease the burden on ACP governments which regularly had to redeploy scarce human resources into protracted negotiations. It was agreed however that after 5 years a mid-term review should be undertaken to see if any modifications were necessary in the light of experience gained.

The Commission put forward proposals for changes which would introduce the most fundamental modification to the Lomé arrangements since their inception in 1975. This arose as a result of a Commission analysis of ACP-EU cooperation which concluded that in development terms it had in large part been a failure, since ACP countries were now poorer than they had been at the outset of cooperation. Politically, the 1995 mid-term review of the current Lomé Convention made conditionality stricter and more transparent. Article 5 of the revised convention made 'respect for human rights, democratic principles and the rule of law' an 'essential element' or legally enforceable condition for receiving aid.<sup>57</sup>

#### **f. Problems and Limitations of Lomé**

##### **Change in Europe's political climate**

There is a clearly-observable decline in European interest for its ACP partners as Europe's relations with the seventy ACP countries have been the victim of the profound geopolitical and economic changes currently taking place in Europe and elsewhere. The end of the Cold War

<sup>53</sup> n 6 at 392; for details see Eighteenth General Report (1984) at 285.

<sup>54</sup> For the Sugar Protocol see Twenty-Third General Report (1989) at 358.

<sup>55</sup> n 6 at 392.

<sup>56</sup> Twenty-Third General Report (1989) at 361.

<sup>57</sup> *Panos Briefing No.31* section 2 at 3.

and the rapid development of a global market have increased the marginalisation of ACP countries. The collapse of the Soviet grip on Eastern Europe, moves towards European political union, the loosening of East-West rivalry and migratory pressures from the Mediterranean region have led to a fundamental reassessment by the EU of its external policies. Europe appears paralysed by its own internal growth problems and its strong emphasis on the two new frontiers - Eastern Europe and the Mediterranean. This trend can be seen in the growth of aid to the Mediterranean region (from 12% of the size of the EDF in 1991-1995 to 32% in 1995-1999). Whereas the funds earmarked for Central and Eastern Europe, Asia and Latin America and the Southern Mediterranean Countries have increased two- to threefold over the last few years, the funds for the ACP States have only kept pace with inflation. Over the period between 1995 and 2000, 6.7 billion ECUs each will be available for Asia and Latin America; the figure for the Southern Mediterranean countries is 4.7 billion ECUs, the ACP States will receive some 15 billion ECUs.<sup>58</sup> Investment and trade patterns, alliances with Eastern European states and migration arrangements with the Maghreb region, may soon completely dominate the EU's international agenda. The ACP are expected to descend on the list of EU priority regions. This tendency was revealed during the renegotiation of the financial protocol during the Lomé mid-term review. Few of the Member States were willing to even maintain their contributions to the European Development Fund (EDF) far less to increase them. The increase by 2.625 billion ECUs over the 7th EDF was only possible due to the participation of new Member States (880 million ECUs). Germany, Italy, the Netherlands, and Spain reduced their contributions in relative terms; Denmark and the United Kingdom will contribute less in absolute terms.<sup>59</sup> Generally speaking the significance of North-South cooperation is eroding. While in 1987 about 50 % of the development assistance budget of the EU was allocated to the ACP states through the Lomé Convention, by 1995 the proportion had declined to about a third.<sup>60</sup>

Additionally, in most European countries, ministers of development cooperation face a hard time defending aid budgets amidst domestic pressure to curb deficits and a major crisis for the welfare state.<sup>61</sup> Aid fatigue can also be observed. Public opinion in Europe increasingly wonders why they should provide aid when their own societies confront major economic and social problems. It has become more and more concerned with the question whether donated aid is well used and effective.<sup>62</sup>

The EU has also undergone significant changes since the signing of the first Lomé Convention. Nowadays it has 15 members and the newcomers have generally tended to have little sympathy

<sup>58</sup> Lingau *"Perspectives on Lomé Cooperation"* (ECDPM Working Paper Number 12) Maastricht: ECDPM (1996), [http://www.oneworld.org/ecdpm/pubs/wp12\\_gb.htm](http://www.oneworld.org/ecdpm/pubs/wp12_gb.htm) at 2.

<sup>59</sup> Denmark and the U.K reduced their absolute contribution; see n 48 at 4.

<sup>60</sup> Matambalya *"Future Perspectives of EU-ACP Relationship...Case of the Southern African ACP-States"*, <http://www.oneworld.org/euforic> at 8.

<sup>61</sup> *Policy Management Report*, Chapter 2 at 1.

<sup>62</sup> *ibid* Chapter 1 at 2.

for the Lomé idea as they regard this as a 'post-colonial relict' and 'discriminatory' against other countries that are not members of Lomé.<sup>63</sup>

The planned enlargement of the EU will compound this problem. With the Treaty of Maastricht, the EU has set out its overall policy on development cooperation. As Lomé and the EDF stand outside this framework there is increasing pressure to integrate Lomé into the overall policy framework and to make the EDF part of the overall EU budget and procedures. Finally, privileged cooperation with the ACP group as such is no longer a shared EU foreign policy priority. Member States have different interests, either linked to their own history, e.g. Spain with South-America, proximity, the south of Europe with the Mediterranean region, economic interests, e.g. South-East Asia or the fight against poverty in both Lomé and non-Lomé countries.<sup>64</sup>

### **Insufficient trade development**

As trading partners, the ACP states have been a clear failure and have become less significant, politically and economically. At present, Europe's trade and investment links with Africa are, at best, secondary to those that exist with other regions. Inflows of foreign direct investment (FDI) to Africa still lag far behind those to other developing regions. In 1993, Africa attracted \$9.6 for every \$1000 of GDP. The figures for Latin America and Asia were \$13.2 and \$23.1 respectively.

Looking at the Southern-African Development Community (SADC) one must say that despite the various trade preferences under the Lomé Convention they are nevertheless prone to shortcomings that either render them redundant or, at least, contribute to the erosion of their margins. The Convention does not provide *carte blanche* for many products of most interest to the SADC economies and several policy restrictions, such as the Common Agricultural Policy, exist alongside EU preferences. A number of technical barriers to the export performance of the SADC can be identified, as it is extremely difficult for developing countries to comply with the high EU standards for quality and safety. Some of the obvious characteristics of the export portfolio which further erode the actual preference margins are the concentration of SADC exports on a few primary products, the surge in global supply, falling demand due to the development of synthetic substitutes and the reduction of input intensity as a result of technological innovations.<sup>65</sup>

Routine EU policy changes can have drastic effects on the future of ACP countries. The Côte d'Ivoire, the world's largest exporter of cocoa, was heavily effected when the 15-nation bloc changed the rules on the use of vegetable fat in EU-made chocolate. An EU proposal to authorise the use of up to five percent vegetable fat instead of traditional cocoa fat in products sold as 'chocolate' has unnerved 500,000 small farmers in the country who make a living from the export crop. The aim is to accommodate sweet manufacturers, mainly in Britain, who

<sup>63</sup> *ibid* Chapter 3 at 2.

<sup>64</sup> *ibid.*

<sup>65</sup> n 60 at 1.

already use significantly cheaper vegetable fat substitutes in their chocolate products. If the EU proposal is adopted it could mean a drop of between 60,000 and 200,000 tonnes of cocoa exports a year - or a loss of between 350 to 500 million ECU (385 to 550 million US dollars) - to producers exporting to EU markets, according to the Côte d'Ivoire government.

The market was turned over to the private sector in line with World Bank requests in 1995, ending the state system of controlled credit and production designed to keep the market stable and small farmers' incomes secure. Liberalisation has offered the farmers no protection, despite the fact that the reforms were supposed to benefit them.

Côte d'Ivoire's present production of 1.2 million tonnes a year adds up to about 15 percent of total world output, estimated at 8.2 million tonnes. More than half of the country's estimated 15.8 million population live directly or indirectly from cocoa production.<sup>66</sup> Exports of SADC economies to the EU usually consist of only a few products or product groups. Throughout the present Lomé Convention, for instance, copper has contributed for more than 80 % of Zambia's revenue from exports to the EU. This mono product character dominates most of the ACP's export portfolios and reveals that most of them have failed to diversify their exports into non-traditional products.<sup>67</sup> In addition, the high level of EU production of many typical SADC exports, such as sugar, beef and veal, limits its capacity to absorb substantial exports and shows it to be a limited market for products traded by SADC and other ACP States.<sup>68</sup>

On the whole, the impact of non-reciprocal preferences and the Protocols offered to the ACP countries has been disappointing. During two decades of Lomé preferences the ACP share of the EU market dropped from 6.7 % in 1976 to 2.8 % in 1994 while less preferred developing countries gained market share. This indicates that most ACP countries have not managed to become more competitive in the world market.<sup>69</sup>

Additionally, guaranteed supplies of raw materials at stable prices may have become less of an issue for the EU these days, as it can source them more reliably and cheaply elsewhere or has its own producers to think of.

**Table 1: Developing countries' share of EU imports, 1976-1994 (%)<sup>70</sup>**

	1976	1980	1985	1990	1992	1994
<b>ACP</b>	6.7	7.2	6.7	4.7	3.7	2.8
<b>Asia</b>	4.2	5.9	6.5	11	13.6	13.1
<b>Latin America</b>	5.3	5.1	6.5	4.6	5.1	5.4
<b>Mediterranean</b>	6.1	6.1	8.1	6.5	6.2	6.1
<b>All Developing Countries</b>	44.8	42.4	34.7	31.2	29.2	34.2

<sup>66</sup> *Panos Briefing No.31* section 2 at 9.

<sup>67</sup> n 60 see Table 7.

<sup>68</sup> n 60 at 2.

<sup>69</sup> *Policy Management Report*, Chapter 4 at 2.

<sup>70</sup> *Source: Eurostat.*

Also, besides intra-ACP competition, the situation is exacerbated by the proliferation of arrangements linking the EU to the international system including, in ascending order of generosity, the GATT/WTO, the Free Trade Agreements, the Generalised System of Preferences.<sup>71</sup>

Considering single trade regimes for access to the EU market, severe interactions exist between Lomé and SGSP programmes which lead to a 'cancelling out effect' of the individual trade regimes. Comparably, such instruments as STABEX and COMPEX compete for the same limited resources made available by the EU to stabilise agricultural export revenues.

### **Geography of Lomé**

Another problem arising is the growing heterogeneity of the ACP. The wide diversity of conditions prevailing in the ACP creates tensions. It is, for instance, increasingly difficult to see what "common interests" tie the 70 ACP countries together. Furthermore, the EU demands greater differentiation of categories of developing countries, using a range of criteria such as levels of development and commitment or economic reform in order to determine the effectivity of aid donations.

The EU is now also keen to introduce a greater degree of differentiation and selectivity in its cooperation relations. The current Convention does not cater for this need. It provides, to a large extent, for standard treatment of all ACP countries, regardless of their economic development, governance systems, administrative capacities and performance. The same trade arrangements apply to the whole group and only a limited amount of differentiation exists in financial and technical cooperation, e.g. through phased programming.<sup>72</sup>

### **Erosion of the guiding principle of partnership**

Partnership has been the central notion in ACP-EU relations. The first Lomé Convention (1975) claimed to introduce a contractually agreed "partnership between equals" based on mutual rights and obligations. Both parties made long-term commitments to achieve common goals. ACP countries took a lead role in managing Lomé resources, with the EU playing a supportive role.<sup>73</sup> A complex set of joint institutions was set up to structure different forms of dialogue and to promote effective implementation. This concept of partnership, together with the principle of dialogue, contract and predictability add up to the so-called "Lomé culture". Over the last twenty years this culture has lost most of its momentum. Whereas the first Lomé Convention clearly laid down the principle that ACP countries were responsible for distributing aid with the EU adopting a "laissez-faire" attitude, successive conventions sought to integrate donor concerns into the partnership. Nowadays, efficiency concerns force the EU to reduce recipient roles in partnership and development models are imposed by the donor community. Furthermore, complex and rigid procedures make it difficult for each country to benefit from

<sup>71</sup> n 60 at 3.

<sup>72</sup> *Policy Management Report*, Chapter 3 at 2.

<sup>73</sup> *ibid* Chapter 5 at 1.

available instruments and resources. Non-state actors in the ACP suffer from the monopoly position of the governments which is seen as outdated and ineffective because the Convention's instruments were traditionally aimed at public sector needs and often only a small number of government officials had appropriate knowledge of the operation of Lomé and its operational procedures.

The EU finds it difficult to establish a genuine partnership with ACP countries that have poor governance or administrative capacities. This leads to a non-transparent and ineffective use of the resources.<sup>74</sup>

### **Management constraints of Lomé**

On paper Lomé seems to be the finest and most complete instrument of North-South cooperation ever. The flexibility of its framework may have facilitated innovative approaches and successful programme implementation in many ACP countries. On the operational level, practitioners on both sides see a growing gap between the Convention's grand ambitions and the modest achievements on the ground.<sup>75</sup>

Its organisational complexity, the minimal transparency of the distribution of gains from trade preferences, uncertainties concerning both the amount of anticipated aid (particularly the non-programable portion of the EDF), and the transient character of Lomé, leverage of EU vested interests, as well as restricted efficiency of aid distribution may be singled out as important shortfalls complicating the management of the Lomé. Actors in the ACP have difficulties understanding the complex system of provisions and conditions, as well as the actual benefits tied to them. Some of the largest ACP exporters were unaware of the margin of trade preference for their cocoa to the EU.<sup>76</sup> Lomé also suffers from the absence of clear and transparent modalities for the distribution of the preference margins. For many commodities enjoying preferential access to the EU, the margin of preference is part of the overall negotiated price. Theoretically, this margin can either be passed on to the exporting economy or be retained by the EU. It can also be shared proportionately or disproportionately by the parties involved. Furthermore, the efficiency of the Convention is constrained by uncertainties relating to the allocation of aid funds and the transient character of the arrangement. Both country and regional shares of aid funds invariably indicate the benefits accruing to the individual ACP states and regions: therefore, the procedure to allocate these funds to the individual ACP States is a contentious issue, mainly because Lomé lacks viable criteria for ranking the recipient sectors and/or economies.<sup>77</sup> The differentiation under the Convention between programable and non-programable assistance could imply diversion and covert conditionality of aid.

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<sup>74</sup> *ibid* Chapter 5 at 2.

<sup>75</sup> *ibid* Chapter 7 at 1.

<sup>76</sup> n 60 at 3.

<sup>77</sup> *ibid* at 4.

Programable assistance is allocated according to geographic criteria and is either regional or country specific. Non-programable assistance is not allocated according to geographic criteria, but is issued under specific conditions.<sup>78</sup> The distribution of both the STABEX and the SYSMIN funds, which are both non-programable, are blamed for their non-transparency. Large amounts of money remain unspent and there is generally a major time-lag between "commitments" and "disbursements", a trend that can even be noticed in countries with sufficient levels of administrative capacity.<sup>79</sup>

### **Leverage on vested interests**

This constitutes another factor that limits the efficiency of Lomé in stimulating development. If the EU's interests are guided by specific returns on aid, there is a real risk of tying this aid to overt and/or covert conditions, thus making assistance vulnerable to 'vested interests' of the EU rather than 'common' interests between the EU and its ACP Associates. The amount of 'tangible aid' available to the recipient economies is substantially reduced by expatriate salaries, consultancy fees, etc. According to the World Bank, Pacific ACP region technical assistance makes up for about 45 % of total aid, while the actual tangible proportion of this aid is probably under 50 %.<sup>80</sup> Uncompetitive pricing, as experienced in the SADC region, is also caused by aid conditionality, particularly the phenomenon of tied-aid.<sup>81</sup>

### **Incompatibility of Lomé with WTO rules**

The Lomé Conventions have based their trade initiatives on the principle of positive discrimination in favour of ACP countries, a group composed mainly of Europe's former colonies. The new 'world trade order' enforced by the WTO (World Trade Organisation) which was born in 1995 after the Uruguay negotiations on GATT (General Agreement on Tariffs and Trade) has clear aims.

It seeks to create a system where all economies, regardless of level of development or capacity to develop, irrespective of their individual circumstances, must eventually adopt equal rules and standards in tariff reduction, protection of private property and foreign investment. In WTO terms, this means that countries at the same level of development which are not so favoured are discriminated against, and that breaks the rules on free trade. As shown above about 94 percent of total ACP exports to EU markets enter duty-free (100 percent in the case of industrial and fish products, almost 80 percent for agricultural products). If they were operating under WTO rules instead of the Lomé Convention, only 10 percent of ACP agricultural exports would enter the EU duty-free, and the remaining 90 percent would be hit

<sup>78</sup> *ibid.*

<sup>79</sup> *Policy Management Report*, Chapter 7 at 1.

<sup>80</sup> n 10 at 4.

<sup>81</sup> E.g. *Italy made available a grant to Mozambique for upgrading its portion of a railway line between Swaziland and Maputo while Swaziland was to received a loan. This loan was tied to the use of Italian contractors and rail. The Swaziland Railway could have obtained cheaper steel from Zimbabwe, while South-African contractors would have cost less. see ibid.*

by an average tariff of 23 percent. Under the WTO regime almost no fish products are allowed duty-free access, so virtually all ACP exports would face an average tariff of 17 percent.<sup>82</sup> Additionally the Lomé preferences function on a non-reciprocal basis which is against the WTO rules which demand reciprocity in order to guarantee free and fair trade.

### **The Banana War**

The problems deriving from this incompatibility and the pressure exerted on the EU can be shown best by describing the so called Banana War. The banana protocol which is attached to the Lomé convention and which covers the export of bananas from the ACP countries to the EU provides traditional ACP banana suppliers with duty-free access of up to a global quota of 875.000 tonnes. It also regulates the market by maintaining tariff and quota restrictions against non-traditional suppliers, mainly from Latin America. In spite of these controls the non-traditional suppliers have built up an 80 % market share of the EU's banana market, their profits raised by extensive industrialisation of giant banana plantations in the region, mostly owned and run by US multinationals. Despite this market share, the US, on behalf of their multinationals and five Latin American producer nations, complained to the WTO about Lomé's banana preferences, a complaint that was upheld and confirmed again by the WTO in September 1997.

The Commission's draft modifications to the banana trade preferences system which were aiming at meeting WTO terms while still preserving the benefits for ACP producers were rejected by the US and their allies on the grounds that the new system is just as discriminatory as the original and they threaten to ask for the WTO to rule again on the revised version.<sup>83</sup> This dispute even threatens to ignite a trade war between the US and the EU.<sup>84</sup> Having to face this strong opposition in connection with the EU's own commitment to WTO rules leaves the EU little choice but to reform the trade preferences which are granted to the ACP states.

### **g. Future perspectives**

Because of all the enumerated problems and the fact that Lomé IV will expire in the year 2000 the parties had to make up their minds about the shape of their future relations.

#### **(i) The EU's position**

At the end of June 1998 the EU agreed a 36 page 'Document 10017/98: Negotiating Directives for the negotiation of a development partnership agreement with the ACP countries', containing its strategy for the September talks. Lomé IV provides that negotiations for a successor convention have to start in September 1998 at the latest.<sup>85</sup> The successor agreement is to support the development of socially orientated market-based economic systems. The

<sup>82</sup> *Panos Briefing No.31* section 2 at 3.

<sup>83</sup> *ibid* section 1 at 3.

<sup>84</sup> *Time*, Dec. 21, 1998 at 49.

<sup>85</sup> Venro Arbeitspapier zur Zukunft der EU-AKP-Zusammenarbeit (Lomé-Papier), <http://www.venro.org/arbpaapiere/lome.html> at 1.

Parties will recognise that a market based system supported by transparent competition rules, by sound economic, fiscal and social policies and by safeguards for private property, provide the best framework for promoting economic efficiency, facilitating private sector development and promoting an equitable distribution of income, thereby contributing to achieving the objectives assigned to the partnership.<sup>86</sup>

In order to initiate the discussion process about the future outline for cooperation between the EU and the ACP states the EU Commission had already published a Green Paper in 1996 in which the EU made it clear that it does not merely intend to continue the current cooperation under Lomé. Facing economic globalisation, world political changes since 1989 and the end of the post-colonial era it supports a fundamental reform of the Lomé model.<sup>87</sup> After a broad consultation process involving all EU Member States and the three regions of the ACP group, guidelines for orientation were added to the Green Paper which call for the preservation of the ACP group but with a prerequisite for far-reaching geographical differentiation.<sup>88</sup>

The Commission's suggestion consists of 5 basic guidelines. 1. The political dimension of the new EU-ACP partnership shall be emphasised. A more open dialogue shall take place concerning aid conditionality. 2. Furthermore, the Commission suggests an integrated concept for the fight against poverty which balances economic and social aspects equally. The economic considerations aim at integration into the world market, the development of local markets, regional integration and the promotion of the private sector. 3. The concept of a new economic partnership occupies a large part of the Commission's conception. It suggests the negotiation of three regional agreement with Africa, the Caribbean and the Pacific region. The current non-reciprocal trade preferences shall be gradually transformed into reciprocal trade relations. In the long term free trade zones shall be established between the three regions and the EU. Future economic measures shall be orientated more strongly by the efficiency and needs of states. While unilateral trade preferences for fast-developing nations will be withdrawn, ACP trade preferences will be offered to all least-developed countries (LLDCs). 4. Instruments of financial cooperation shall be considered together and examined from the point of view of overall efficiency. 5. The negotiation shall aim at achieving a global agreement which on the one hand respects the developed ACP identity involving solidarity but which on the other hand is open to the accession of third countries.<sup>89</sup>

According to the EU, its international trade and investment policy is 'centred on multilateral obligations' in global trading systems and is 'better managed' within the framework of WTO. This has led the Commission to propose Free Trade Agreements (FTAs) as the best possible option for EU economic relations with all ACP states.

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<sup>86</sup> Document 10017/98 *"Negotiating Directives for the negotiation of a development partnership agreement with the ACP countries"*, Council of the EU, 30/06/98.

<sup>87</sup> n 85 at 1.

<sup>88</sup> *ibid.*

<sup>89</sup> *ibid.*

The EU holds that FTAs, because of their long term predictability and liberalised trading environment, will enhance the competitiveness of ACP exports and promote private investment.

However, the Negotiating Directives accept that not all ACP states may be able or willing to enter an FTA. They therefore acknowledge that an alternative is necessary which should not increase EU protectionism against these states' exports. The alternatives will be examined in order to provide these countries with a new framework for trade. This should be equivalent to their existing situation under the Lomé Convention and in conformity with WTO rules. This is understood to mean an improved Generalised System of Preferences (GSP) offered to all developing countries.<sup>90</sup> The EU's commitment to free trade and investment culminates in its aim to liberalise ACP investment regimes. The EU's Negotiating Directives suggest that support for the liberalisation of investment such as that proposed by the Multilateral Agreement on Investment (MAI) will allow ACP countries to integrate fully into the global economy so that they can 'benefit from the opportunities of globalisation'.<sup>91</sup>

The Commission's proposals concede that there must be a waiver from the WTO which excludes the ACP countries from the application of the WTO trade rules for the period 2000-2005 to facilitate the negotiation of the FTAs with each of the regions.<sup>92</sup> During this time current trade arrangements would be maintained.

### *(ii) The ACP states' position*

At a conference in Libreville/Gabon ACP governments responded to the Commission's proposals pointing out their preference for a continuation of the current Convention and its instruments without substantial changes. The status quo should be preserved and the ACP states are particularly concerned about the abolition of trade preferences. They stress that a trade liberalisation which happens too quickly could have negative economic and social effects.<sup>93</sup>

### *(iii) NGOs' positions*

This negative view of the Commission's proposals is shared by many NGOs in the ACP countries as well as in Europe. ACP NGOs hold that ACP countries are marginalised under globalisation; the international trade and investment regime which has been established under the Uruguay Round Agreements and institutionalised within the WTO does not give ACP products effective access to global markets. Furthermore, they threaten to undermine the ability of ACP countries to build effective trade and productive capacity at the domestic, national and regional levels and thereby constitute constraints on the supply side to their effective participation in global trade. In a future cooperation framework ACP countries must

<sup>90</sup> Panos Briefing No.31 section 1 at 3.

<sup>91</sup> Green Paper on relations between the EU and the ACP countries on the eve of the 21st century "Challenges and options for a new partnership", European Commission, 1996.

<sup>92</sup> Summary Response to the European Commission's Proposed Negotiating Mandate for Lomé V at 2.

<sup>93</sup> n 85 at 1.

develop and the EU support a co-ordinated strategy to mitigate, if not reverse, the negative effects of measures such as TRIPs and TRIMs which specify minimum protection for intellectual property rights.<sup>94</sup> Preference should be maintained and should take into consideration the specificities between regions and within regions using agreed indices for measuring vulnerability. Trade, trade cooperation and investment within and between the ACP countries and the EU must adhere to the principles of fair trade vis-à-vis cross compliance and cost internalisation through agreed minimum social and environmental criteria.<sup>95</sup> Others believe that the proposal on economic and trade cooperation is fundamentally unbalanced as it is not based on a development rationale and is likely to damage the economic prospects of people living in poverty in the ACPs rather than enhance them.<sup>96</sup>

### **The options for ACP states under the mandate**

In the Negotiating Mandate, the Commission essentially proposes one option for most countries: the negotiation of regional FTAs with the EU by 2005 which will be expected to cover substantially all trade by 2015. Other options are presented, but these are so onerous and damaging to ACP trade prospects that they pressurise ACP countries to seek regional FTAs. These other options are:

- for the LLDCs to continue benefiting from the current Lomé trade preferences. This is in line with proposals within the WTO to move towards complete market access for all LLDCs and would be available to those outside as well as inside the ACP group. However, this will only be offered if the LLDC is not part of a regional trade agreement. It therefore undermines its potential as an option. If for example, Mozambique wanted these preferences it would have to leave the SADC, a move which would isolate it both politically and economically from its neighbours and principal trading partner.
- for non-LLDCs to move from the Lomé preferences to the EU's GSP which would result in a considerable rise in protectionism from the EU towards their exports. The increased EU tariffs on ACP exports, under current conditions, would lead to a loss to the ACP supply chain of more than ECU 767 million-a retransfer back to the EU treasury of over 40 % of Lomé aid to all ACP countries (EDF) in 1994.

### **The impact of FTAs**

There is little evidence offered or available on the impact of FTAs between highly advanced regions such as the EU and some of the least advanced and marginalised areas of the world. Relevant evidence which is available comes from three sources: the negotiations between the EU and South-Africa<sup>97</sup>, the multilateral liberalisation which developing countries agreed to in

<sup>94</sup> An agreement concerning Trade related aspects of intellectual property rights (TRIPs) was negotiated during the Uruguay Round within the framework of GATT, van Houtte *"The Law of International Trade"*, 1995 at 211.

<sup>95</sup> *NGO Declaration* at 2.

<sup>96</sup> *Summary Response* n 92 at 2.

<sup>97</sup> This subject will be elaborated later.

the Uruguay Round of GATT and the experiences of Tunisia and Morocco. From the Uruguay Round, it is clear that some of the developing countries, in particular China, will gain from this multilateral liberalisation whereas sub-Saharan Africa stands to lose over \$ 1 billion a year in foreign exchange.<sup>98</sup> This is a figure which translates into falling incomes, greater insecurity, reduced government revenues and greater obstacles to investment in basic health and primary education. Liberalisation of trade is not the problem itself, but rather than the terms reflect the priorities of powerful and advanced nations over the needs of the poor. For example, the FTAs under Article XXIV of GATT provide little or no flexibility to include crucial development aspects for agreements between highly advanced and developing countries. The adjustment costs are likely to work against the development goals of the ACP and EU governments. FTAs will expose infant industries of countries like Mozambique and Ghana to unrestricted imports of products (often highly subsidised) from globally competitive companies based in Europe. ACP countries need to protect these infant industries on which their prospects for development lie.<sup>99</sup> The Commission makes a concession to these concerns stating that *"the negotiations will take account of the level of development of the countries concerned, their capacity to adapt to the liberalisation process and to adjust their economies"*. Nevertheless, under WTO rules a free trade area must cover "substantially all trade", exclude no sector and be implemented in "a reasonable period of time". This is understood to mean a maximum of ten years which would imply full reciprocity between the EU and ACP regions by the year 2015.<sup>100</sup>

In Barcelona in 1995, the EU agreed a New Mediterranean Policy covering 11 Mediterranean countries, based on the implementation of bilateral free trade agreements between the EU and each country, to be completed by 2010. Morocco and Tunisia went ahead and negotiated free trade agreements with the EU. The accord only lifts EU restrictions progressively on the two countries' exports of textiles and clothing and only slightly liberalises trade in agriculture. These two countries were already free to export all other non-agricultural goods to the EU before signing the accords. Allowing for these existing preferences, these free trade agreements will do little for Maghreb exports. But the accords also commit the two to removing progressively all barriers to EU imports over a 12-year period, which will put both their balance of payments and domestic industrial firms at risk. An estimated 60 percent of the Maghreb's domestic industries are unable to resist European competition unless significant technological and marketing upgrading is achieved by 2010.<sup>101</sup>

### **FTAs and poverty eradication**

The Maastricht treaty lays down the EU's commitment to the campaign against poverty and all EU member states have endorsed international commitments to achieve poverty eradication as

<sup>98</sup> Davenport/Page *"World Trade Reform: Do Developing Countries gain or Lose?"*, ODI Special Report 1994 at 3.

<sup>99</sup> *Summary Response* n 92 at 3.

<sup>100</sup> *ibid* at 3.

<sup>101</sup> *Panos Briefing No.31* section 3 at 6.

well as the Development Assistance Committee (DAC) targets, one of whose principal goals is the reduction by one half of the number of people living in absolute poverty by the year 2015. The greatest challenge for achieving this goal lies in the sub-Saharan region which has an actual growth rate of -1.3 % between 1991 and 1995. The World Bank calculates that an economic growth rate of at least 2 % between now and 2015 is needed.<sup>102</sup> Considering those commitments it seems to be paradoxical that the Commission should propose removing all Lomé IV trade preferences and instead insist that developing countries, among them some of the poorest in the world, open their markets to EU products in a reciprocal arrangement.

### **The proposed timetable**

The Commission's proposals concede that there must be a waiver from the WTO for the period to 2005 to facilitate the negotiations of the FTAs. This timespan already represents an extension from 2003 in previous documents but still seems to be too short.<sup>103</sup> Achieving the Commission's proposals by 2005 would require the development of an unprecedented number of FTAs between heterogeneous regions in Africa, the Caribbean and Pacific which contain some of the least developed and war-torn countries in the world. It took the EU, a highly developed region, many decades to introduce economic integration and the protracted FTA-negotiations between the EU and South-Africa have taken 4 years so far and are not yet finalised. The success of the Commission's proposal will depend upon the regions in Africa, the Caribbean and Pacific first establishing their own national institutional capacity as well as regional institutional structures capable of rapidly negotiating FTAs within the regions before being in a position to negotiate with the EU. It is quite unlikely that this difficult process of negotiating regional integration can be forced by an external timetable and there is reason to believe that this can be counter-productive as countries fear losing out and retract from liberalisation commitments especially when they see the EU's own reluctant attitude towards liberalising its own CAP.<sup>104</sup> A further problem with the five year waiver is that the resulting uncertainty about the future will deter foreign investment as foreign companies are already starting to review their investment plans.<sup>105</sup> With the Commission's current proposal the failure to meet the 2005 timetable will either mean that most ACP states only benefit from the GSP after that date or a further waiver will need to be requested from the WTO to enable the process preparation and negotiation to continue. The cost to the EU in possible similar trade concessions to other WTO members in order to prevent discrimination against them could be far greater as a result.

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<sup>102</sup> *Summary Response* n 92 at 3.

<sup>103</sup> *ibid* at 4.

<sup>104</sup> *ibid*.

<sup>105</sup> This tendency was found out by a report published by the University of Zimbabwe.

### **Private investment**

Like all FTAs, the Commission proposes that these should include not just trade but also many aspects of investment. It does not however clarify its investment strategy. The section on the protection of intellectual property rights makes no mention of the need for these rights to be balanced by measures to reverse the exclusion of many developing countries from the global information society. Technology transfer is vital for increased productivity and international competitiveness, and yet the cleavage of the world into information-rich and information-poor sectors is not addressed. Additionally the Commission proposes support for privatisation, a step which has brought economic growth to countries such as Uganda. The proposal however fails to mention the need for effective regulatory frameworks to allow adequate appraisal of the benefits and drawbacks of programmes and to eliminate corruption and anti-competitive monopolies which have been symptomatic of many privatisation programmes in developing countries in transition.<sup>106</sup>

### **Significance of protocols and trade preferences**

The Protocols for Sugar, Bananas, Rum and Beef and Veal give free access to EU markets for a fixed quantity of exports from selected traditional ACP suppliers. For the Sugar and Banana Protocols, ACP countries also benefit from a relatively generous EU price for their exports which often amounts to two to three times the world price as in the case of sugar.

The transfer linked to price stability and guaranteed market access provided by the Sugar Protocol is substantial. For Mauritius and Guyana it amounted to 6 % of GDP between 1980 and 1990. The importance of these transfers is underlined by the large number of people dependent on the sugar industry. In Fiji sugar represents 40 % of the agricultural sector and provides direct employment for 25 % of the economically active population.<sup>107</sup>

Banana exports by the Windward Islands amounted to 78 % of total agricultural exports in 1990. In terms of the share of total export earnings from the EU, bananas represented approximately 90 % in St. Lucia and Dominica, 60 % in St. Vincent, and 20 % for Grenada in 1992. The privileged and guaranteed market access that Windward Islands banana producers enjoy over Latin American 'dollar' banana producers, has to be regarded as substantial for their economies. Without the Protocol they are unlikely to be able to compete in the EU market without major improvements in quality and productivity.

On average, Botswana, which is the main beneficiary of the Beef and Veal Protocol received annual payments from the export of beef to the EU of 24 million ECU between 1990-1994. This equals 20 % of all development assistance received.<sup>108</sup>

<sup>106</sup> *ibid* at 5.

<sup>107</sup> *Policy Management Report*, Chapter 4 at 3.

<sup>108</sup> *ibid*.

Without these trade preferences, countries which have benefited most from them will be most adversely affected. For other ACP countries, the potential positive impact will be taken away and exports are not likely to pick up without alternative measures that address trade development.

The example of Swaziland shows that the trade preferences granted under Lomé sometimes helped developing countries to diversify their economies. This is well illustrated by the experience of the Swazi textile and clothing manufacturing industry.

This sector employs in excess of 2000 people which represents over 3 % of the private sector wage labour force. It grew up initially with a strong orientation towards South-Africa, both for raw material inputs and markets. In many respects the Swazi industry was an appendage of the South African industry. In the 1990s however, in the face of changes within the South African industry where vertical integration was occurring around two corporate giants, opportunities for independent producers declined markedly. As a consequence Swazi producers had to look for new markets and only against this specific background did the significance of the Lomé trade preferences become apparent to Swazi textile producers. In a sector with high turnover and low profit margins, Lomé duty free access, which provides a 7 % margin of preference over non-ACP developing country suppliers, can make the difference between profit and loss.<sup>109</sup> Lomé preferences thus enabled Swazi textile producers to diversify away from their heavy dependence on the South African market and ensured the continued viability of certain enterprises which would otherwise have found it difficult to survive in the changing market situation in SA.

In the face of a changing market situation in the region, a Lomé preference which was of no significance to Swaziland under the first three Lomé conventions has taken on profound significance under Lomé IV. The significance of Lomé trade preferences will vary from country to country and over time, depending on the national economic situation and the situation faced in other markets which local producers seek to serve. Thus, dismissing the significance of non-reciprocal trade preferences, in a time of profound economic and political restructuring; could prove to be a major economic and political error which could undermine the future prospects for development not only in Swaziland but in a whole range of African economies.<sup>110</sup>

### **Lomé and EU policy reform**

The EU's proposal to create FTAs is also perceived as premature and likely to clash with its own plans to reform the CAP. Without reform of CAP, FTAs with the EU would not improve market access for exporters in the ACP. On the contrary it would improve market access for EU exporters to ACP markets. ACP states, whether trading individually or within a regional FTA, are not equipped to compete with the marketing power and price advantage enjoyed by

<sup>109</sup> Goodison "National Perspectives on the Post Lomé IV Debate: a Swaziland Case Study", ECDPM Working Paper, Maastricht, ECDPM, [http://www.oneworld.org/ecdp/pubs/wp62\\_gb.htm](http://www.oneworld.org/ecdp/pubs/wp62_gb.htm) at 3.

<sup>110</sup> *ibid.*

EU exports, many of which are heavily subsidised under the CAP<sup>111</sup>. Discount beef, paid for by EU taxpayers to maintain EU farmers' incomes and then dumped on the markets of Africa's Sahel region nearly wrecked the latter's domestic cattle trade.<sup>112</sup> Agricultural goods have always dominated and will continue to predominate the ACP goods on offer in FTA-linked markets. However, with the EU's CAP funding regimes not due for reform until 2010, trade in these goods would be seriously limited while the CAP and its parallel fishing systems are still in place.

#### **h. Conclusion**

Having dealt with Lomé's failures and the problems resulting from diverging positions on the structure of a future partnership between the EU and the ACP states in the post Lomé IV era, it is now necessary to analyse the different approaches in order to suggest a practical solution. The problem with the European Commission approach is that it is not sufficiently proactive in seeking reform of the WTO agreements in order to sustain an arrangement which is beneficial to the ACP. The Commission points out that current ACP-EU trade relations must change because WTO dispute rulings on issues like Lomé's banana trade preferences question these country-by-country (differentiated) non-reciprocal trade schemes. WTO does however allow the limited differentiation for developing countries, and indefinite differentiation for LLDCs. Even in the case of the WTO banana regime ruling some argue that the US is not specifically concerned about the trade preferences granted to the ACP countries but is more concerned at the way that EU corporations benefit from the so-called 'cross-subsidies' when importing ACP and EU bananas, making US and Latin American bananas more expensive. Only 50 % of the bananas benefiting from this cross-subsidy are ACP bananas.<sup>113</sup> The other 50 % are coming from EU territories and fall within the CAP. This is therefore obvious protectionism, which has little to do with the ACP and the non-reciprocal trade preferences from which they benefit. Considering the low market share ACP bananas hold in the European market and the potentially disastrous effects on these countries' economies, the EU should come to an agreement with the US which allows the ACP producers to maintain their trade preferences. From the perspective that the preferences need to be maintained even if only for a transitional period, the ACP and the EU should press for the necessary exemptions within WTO. The EU is a leading economic force in WTO and its authority could be bolstered by the number of ACP countries. Any WTO member can seek a waiver under Article XXV, which can be granted for any purpose by a 75 % majority vote. The GATT/WTO rules allow industrialised countries to offer preferential market access in an enabling clause that covers 'special and different treatment' for developing countries. GSP for trade deals offered by most OECD states work on the same principle. The EU, as the world's largest donor and trade bloc, has the potential, and maybe even the duty due to its commitment to poverty eradication, to take a leading role in

<sup>111</sup> Currently the CAP account for more than 50 % of the operating budget.

<sup>112</sup> *Panos Briefing No.31* section 3 at 7.

<sup>113</sup> *ibid* section 5 at 1.

shaping a new approach to issues of global security and solidarity. Another possibility could be to extend the Lomé trade and aid system to other developing countries in order to establish a justifiable and non-discriminatory system under WTO while retaining low EU tariffs and the advantages of the existing Lomé for all the ACPs. Nevertheless, whatever moves are taken, it must be borne in mind that the eventual reform of the EU's CAP and the EU's move towards removing tariffs in line with global trade liberalisation will render the future Lomé convention largely redundant within a decade. Preferences should therefore not be an ACP long-term objective but a short-term strategy to buy time for restructuring economies to enhance market efficiencies. Meeting the objective of poverty reduction will require the provisions of Lomé to support a sound regulatory framework, skills for workers and managers and an infrastructure for long-term development.

## **B. SOUTH AFRICA**

### **I. South Africa's position within the international trade community**

South Africa (SA) was one of the founding members of the General Agreement on Tariffs and Trade (GATT) and has always participated in the various rounds of negotiations. Nevertheless due to the sanctions which were imposed on SA by the international trading community, SA tended to be protectionist in nature during the apartheid era. On 2 December 1994, SA deposited with the secretariat of the GATT, a signed instrument of accession to the Agreement establishing the World Trade Organisation (WTO). It thereby became a member of WTO and a party to all the multilateral agreements concluded in the Uruguay Round of trade negotiations. Although Parliament has not yet enacted that the Uruguay Round Agreements form part of the domestic law of SA, there has been a major effort to amend existing legislation or introduce new legislation to ensure compliance with these international obligations. Anti-dumping and countervailing legislation existed in the Customs and Excise Act No. 91 of 1964 (the Customs Act) for decades. New anti-dumping and countervailing legislation was introduced in South Africa in May 1992, in the form of amendments to the Board of Trade and Industry Act, now renamed the Board on Tariffs and Trade Act No. 107 of 1986 (the Board Act) and to the Customs Act. Further amendments were made to the Board Act and the Customs Act in 1995 and 1997 to ensure greater consistency with GATT/WTO definitions. There is a clear recognition that South Africa has to abide by GATT principles and adhere to the Uruguay Round, including the Anti-dumping Agreement and the Agreement on Subsidies and Countervailing Measures.

### **II. South Africa's position under the Lomé Convention**

In November 1994, Thabo Mbeki, vice-president of SA wrote to the Co-Presidents of the ACP/EU Council of Ministers requesting the opening of negotiations establishing the closest possible relationship between SA and the Lomé Convention. In response to the South African request, the Community proposed a twin track approach which was tailored to SA's unique

circumstances. Rather than full accession, the Community granted SA a qualified membership of Lomé which was approved by the ACP/EU Council in 1997.<sup>114</sup>

### **Benefits of membership**

SA's accession to the Convention is governed by a special Protocol, setting out its conditions of membership. The areas where SA benefits from Lomé membership include eligibility for tenders for the 8th European Development Fund (EDF) (but excluding the preferential ACP treatment), industrial development, investment promotion and protection and the participation in the institutions of the Convention-the Joint ACP/EC Council of Ministers, the Committee of Ambassadors and the Joint Assembly.

### **Qualified membership**

As SA's participation in Lomé must be consistent with the interests of other members, it was only granted qualified membership excluding certain articles. The most significant of these is the exclusion of SA from the general trade regime and the trade protocols of the Convention.<sup>115</sup> Instead, SA's trade with the EU was made subject to a bilateral agreement which contains provisions concerning the establishment of a FTA.

The reasons for not granting SA full membership to Lomé were manifold. First of all, it would have been against the interests of the ACP states. Whilst SA shares many characteristics with ACP states, the relatively high development of some sectors of the SA economy in terms of size and competitiveness outweighs those of most ACP countries. In 1995, for example, SA's total exports to the EU (7,8 billion ECU) were equivalent to more than one third of the exports of all 70 ACP countries (21,9 billion ECU).<sup>116</sup> With a per capita GNP of US \$ 3040 in 1994, SA ranked amongst upper-section developing countries like Malaysia, Brazil and the Czech Republic. Secondly, it would have been against the interests of third members of the WTO. There already existed a certain amount of controversy regarding the WTO compatibility of Lomé and a decision to grant SA non-reciprocal Lomé trade preferences would inevitably have been challenged by other members of WTO. Thirdly the EU wishes to exclude trade preferences to protect vulnerable EU sectors. Allowing SA full access to Lomé would have threatened the interests of certain sectors of EU industry and certain EU agricultural producers. Fourthly full membership of Lomé might, unintentionally have slowed down the pace of much-needed liberalisation of SA's protectionist economy and might have constituted a serious disincentive for potential foreign investors.<sup>117</sup>

<sup>114</sup> The European Commission "*South-Africa's Membership of the Lomé Convention*", <http://www.europa.eu.int/comm/dg08/s-a/en/lome.htm> at 1.

<sup>115</sup> *ibid* at 2.

<sup>116</sup> *ibid*.

<sup>117</sup> *ibid* at 3.

### III. The impact of SA's strife to comply with WTO rules

SA has already discovered, to its cost, the inequality built into liberalisation of trade between developing states and an EU that has yet to reform its CAP. In line with WTO rules, SA agreed to abolish its General Export Incentive Scheme, the only state support given to local canneries for their exports (more than 50 % of which are supplied to the EU). Their EU competitors, however, continued to receive substantial help. In 1996 the EU spent about 655 million ECU (727 million US \$) on subsidies to their fruit and vegetable producers, with more than half of this going to tomato producers alone.<sup>118</sup> Thus European canned tomatoes enter the SA market at prices far below the domestic production cost of canned tomatoes. Italian canned tomatoes are at least 30 cents cheaper than the local product on SA shop shelves. As a counter measure the SA government increased its import duty on EU canned tomatoes from 23 to 30 percent in a bid to stem the flood of cheap exports. This had little effect as, due to high subsidies, European producers still seemed able to beat the tariffs. The EU's own import tariffs top the charts. On canned pears, e.g., Europe charges 23 percent duty, compared with the USA (16 %), Japan (14 %) and SA itself, which charges just 5 % import tariff despite the importance of the fruit industry to its economy. SA melons exported to the EU face a tariff of 11 %, whereas Turkish, Venezuelan and Costa Rican melons enter the EU duty-free. As shown above, SA as a new Lomé member does not enjoy the same duty-free access to the EU markets as ACP countries, nor has it any allocations under Lomé's banana, sugar or beef protocols. Despite this, efforts to have the tariffs removed within three years of a free trade treaty taking effect were rejected by EU negotiators, following pressure from European producers. This refusal has already led to job losses in SA. Langeberg Foods, the country's largest food processing company, has been forced to close its main canning plant, putting some 2,500 people out of work. Highly subsidised EU beef already accounts for 70 to 80 % of all meat that now goes into canned meat production in SA and is effectively pricing out locally produced meat from this particular market. This subsidised EU meat is being docked in SA at less than one quarter of the price paid in Europe.<sup>119</sup> South Africa might still have to remove tariffs on some 45 % of its present imports from the EU, while the EU would have to remove tariffs on only 3 % percent of its imports from SA.

### IV. Trade relations between SA and the EU

The successful SA elections in 1994 and the installation of the Government of National Unity, headed by President Nelson Mandela, heralded a new era in EU-SA relations. After a time of sanctions and isolation, the rapid political changes since the early 1990s brought SA back into the international community of nations, of which the country is now a respected member again.<sup>120</sup> EU policy responded to the momentous developments in SA with the objective of

<sup>118</sup> *Panos Briefing No.31* section 3 at 8.

<sup>119</sup> *ibid* at 9.

<sup>120</sup> The European Commission "*Proposal for long term cooperation*" in "*The EU and South Africa-Building a framework for long term cooperation*", February 1998 at 4.

supporting and consolidating the changes taking place. Sanctions were gradually lifted in line with political liberalisation and a package of immediate measures, such as an electoral assistance programme and improved access to the EU market (through the granting of GSP in 1995) were offered to help in the transition towards a democratic SA.<sup>121</sup>

Following the first democratic elections the European Programme for Reconstruction and Development (EPRD) was set up to assist the Government of SA in fighting the wide range of socio-economic problems resulting from the Apartheid era. With an annual budget of 125 million ECU this programme represents the single largest development programme in SA.

#### European Union assistance to SA (1997)<sup>122</sup>

Donor	Type of aid	Million ECU
European Community (EPRD)	grants	127,5
European Investment Bank (EIB)	loans	150
EU member states (1995)	grants and loans	138

The aim was to establish a long-term partnership between the EU and SA.

In recognition of SA's unique circumstances, and taking into account the interests of the other countries in the region, the EU proposed a framework for cooperation built around two pillars, the first being SA's membership of Lomé and the second a comprehensive bilateral agreement between SA and the EU. This bilateral agreement for trade and cooperation would cover all subjects that are not dealt with in the context of SA's Lomé membership. It would provide for cooperation between the EU and SA in a wide range of areas such as trade, economic relations, finance and technical assistance. It would include provisions for continued political dialogue and development assistance.<sup>123</sup>

#### Initial trade offers

The EU's trade proposal was finalised by the EU Council of Ministers in March 1996 in the negotiating directives. In January 1997 the SA Government presented its own initial discussions on the scope which led to the presentation of a detailed trade offer in November 1997 during the 14th round of negotiations. This initial offer covers 80 % of current South African imports from the EU. The remaining 20 % of trade, consisting of nearly 2500 tariff lines, are set aside in 10 different protocols. SA proposed that the protocols will be reviewed in the 4th, 6th and 8th year of the transition period. Three options would then be available: either the products are fully liberalised, or they will benefit from a tariff reduction as compared to MFN duties, or they will remain dutiable at the applied MFN tariff. In the latter case, the products would be de facto excluded from free trade.<sup>124</sup>

<sup>121</sup> *ibid* at 1.

<sup>122</sup> *ibid* at 17.

<sup>123</sup> The European Commission "An Agreement for trade and cooperation" at 1.

<sup>124</sup> *ibid* at 4.

During the 16th round of negotiations the EU presented its corresponding offer in late January 1998. It includes all traded and non-traded products and it covers 90 % of SA's exports to the EU leaving aside the agricultural exclusions as well as an additional 4 % of current trade for which the tariff treatment is yet to be determined.

## V. A Free Trade Agreement between the EU and SA

The most ambitious provisions of the bilateral agreement are those concerning the establishment, after a transitional period, of a FTA between the EU and SA.

This FTA will not only cover free trade in goods, but also the right of establishment, the right to provide services, the free movement of capital and the free settlement of current transactions in convertible currencies. The FTA is intended to be developmental in nature, with the EU opening its markets more rapidly and more extensively than SA. The FTA shall be in full compliance with the rules of the WTO.<sup>125</sup>

### 1. Current EU-SA trade

Trade between the EU and SA is already significant with the EU being SA's main trading partner. The EU accounts for over 40 % of its imports, 30 % of its exports and over 50 % of foreign investment.<sup>126</sup> In 1996 37 % of SA's exports to the EU consisted of pearls, precious metal and stone, 51 % of industrial products and 12 % of agricultural products.<sup>127</sup>

### SA's main trading partners (1996)<sup>128</sup>

Imports from:	Million ECU
EU 15	9.278
USA	2.717
Japan	1.737
Exports to:	
EU 15	4.301
USA	1.580
Japan	1.230

### Improving market access

The EU believes that a FTA will further strengthen this relationship, making SA one of Europe's preferred trading partners and the FTA will respond to SA's request for improved access to the European market and the economic commitment to the global economy.<sup>129</sup> SA already benefits from the GSP leading to substantial market access. An FTA, which under WTO rules must cover 'substantially all trade', will further improve this access. In line with

<sup>125</sup> *ibid* at 1.

<sup>126</sup> *ibid*.

<sup>127</sup> Source: *EUROSTAT*.

<sup>128</sup> Source: *EUROSTAT*.

<sup>129</sup> The European Commission "*The proposed FTA*" at 2.

WTO rules on FTAs, SA would be required to make reciprocal concessions to the EU and to reduce its tariff barriers throughout a ten year transition period.

## *2. Nature of the FTA*

It would be a developmental FTA with its nature revolving around a number of principles. Firstly it will revolve around the principle of asymmetry and differentiation. These twin concepts reflect the developmental approach which recognises SA's restructuring efforts. The EU would open up its market quicker and more extensively for SA products than SA would do for EU products. Secondly a FTA would support regional economic integration which is currently underway in Southern Africa . Thirdly a FTA would be fully WTO compatible. It would cover 'substantially all trade' between the parties, without excluding any sector. A FTA would liberalise trade in services as well as the free movement of capital.<sup>130</sup>

Fourthly it would protect sensitive sectors. Both partners to the agreement are allowed to exclude vulnerable sectors from liberalisation.<sup>131</sup>

A FTA would be gradually established over a maximum transitional period of 10 years starting from the entry into force of the agreement. Exceptionally, for specific products, this period could be extended to 12 years.

Its aim is to help integrating SA into the global economy through increased economic growth and competitiveness with the liberalisation of trade stimulating foreign investment.

## *3. Trade liberalisation for agricultural products*

The EU has proposed a FTA with SA that will include the liberalisation for trade of agricultural goods. This approach is new as all former FTAs with third countries did not aim at liberalising this sector. They just provided for a limited number of concessions in the agricultural sector, summarised in a 'positive list', usually with restrictive quota.<sup>132</sup> With SA an open and ambitious objective has been formulated, with certain highly sensitive exclusions, summarised in a negative list.

The products that the EU has proposed for exclusion amount to 45 % of agricultural imports from SA. Although this seems to be quite a high degree of exclusion, it does in fact represent less than 6 % of all EU imports from SA. The suppression of Community duties and taxes in the agricultural sector would take place in four steps. Immediately at the entry into force of the agreement a first group of products would be liberalised. This group would include those products that are currently covered by the GSP. For a second group of products duties and taxes would be eliminated over a period of three years, starting from the entry into force of the

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<sup>130</sup> *ibid* at 2.

<sup>131</sup> *ibid*.

<sup>132</sup> *ibid* at 4.

agreement. For a third and fourth group the Community would start eliminating duties and taxes no later than 4 and 6 years respectively after the entry into force of the agreement.<sup>133</sup> SA is asked to liberalise its agricultural imports from the EU in two stages. The first would begin immediately at the entering into force of the agreement. For a second group of products SA is requested to eliminate its custom duties and taxes over a 10 year period starting at the entry into force of the agreement.

#### **Agricultural exclusion**

The list of proposed exclusions mentions, inter alia, cut flowers, apples and apple juice, pears, oranges and orange juice and wines. The tariffs imposed on every specific product range between 5 and 25 %. These MFN tariffs will further decrease for all third countries, following the implementation of the Uruguay Round commitments of the EU.<sup>134</sup> It is not considered necessary by the EU to give SA preferential access for the above listed products given their already strong presence despite the current tariffs.

#### **4. Trade liberalisation for non-agricultural products**

In the non-agricultural sector the Community would suppress duties and taxes in two stages. One group of products, including the products that are currently covered by the GSP would be liberalised immediately following the entry into force of the agreement. For a second group of products duties and taxes would be eliminated during the first 3 years of the agreement.<sup>135</sup> SA would have to suppress customs duties and taxes in four stages. A first group of products would be liberalised immediately after the entry into force of the agreement; a second group after a transitional period of 3 years; a third process of liberalisation would start 4 years after the entry into force of the agreement and a last one would start after 6 years. Both parties would eliminate customs duties in parallel, notwithstanding the principle of asymmetrical dismantling, for products where SA has proved strongly competitive on world markets. Other, very sensitive products, would be excluded from liberalisation.<sup>136</sup>

#### **5. Development and outcome of the negotiations**

The negotiations between the EU and SA have proven to be very difficult and lengthy. It was not until the 21st round of negotiations which were held at Brussels at the end of September 1998 that the parties came close to an agreement. Market access problems have continued to be the key to the agreement and the source of most differences. In recent months, both the EU and SA have improved their original tariff dismantling offers. SA now offers to liberalise 86 % of its trade with the EU instead of 81 % initially suggested.<sup>137</sup> This increase is due to improved

<sup>133</sup> "The Community's Trade Proposal For The Planned Bilateral Agreement Between The EU and SA", statement of Director General Steffen Smidt, in European Commission DG for Development "The EU and South Africa-Building a framework for long term cooperation" at 4.

<sup>134</sup> n 133.

<sup>135</sup> n 134 at 3.

<sup>136</sup> *ibid.*

<sup>137</sup> Shada Islam "End Of Long-Lasting Labour Pains in Sight", in Financial Mail, September 18, at 51.

access to the SA market for EU exports of some steel, chemical and textile goods. The EU increased its offer from 90 % to 95 % of its imports from SA by extending the list of products covered by the accord to include dairy products, processed fruit, wine and cut-flowers. Additionally there had been disagreement on the pace of tariff elimination. The EU demanded a faster liberalisation of SA imports of European textiles and cars whereas SA only offered to bring the customs duties down to 15 % or 20 % by the end of the transitional period.<sup>138</sup> Finally the EU agreed to allow SA to continue protection for those vulnerable industries.<sup>139</sup> Another point of disagreement was the separate but parallel agreement on wines and spirits which, from the EU's point of view, is part and parcel of an overall agreement. EU member states Spain and Portugal insist that the terms Sherry and Port should only be used for wines produced in Oporto, northern Portugal or Jerez, Spain. Initially SA only offered to phase out the use of these terms in its export markets over 5 years but finally agreed to phase them out over 12 years on the domestic market as well. Other agreements are that SA will be allowed to export 60 000 tons of canned fruit on 'favourable conditions' and about 32 million litres of wine will enter the EU at 50 % rebates on the MFN<sup>140</sup>. The final outcome of the negotiations lays down that about 90 % of trade between the EU and SA will be liberalised by 2008 if the deal is approved by the Cabinet and the EU Council of Ministers and then ratified by the SA and EU parliaments.

#### 6. *Effects on SACU<sup>141</sup> and SADC<sup>142</sup>*

Smaller Southern African nations linked with SA in a customs union fear that a FTA between the EU and SA will endanger their fragile economies. The FTA is expected to have important implications for other members of the SACU. As there are no internal customs duties within the SACU, anything exported from the EU to SA will automatically have duty-free access to the other SACU members as well. Trade experts say revenue losses to these countries may be 6 to 11 times the annual level of the EU aid they receive.<sup>143</sup> It is estimated that the FTA could result in Botswana, Lesotho, Swaziland and Namibia losing revenue of between 400 to 800 million US \$ a year. The introduction of a fully reciprocal EU-SA FTA is likely to adversely effect not only customs revenues, but also revenues from corporate taxes, which have, particularly in Swaziland, expanded since the manufacturing investment boom of the mid 1980s.<sup>144</sup>

Looking at Swaziland, half of the sugar production is used domestically for the confectionary and soft drinks industry which supplies the SA market. Certain EU member states, however,

<sup>138</sup> *ibid.*

<sup>139</sup> "Trade Deal means lower prices and more choice", article in the Cape Argus, February 1. 1999 at 2.

<sup>140</sup> "Trade glee masks unequal nature of the deal", article by Thabo Kobokoane in Sunday Times, business section at 2.

<sup>141</sup> The SACU comprises: Botswana, Lesotho, Namibia, SA and Zwasiland.

<sup>142</sup> The SADC comprises: Angola, Botswana, Mozambique, Namibia, Mauritius, Democratic Republic of Congo, Malawi, Seychelles, Tanzania, Zambia, Zimbabwe, Lesotho, Swaziland and South Africa.

<sup>143</sup> Panos Briefing No.31 section 3 at 9.

<sup>144</sup> n 109 at 2.

have identified an obviously offensive interest in securing an early elimination of duties and non-tariff barriers in processed agricultural products, including sugar and confectionary. Were this to occur, without the issue of EU export and producer subsidies being properly addressed, this could seriously effect the price of sugar and confectionary products on the SA market and hence the price and market share of Swazi sugar and confectionary producers.<sup>145</sup> With the sugar-related industries accounting for 33 % of foreign exchange earnings and with the sugar industry as a whole employing 16,000 people directly and 20,000 in associated industries, this is an issue of great economic and socio-political concern.

A second serious area of concern relates to the impact the proposed EU-SA FTA will have on Swazi government revenue. While the importance of ensuring fiscal stability within any moves towards free trade is recognised in SA, the EU has been highly equivocal in its response to this challenge. Fiscal instability in Swaziland would have serious implications not only for the provision of government services but also for overall levels of public sector employment. In 1993 the public sector accounted for approximately 31 % of total paid employment. With staffing costs constituting 60 % of government recurrent expenditure, revenue losses of the magnitude possible as a result of the conclusion of FTA would probably result in extensive retrenchment of public sector workers. Similarly, with a third of all personnel expenditures allocated to teaching, deepening budgetary problems would have serious implications for government efforts to enhance human resource development.<sup>146</sup> Overall, the potential adverse effects of poorly conceived and designed moves towards free trade with the EU could set back Swaziland's economic and social development 10 years and levels of overall poverty are likely to increase in direct relation to the level of reduction in formal sector wage employment. The establishment of a FTA between the EU and SA, together with the loss of certain Lomé trade preferences will seriously undermine the prospects for sustained economic growth. In all probability it will result in reduced or stagnant levels of formal sector employment, against a background of rapid population growth, resulting in increased levels of poverty. Furthermore, it is also quite likely that private sector development in Swaziland will face a serious blow, as existing enterprises struggle to restructure and the options for export diversification are reduced.<sup>147</sup> For Swaziland, as well as all the other ACP states, the crucial issue is not so much ensuring their integration in the world economy, but the basis on which this integration takes place. The key issue is whether or not the basis for their integration promotes sustainable development and meets the basic needs of the population.

Namibia, another member of SACU, generated, at the time of its independence in 1990, about 30 % of government revenue from SACU. It argues that a FTA would hurt its lucrative beef industry, which makes up to 90 % of the country's agricultural Gross Domestic Product (GDP), if the existing tariff protection in SA is removed. Beef producers in Namibia say they would be unable to compete with the highly subsidised European beef entering the SA market.

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<sup>145</sup> *ibid* at 5.

<sup>146</sup> *ibid*.

<sup>147</sup> *ibid* at 7.

SA is Namibia's major market for livestock and meat products, being the destination for more than 70 % of the country's total exports in these commodities.

Outside SACU, the FTA will have different consequences. SADC countries are worried that the EU will obtain improved access for its own exports to the SA market which would not be available for countries like Zimbabwe or Angola. These countries would feel discriminated against by their largest neighbour. The SADC economies are highly dependent on the enormous SA market and they all run serious trade deficits in their trade with SA.<sup>148</sup> These deficits fuel their negative balance of payments and their debt problems. They are very keen on exporting more to SA to equalise the deficits and they therefore fear that the situation would get even worse if SA grants trade concessions to the EU and not to them. This negative scenario, nevertheless, could be cured by SADC itself. The SADC Trade Protocol, signed by all Heads of States in Maseru in 1996, contains an article which says that no SADC state can offer trade benefits to a third country without extending them immediately to all other countries of SADC. In other words, SADC countries have undertaken to treat each other at least equally to outsiders. This means that whatever trade concessions the EU obtains under the FTA would automatically have to be extended by SA to other SADC countries.<sup>149</sup>

#### *7. A positive way of integrating SADC into the process*

The centre of gravity of EU interests in Southern Africa is SA as it is the major economic power in the region and has a large number of immigrants from Europe. The EU would therefore prefer a separate deal delinking the country from the rest of SADC. SA is nevertheless and will stay an integral component of the socio-economic system of the Southern African region.<sup>150</sup> Consequently it should be treated as such. The apartheid experiment verified that SA cannot exist as an island of prosperity and stability in a sea of poverty and instability. Long-term security and stability can only be attained through regionally co-ordinated economic, political, and social programmes, which the SADC has been trying to attain throughout its existence. For future cooperation strategies between the EU and its Southern African Associates, special care should be devoted to four elements: development policy orientation, its contractual basis, the requisite form of institutional framework and the content of the economic concept. Subjects of the reform should be a shift towards a more efficient and pro-competition arrangement with the EU. The long-term goal should be the establishment of an enlarged customs union in Southern Africa comprising all SADC countries.<sup>151</sup> The way toward the attainment of these goals should constitute a transitional phase, based on phased and relative reciprocity, which should precede the establishment of a FTA between the EU and Southern Africa. During this phase, too, development cooperation efforts should be focusing on the creation of competitive structures in the SADC economies.

<sup>148</sup> Jean Claude Boidin "EU/South Africa negotiations: What consequences for South Africa's neighbours?" interview by Miss Debora Percival, <http://www.europa.eu.int/comm/dg08/ds/eu/blmsimpl.htm> at 6.

<sup>149</sup> *ibid.*

<sup>150</sup> n 60 at 10.

<sup>151</sup> *ibid* at 15.

Development assistance should serve as external impulse and aim at augmenting efforts to mobilise the internal development potentials.<sup>152</sup> This external impulse should be modelled along competitive lines in order to prepare the SADC economies for a move towards a FTA with the EU. Simultaneously comprehensive trade liberalisation within the SADC region must take place.

## VI. Conclusion

Having examined the impact of a FTA between SA and the EU not only on SA but on the whole Southern African Region from a critical point of view it still must be said that the approach underlying this FTA is most probably the only effective one. The first part of this paper has shown quite clearly that EU's old development policy under the 4 Lomé conventions has not succeeded. Trade liberalisation is already on its way in SA due to SA's commitments under WTO and the Uruguay Round. A FTA could support and guide this progress. When reducing its tariffs, SA effectively introduces more competition in its own economy. As shown, this can result in job losses as SA producers have to compete directly with imports from the EU and therefore can be forced to reduce their prices or even to lower capacities. On the other hand there will be gains for consumers and entrepreneurs alike. Both will have access to cheaper, better quality and a more diversified range of supplies. The business community will have better prospects for investing, exporting and hiring additional staff. The growth in consumer demand together with increased investment activities will help to create new jobs which will compensate for the lost ones. Intensified competition through trade liberalisation can be one instrument for the SA economy to become more efficient. Although there is the danger of subsidised EU products entering the SA market and threatening domestic production local industries are not left defenceless but can and actually do make use of anti-dumping and anti-subsidy and countervailing codes under the GATT. Nevertheless it is quite important that a FTA acknowledges the developmental situation of SA and its neighbours. A FTA should be strictly guided by the principle of asymmetry. Asymmetrical tariff dismantlement where the bulk of liberalisations take place only in the second half of the transitional period gives both SA and the other SACU countries time to reform their fiscal systems and to enhance economic competitiveness. Due to its WTO membership SA has again become a member of the international trading community and this progress will be supported by the conclusion of a FTA.

As pointed out the SACU countries are highly dependent on revenues generated from the common customs pool. These earnings are endangered by the FTA but it must be considered that fiscal adjustment has occurred on its own momentum through economic progress in developed and developing countries alike so that, progressively, customs duties account for a dwindling share of overall budget revenue.<sup>153</sup> In the course of trade liberalisation there has been a shift to a more growth-friendly taxation system with the taxation of goods and wealth at the

<sup>152</sup> *ibid.*

<sup>153</sup> n 148, at 4.

stage of production and consumption by means of excise duties, income tax, corporate tax, sales tax and value-added tax. These represent the basic sources of taxes for modern societies. It is quite interesting to see that SA has already introduced VAT and that the other Southern African countries are in the process of doing the same. Increased consumer demand in connection with the introduction of VAT is definitely a way of balancing the shortfall of customs duties. With the EU's technical support SACU countries should be able to reform their taxation systems. A FTA between SA and the EU is supposed to increase economic growth in SA. SA represents not only a big producer of goods but is also a big buyer of goods. If, as a result of liberalisation and other structural reform, SA can increase its current growth rate from 2.5 % per year to 6 %, as targeted for the year 2000, this will have a positive effect on the whole Southern African region. This growth would attract more imports to SA from these countries and could help SADC countries to balance their trade deficits with SA and to create more jobs. As SA needs stability in the Southern African region for its own development and in connection with a future FTA within the SADC it is quite likely that SA firms will invest more in this region. Economic growth on the one hand would lead to increased imports but on the other hand exports would increase as well. Therefore, SA needs growth in the Southern African region which will help alleviate migratory pressure and offer a larger market for SA products.

Future developments will show whether this new approach is more successful in helping to integrate developing countries in the global economic system but it surely is a move away from old and unsuccessful developing policies towards a more differentiated and competition orientated way of dealing with developing countries.

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