

# **EU-ACP Trade Relations, Environmental Protection and Sustainable Development**

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## **EU-ACP Trade Relations, Environmental Protection and Sustainable Development**

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MARVIN SPENCE, MAR 11 2011

### **From Association Policy to Cotonou: EU-ACP Trade Relations, Environmental Protection and Sustainable Development**

The countries of the Caribbean benefited from a series of preferential trade agreements with the EU. Preferential trade agreements between the EEC and its colonies started with the Policy of Association. This was eventually followed by the Yaoundé Conventions (between the EEC and its former colonies) and the Lomé Conventions (between the EEC and ACP states), which will be examined throughout this paper. It was the underlying aim of these agreements to foster economic development within the ACP states by providing ACP states with a competitive edge in the international market. In other words, it was believed (and still is by some) that preferential treatment of goods from ACP states entering Europe, would lead to these states being able to compete within the international arena.

In fostering economic development in ACP states, the Policy of Association and the Yaoundé Conventions did not include environmental protection measures. It was with the advent of Lomé III that environmental protection measures were introduced to EU-ACP trade relations. The scope of environmental protection measures in EU-ACP trade relations was to be elevated with Lomé IV. The Cotonou Agreement was to provide a framework for how environmental issues are to be addressed in EU-ACP trade relations.

This paper will examine EU trade relations with its former colonies from the policy of Association to the Cotonou Agreement. It will further examine environmental protection measures in EU-ACP trade relations and some of the challenges that faced EU-ACP trade relations.

#### **Association Policy and the Yaoundé Conventions**

The signing of the Treaty of Rome in 1957, which created the European Economic Community (EEC), was significant as it initiated cooperation between the EU (then EEC) and African states. This cooperation was largely due to pressures from the French government to associate the dependent territories of the Member countries to the Community. Cooperation between the EEC and African states came in the form of an Association policy, included in Part IV of the Treaty of Rome. The policy of Association was to last for an initial period of five years, from January 1958 to December 1962. It is noted in Part IV of the Treaty of Rome, that association shall be to promote the economic and social development of the overseas countries and territories that were dependents of the Member states. Association was also seen as necessary to promote close economic relations between overseas countries and territories and the Community as a whole.

The policy of Association led to imports from Associated states gaining preferential access in the EEC market, as it stipulated that the same treatment accorded by Member states of the Community to trade among themselves, shall be accorded to the Associated states. The Associated states were also expected to treat in a similar manner, other

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Members of the Community with whom they did not have 'special relations'.

Following the independence of many African countries in the 1960's, the Community was faced with the problem of how to adjust the system of Association to the new status of independence. The first Yaoundé Convention, which was negotiated between the EEC and 18 Associated African states and Madagascar (AASM), was seen as the solution to this problem. The Yaoundé Convention led to the extension of EEC relations with Associated states for an additional five years (1964-1969). In 1969 the Convention was further renewed for another five years.

The Yaoundé Conventions were geared mainly towards financial, technical and trade cooperation, primarily in the sectors of economic and social welfare[1]. It should also be noted that the signing of the second Yaoundé Convention was accompanied by the Arusha Agreement signed between the EEC and East African states[2]. The Arusha Agreement was a trade agreement embodying reciprocal rights and obligations. Unlike the Yaoundé Convention, the Arusha Agreement did not provide for financial and technical assistance from the EEC (Gruhn 1976).

The Association Policy, Yaoundé Conventions and Arusha Agreement were significant in aiding economic development within African states. This is so as they provided a guaranteed market for African goods entering the European market. While they provided an opportunity for economic development, they did not address the issue of environmental protection. It can thus be argued that economic development under these agreements was not sustainable, as decisions about economic development were not the outcome of a decision making process that took environmental concerns into account.

## **The Lomé Conventions**

With the accession of Denmark, Ireland and the United Kingdom to the EEC in 1973, it became necessary to expand the scope of Community development policy to former British overseas colonies and territories. This led to the creation of the Lomé Conventions, which was to replace the Yaoundé Convention and the Arusha Agreement.

The Lomé Conventions, similar to the policy of Association and the Yaoundé Conventions, was to play a significant role in fostering economic development in ACP states. Through the Lomé Conventions the ACP states were able to offset the possible negative effects of economic globalization by securing a guaranteed market for their products. The non-reciprocal preferences of the Lomé Conventions led to more than 90 percent of ACP exports, predominantly primary commodities entering the EU duty free.

The first Lomé Convention (Lomé I) was concluded on the 28<sup>th</sup> of February 1975 at Lomé, Togo and came into effect April 1, 1976. Lomé I was signed by 45 ACP states and 9 EEC Member states. It was comprised of seven Titles and seven Protocols, as well as a joint declaration on fishing activities.

Title I (Trade Cooperation) of Lomé I was aimed at promoting trade between the Contracting Parties. The promotion of trade was to be done taking into account the respective levels of development of the Contracting Parties. Under the terms of Title I products originating in ACP states were to be imported into the Community free of customs duties, quantitative restrictions and other similar charges once the treatment applied to those products was not be more favourable than that applied by Member States among themselves. ACP states, on the other hand, were not required to assume similar obligations in regards to the importation of goods from the Community. This was seen as necessary in light of their development needs. It is further noted in Title I that nothing in the Convention shall prohibit Contracting Parties from restricting imports of goods on the grounds of public morality, public policy or public security.

Title II (Export earnings from commodities) was aimed at remedying the harmful effects of the instability of export earnings. It is noted that the Community would implement a system for guaranteeing the stabilization of exports by the ACP states to the Community of certain products on which their economies are dependent and which are affected by fluctuations in price and/or quantity[3].

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The issue of industrial cooperation was addressed in Title III of the Lomé Convention. Industrial cooperation between the EEC and ACP states was seen as necessary to promote the development and diversification of industry in the ACP states. Industrial cooperation was also seen as necessary to increase the link between industry and other sectors of the economy, particularly agriculture. It was also believed that industrial cooperation would facilitate the transfer of technology to ACP states and the adaptation of such technology to their specific conditions and needs.

Title IV (Financial and Technical Cooperation) was aimed at correcting the structural imbalances in the various sectors of the ACP state's economies. It highlighted that Financial and Technical Cooperation was to be related to the execution of projects and programmes which contribute essentially to the development of ACP states.

In Title V (Provisions related to establishment, services, payments and capital movements) of the Agreement it was noted that the Parties shall treat nationals and companies or firms of the Parties on a non-discriminatory basis. The institutions of the Convention were highlighted in Title VI, these are: the Council of Ministers, Committee of Ambassadors, and the Consultative Assembly[4].

Along with the various Titles of the Lomé Convention, several special Protocols were attached which governs the trade of sugar, rum, beef and bananas to the EU.

Under the Protocol on Sugar the Community undertook to purchase and import, for an indefinite period at guaranteed prices, specific quantities of cane sugar which originate in the ACP states. Article 10 of the Sugar Protocol noted that the provisions of the Protocol may be denounced, subject to two years notice, after the conclusion of the Lomé Convention. The sugar protocol played a significant role in the socio-economic development of ACP states. It ensured that ACP sugar had a market in the EU. McDonald (2004) notes that out of the 710,000 tonnes of sugar produced in the Caribbean, 420,000 are exported to the EU under the sugar protocol. It is further estimated that the sugar industry in CARICOM generates 125,000 jobs in direct and indirect employment (McDonald 2004).

In regards to the importation of bananas to the EEC, the Protocol on bananas stipulated that no ACP state shall be placed, as regards to market access and market advantages, in a less favourable situation than in the past or at present. The Protocol further highlighted that measures should be taken to enable ACP states to gain a foothold in the Community markets and to extend their banana exports to those markets. The Protocol on rum, on the other hand, stipulated that rum from ACP states should be imported in the Community duty free until a common market for spirits was established.

Lomé II was signed in 1979 by 58 ACP states and 9 EEC Member states, it was to last from 1980-1985. The introduction of the SYSMIN[5] system was one major change brought by Lomé II.

The third Lomé Convention (Lomé III) was signed in 1984 between 65 ACP states and 10 EEC Member states, it was to last for a five year period from 1985-1990. Included in the new Convention were provisions human rights and respect for human dignity and on cultural and social cooperation. The provisions on cultural and social cooperation constituted both a new area of cooperation and a complement to operations in all other areas, as it became obvious that a crucial factor for success is cooperation on cultural and social dimensions (ACP-EEC Cooperation Lomé III: 1985). Lomé III was the first trade arrangement between the EU and a group of ACP states that included environmental protection measures. References were made to the environment mainly in connection with drought and desertification control (Lomé IV: 1990). Addressing these issues were seen as necessary to achieve increased food production and general social and economic development in ACP states.

The fourth Lomé Convention (Lomé IV) was signed in 1989. Lomé IV was to last for a ten year period, from 1990 to 2000. Innovations brought by Lomé IV included support for economic rationalization policies and the introduction of a Chapter on debt. With the signing of Lomé IV environmental protection received increased attention in EU-ACP trade relations. While Lomé IV did not speak to the issue of sustainable development, it included various provisions which indicate that economic development in ACP states was supposed to be the outcome of a decision-making process that took into account environmental concerns. The underlying objective of environmental protection, which came under Title I of Lomé IV, was to foster inter-generational equity. This is stated in Article 33 of Lomé IV which

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notes that protection and enhancement of the environment is aimed at improving the living conditions of the populations in some ACP states as well as to safeguard the living conditions of future generations. Article 37 of Lomé IV further provided for Environmental Impact Assessments (EIAs) to be carried out on large-scale projects and those posing a significant threat to the environment. In addition to the conducting of EIAs, environmental protection under Lomé IV noted the importance of integrating development with environmental considerations. This is seen in Article 34 of Lomé IV which outlines that the existence of some ACP states is under threat as a result of the rapid deterioration of the environment that hinders any development efforts. Besides this, the protection of the environment under Lomé IV, similarly to Lomé III, was seen as necessary to achieve food self-sufficiency and food security and foster economic and social development in some ACP states.

An important area of environmental cooperation, in terms of Lomé IV, was in regards to the transshipment of hazardous waste and radioactive waste. Kiss et.al. (2003) state that Lomé IV “was the first binding agreement between developed and developing countries prohibiting the hazardous and nuclear waste trade” (Kiss et.al. 2003: 63). It is outlined in Article 39 of Lomé IV that “the Community shall prohibit all direct and indirect export of such waste to the ACP states”. The ACP states, at the same time, were required to prohibit the direct or indirect import into their territory of such waste from the Community or any other country.

## **The Challenge that Faced EU-ACP Preferential Trade Agreements**

The preferential agreements between the EU and ACP states came under increasing pressure from the international community. The end of the Cold War in 1989 and the conclusion of the Uruguay Round of trade negotiations in 1993 were two events that hampered the further existence of preferential agreements between the EU and ACP states.

### ***The End of the Cold War***

With the end of the Cold War there was the triumph of capitalist ideology over that of communist ideology. The end of the Cold War further led to dismantling of the Berlin Wall that had partitioned the European landscape and significantly affected relations between the EU and ACP states. The Cold War affected EU-ACP relations in two ways. First, it broadened the horizon and scope of the EU's external relations; secondly, it meant a vindication for market-oriented economies and democratization.

The end of the Cold War led to the EU re-defining its relationship with its former Communist neighbours. This led to the EU providing financial assistance to its former Communist neighbours, as they began to reform their economies. PHARE (Poland Hungary Assistance for the Reconstruction of the Economy) was established by the EU after the fall of the Berlin Wall in 1989, it was the main channel for the EU's financial and technical support to former Communist states, and included emergency aid as well as instruments to support modernization and restructuring (European Commission 2000). Financial and non-financial assistance was also provided to establish the proper institutional framework in the former Communist European states to prepare them for eventual EU Membership. This was seen as necessary given that Article 49 of the Consolidated Treaty on European Union states that “any European state which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union”[6]. ISPA (Instrument for Structural Policies for Pre-Accession) was one aid programme established by the EU to prepare former Communist countries for eventual EU Membership.

While the end of the Cold War led to the EU shifting its focus to Eastern Europe, it also led to a justification for economic liberalization and democratization. It was argued that if Eastern European Countries could democratize and liberalize their economies, why couldn't ACP states do the same? Additionally, the change of Eastern European countries to transparent and democratic political institutions led to the EU insisting that ACP states adopt similar institutions. This was evident by the inclusion of human rights and good governance in the Lomé IV convention. At the revision of Lomé IV an updated clause confirmed that the protection of human rights was an essential element of

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cooperation, meaning that any violation could lead to the partial or total suspension of European aid.

The promotion of human rights protection and good governance were further included in the Cotonou Agreement, which will be examined further in this Chapter. Within the Preamble to the Cotonou Agreement it is noted that a political environment guaranteeing peace, security and stability, respect for human rights, democratic principles and rule of law, and good governance is part and parcel of long term development. The Cotonou Agreement also makes reference to various human rights conventions<sup>[7]</sup> which should be taken into account under the partnership.

## ***Uruguay Round of Trade Negotiations***

The conclusion of the Uruguay Round of Trade Negotiations (1986-1994) led to the establishment of the World Trade Organization (WTO) which was accompanied by new international rules to govern trade in agriculture, manufacturing, services and intellectual property.

The establishment of the WTO was to have significant ramifications for the future of EU-ACP trade relations, as it questioned the legality of this relationship. At the heart of the WTO is the principle of Most Favoured Nation (MFN), Article I, which aims to establish equal treatment and non-discrimination among Member states. The Lomé Conventions were seen to be in violation of the MFN principle as they only offered trade preferences to the ACP countries and so discriminated against other developing countries. To justify the legality of the Lomé Conventions in the GATT, the EU had drawn on a combination of Article XXIV<sup>[8]</sup> and Part IV<sup>[9]</sup> Article XXXVI(8)<sup>[10]</sup> (McQueen 1998). This justification was however challenged on the grounds that since Lomé is a non-reciprocal agreement the provisions of Article XXIV cannot apply, while Part IV was not meant to detract from GATT obligations and so could only be applied in a non-discriminatory manner to all developing countries (McQueen 1998).

The incompatibility of the Lomé Agreements with GATT/WTO obligations was further reinforced by the rulings of the first and second dispute panels on the EEC's preferential import regimes for bananas<sup>[11]</sup>. The panels in making their decisions ruled that GATT Article XXIV or Article XXIV in conjunction with Part IV could not be used to justify the legality of the Lomé Conventions (McQueen 1998). This led to the EU seeking a waiver, under the provisions of Article XXV (Joint Action by the Contracting Parties), of its obligations from Article 1.1 of the GATT for the Lomé Convention. The granting of the waiver led to the Cotonou Agreement, which will be examined in the section below.

## **The Cotonou Agreement: Reshaping EU-ACP trade relations**

The Cotonou Agreement was signed between the EU and the ACP states on June 23, 2000. Through the Cotonou Agreement there was an extension of the lifetime of the non-reciprocal trade arrangements of Lomé IV for a transitional period of eight years that ended on December 31, 2007. It should further be noted that through the Cotonou Agreement there was the introduction of the term 'sustainable development' to EU-ACP trade relations. This is evident in the preamble to the Agreement which notes that the Parties affirm their commitment to "sustainable development and the gradual integration of the ACP countries into the world economy". While the Cotonou Agreement introduced the term 'sustainable development' to EU-ACP relations, it did not define sustainable development. It can thus be argued that 'sustainable development', in the Cotonou Agreement, would be determined in a similar fashion to what occurred in the Gabcikovo-Nagymaros Case. Sustainable development would thus be determined by whether or not decisions taken about economic development took into account environmental concerns. This would not only save the Parties from the rigours of determining which development is sustainable, it would further be in keeping with the International Court of Justice's (ICJ) ruling on the Gabcikovo-Nagymaros Case.

In terms of trade between the EU and ACP countries, the Cotonou Agreement outlined the agenda for the negotiation of new reciprocal trading arrangements with the ACP states, called Economic Partnership Agreements. Desta (2006) notes that while the "Cotonou Agreement does not specifically define EPA's, it [however] gives a few

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important clues about them” (Desta 2006: 1346). It is noted in Article 34 (Objectives) of the Cotonou Agreement that EPA’s are aimed at fostering the smooth and gradual integration of ACP states into the world economy. EPA’s are also seen as necessary to enhance the production, supply and trading capacity of ACP countries as well as their capacity to attract foreign investment[12].

In terms of environmental protection, on the other hand, there was the introduction of cooperation on environmental protection and the sustainable utilization and management of natural resources[13]. The provisions found in the Cotonou Agreement to cooperate on environmental protection and sustainable utilization of natural resources were used to inform the provisions of the environmental Chapter of the EPA, which will be examined in the next chapter. The Cotonou Agreement placing emphasis on ‘cooperation’ in terms of environmental protection is necessary, as through cooperation the EU can provide assistance to ACP countries that are in need of support to strengthen environmental protection within their jurisdictions. Cooperation on environmental issues under the Cotonou Agreement was, among other things, aimed at:

1. Maintaining environmental sustainability into all aspects of development cooperation and support programmes and projects implemented by the various actors[14];
2. Building and/or strengthening the scientific and technical human and institutional capacity for environmental management for all environmental stakeholders[15];
3. Supporting specific measures and schemes aimed addressing critical sustainable management issues[16].

It is further noted in Article 32 of the Cotonou Agreement that cooperation should take into account the vulnerability of small island ACP states, drought and desertification problems and institutional development and capacity building.

## Conclusion

Trade relations between the EU and its former colonies can be traced back to the policy of Association and the Yaoundé Conventions. These agreements were to be followed by the Lomé Conventions, which ran from the year 1975 to the year 2000. These agreements were aimed at fostering development within ACP states by providing preferential access to ACP products entering the European market.

Environmental protection measures were not present in the policy of Association and the Yaoundé Conventions. It was with the advent of Lomé III that environmental protection measures were introduced to EU-ACP trade relations. Lomé IV was to elevate the attention placed on environmental protection measures in EU-ACP trade relations. Environmental protection measures under Lomé IV, while they did not speak to the issue of sustainable development, had provisions that were aimed at making development sustainable.

Despite the provisions on environmental protection in the Lomé Conventions, environmental protection in EU-ACP trade relations was hampered by various shortcomings. The focus of environmental protection in the Lomé Conventions being limited to the state of the environment in ACP countries was one shortcoming of the Lomé Conventions. This limited focus was not conducive to the economic development of ACP states as it failed to take into account how the environmental policies of the EU could negatively affect the economic development of ACP states.

With the end of the Cold War and the conclusion of the Uruguay round of trade negotiations, preferential trade agreements between the EU and ACP states came under increased scrutiny and pressure. The end of the Cold War led to the EU shifting its focus to Eastern European Countries, it further provided a justification for economic liberalization and democratization in ACP states. The Uruguay Round of trade negotiations, on the other hand, led to the establishment of the WTO, which questioned the ‘legality’ of the Lomé Convention. The WTO ruled that the Lomé Conventions were incompatible with GATT/WTO obligations. This led to the EU seeking a waiver from Article 1 of the GATT for the Lomé preferences. The waiver allowed for Lomé preferences to be granted to ACP countries for an additional seven year period under the Cotonou Agreement. During the seven year period, the ACP countries

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had the option of negotiating WTO-compatible EPAs with the EU.

The Cotonou Agreement reshaped EU-ACP trade relations, as it not only provided for the negotiation of new reciprocal trade agreements. It further led to the introduction of the concept of 'sustainable development' to EU-ACP relations, which was to find its way in the EU-CARIFORUM EPA.

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[1] See "Regime of Association and Yaoundé Conventions" at [http://www.acpsec.org/en/about\\_us.htm](http://www.acpsec.org/en/about_us.htm)

[2] The Arusha Agreement was signed in 1969 between the EEC on the one hand and Kenya, Tanzania and Uganda on the other.

[3] Article 16 of Lomé I.

[4] It is highlighted in Article 70 of Lomé I that the Council of Ministers shall be composed of members of the Council of the European Communities and members of the Commission of the European Communities. It should also be comprised of a member of government of each ACP state. The Committee of Ambassadors, on the other hand, shall be comprised of one representative of each Member state and one representative of the Commission, and one representative of each ACP state. The Consultative Committee was composed on the basis of parity of members of the Assembly on the side of the Community and of the representatives designated by the ACP states on the other.

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[5] SYSMIN was a special financial facility intended for ACP states whose mining sector played a major role in their economy and is faced with known or foreseeable difficulties.

[6] Article 2 of the Consolidated Treaty on European Union states that “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”.

[7] Some of the human rights conventions that the Cotonou Agreement makes reference to are the Universal Declaration of Human Rights, the Vienna Convention on Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of all forms of discrimination against women.

[8] Article XXIV of the GATT outlines the conditions necessary for establishing a free trade area or customs union.

[9] Part IV (Trade and Development) speaks to the issue of favourable and differential treatment for developing countries.

[10] Article XXXVI(8) states that “The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties”.

[11] Prior to 1993, the EEC had three distinct banana regimes; there was a preferential regime, a duty-free market and a market that was subject to a 20% tariff.

[12] Article 34 Paragraph 3 of the Cotonou Agreement.

[13] Article 32 of the Cotonou Agreement.

[14] Article 32(I)(a) of the Cotonou Agreement.

[15] Article 32(I)(a) of the Cotonou Agreement.

[16] Article 32(I)(c) of the Cotonou Agreement.